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TENTH ITEM ON THE AGENDA

373rd Report of the Committee on Freedom of Association

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Introduction

1. The Committee on Freedom of Association set up by the Governing Body at its 117th Session (November 1951), met at the International Labour Office, Geneva, on 30–31 October and 7 November 2014, under the chairmanship of Professor Paul van der Heijden.
2. The members of Colombian and Danish nationality were not present during the examination of the cases relating to Colombia (Cases Nos 2995 and 3020) and Denmark (Case No. 3039).

* * *

3. Currently, there are 154 cases before the Committee, in which complaints have been submitted to the governments concerned for their observations. At its present meeting, the Committee examined 21 cases on the merits, reaching definitive conclusions in 13 cases and interim conclusions in eight cases; the remaining cases were adjourned for the reasons set out in the following paragraphs.

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

4. The Committee considers it necessary to draw the special attention of the Governing Body to Cases Nos 2445 and 2978 (Guatemala) and 2949 (Swaziland) because of the extreme seriousness and urgency of the matters dealt with therein.

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

5. The Committee deeply regrets that it was obliged to examine the following cases without a response from the Government: Cameroon (3041), Guatemala (2978 and 3035), Swaziland (2949).

Urgent appeals

6. As regards Cases Nos 2203 (Guatemala), 2318 (Cambodia), 2655 (Cambodia), 2786 (Dominican Republic), 2794 (Kiribati), 2902 (Pakistan), 3040 (Guatemala), 3053 (Chile), 3054 (El Salvador) and 3057 (Canada), the Committee observes that, despite the time which has elapsed since the submission of the complaints, it has not received the observations of the governments. The Committee draws the attention of the governments in question to the fact that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body, it may present a report on the substance of these cases if their observations or information have not been received in due time. The Committee accordingly requests these governments to transmit or complete their observations or information as a matter of urgency.

New cases

7. The Committee adjourned until its next meeting the examination of the following cases: 3074 (Colombia), 3075 (Argentina), 3076 (Republic of Maldives), 3080 (Costa Rica), 3081 (Liberia), 3085 (Algeria), 3086 (Mauritius), 3087 (Colombia), 3088 (Colombia), 3089 (Guatemala), 3090 (Colombia), 3091 (Colombia), 3092 (Colombia), 3093 (Spain), 3094 (Guatemala), 3095 (Tunisia), 3096 (Peru), 3097 (Colombia), 3098 (Turkey), 3099 (El Salvador), 3100 (India), 3101 (Paraguay), 3102 (Chile), 3103 (Colombia), 3104 (Algeria), 3105 (Togo) and 3106 (Panama), since it is awaiting information and observations from the governments concerned. All these cases relate to complaints submitted since the last meeting of the Committee.

Observations requested from governments

8. The Committee is still awaiting observations or information from the governments concerned in the following cases: 2177 and 2183 (Japan), 2753 (Djibouti), 2869 (Guatemala), 2871 (El Salvador), 2896 (El Salvador), 2923 (El Salvador), 2989 (Guatemala), 3004 (Chad), 3007 (El Salvador), 3018 (Pakistan), 3025 (Egypt), 3062 (Guatemala), 3064 (Cambodia), 3067 (Democratic Republic of Congo), 3068 (Dominican Republic), 3070 (Benin) and 3072 (Portugal).

Partial information received from governments

9. In Cases Nos 2265 (Switzerland), 2508 (Islamic Republic of Iran), 2673 (Guatemala), 2723 (Fiji), 2726 (Argentina), 2743 (Argentina), 2811 (Guatemala), 2817 (Argentina), 2824 (Colombia), 2830 (Colombia), 2889 (Pakistan), 2897 (El Salvador), 2962 (India), 2967 (Guatemala), 2970 (Ecuador), 2982 (Peru), 2987 (Argentina), 2994 (Tunisia), 2997 (Argentina), 3003 (Canada), 3010 (Paraguay), 3017 (Chile), 3023 (Switzerland), 3043 (Peru), 3047 (Republic of Korea), 3055 (Panama), 3061 (Colombia), 3069 (Peru) and 3078 (Argentina), the governments have sent partial information on the allegations made. The Committee requests all these governments to send the remaining information without delay so that it can examine these cases in full knowledge of the facts.

Observations received from governments

10. As regards Cases Nos 2254 (Bolivarian Republic of Venezuela), 2609 (Guatemala), 2620 (Republic of Korea), 2648 (Paraguay), 2761 (Colombia), 2882 (Bahrain), 2917 (Bolivarian Republic of Venezuela), 2927 (Guatemala), 2937 (Paraguay), 2941 (Peru), 2946 (Colombia), 2958 (Colombia), 2960 (Colombia), 2996 (Peru), 2998 (Peru), 3009 (Peru), 3015 (Canada), 3016 (Bolivarian Republic of Venezuela), 3019 (Paraguay), 3024 (Morocco), 3026 (Peru), 3027 (Colombia), 3029 (Plurinational State of Bolivia), 3030 (Mali), 3032 (Honduras), 3034 (Colombia), 3042 (Guatemala), 3044 (Croatia), 3046 (Argentina), 3049 (Panama), 3050 (Indonesia), 3051 (Japan), 3052 (Mauritius), 3056 (Peru), 3058 (Djibouti), 3059 (Bolivarian Republic of Venezuela), 3060 (Mexico), 3063 (Colombia), 3065 (Peru), 3066 (Peru), 3071 (Dominican Republic), 3073 (Lithuania), 3077 (Honduras), 3079 (Dominican Republic), 3082 (Bolivarian Republic of Venezuela), 3083 (Argentina) and 3084 (Turkey), the Committee has received the governments' observations and intends to examine the substance of these cases at its next meeting.

Article 26 complaint

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

Withdrawal of a complaint

12. In its communication dated 30 June 2014, the Federation of Maquila and Textile Workers (FESTMIT) indicated that, by virtue of the decision taken by its extraordinary congress, it wished to withdraw the complaint presented against the Government of Nicaragua (Case No. 3045). The Committee notes this information and considers the complaint to be effectively withdrawn.

Receivability of a complaint

13. The Committee considered that the complaint against the Government of the Bolivarian Republic of Venezuela (Case No. 2955) was not receivable.

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

Case No. 2460 (United States)

14. The Committee last examined this case – which concerns the prohibition imposed by the legislation of North Carolina to make any collective agreement between cities, towns, municipalities or the State and any labour or trade union in the public sector – at its November 2011 meeting [see 362nd Report, paras 58–61]. On that occasion, the Committee noted with regret that none of the bills introduced in North Carolina to remove the collective bargaining ban imposed on state and local public employees were enacted into law. The Committee expressed the firm hope that similar legislation would be introduced and adopted in the very near future. Taking note of the efforts made by the Government, the Committee urged it to continue to promote freedom of association and collective bargaining rights in the public sector, including by promoting the establishment of a collective bargaining framework in the public sector in North Carolina and to keep it informed of developments in that respect.
15. In its communication dated 11 October 2012 and 28 August 2014, the Government provides an update concerning the steps and action taken at both the state level and more broadly at the federal level to promote the establishment of a framework for public sector collective bargaining in the State of North Carolina. At the same time, the Government refers to a bill introduced by the members of the North Carolina House of Representatives on 30 January 2013, which included language that would enshrine a “right to work” provision and a prohibition on public sector collective bargaining in North Carolina’s Constitution. No further action has been taken. The Government also refers more broadly to information provided within the framework of the follow-up given to the ILO Declaration on Fundamental Principles and Rights at Work, which outlines federal-level efforts to protect workers’ rights to freedom of association.
16. *The Committee takes due note of the information provided by the Government and notes with regret the introduction in January 2013 in the North Carolina House of Representatives of a proposed constitutional amendment to prohibit public sector*

collective bargaining. The Committee recalls that this complaint concerned in particular members of UE Local 150 which is essentially made up of women and people of colour in some of the most difficult, low-wage public sector jobs (janitors, refuse disposal workers, housekeepers, groundkeepers, medical technicians, bus drivers, etc.). It refers once again to its previous conclusions that only public servants engaged in the administration of the State may be excluded from the guarantees of the principles embodied in Convention No. 98 and that priority should be given to collective bargaining in the fullest sense possible as the means for settlement of disputes arising in connection with the determination of terms and conditions of employment in the public service [see 344th Report, paras 981 and 989]. The Committee therefore once again urges the Government to continue to promote freedom of association and collective bargaining rights in the public sector, including by promoting the establishment of a collective bargaining framework in the public sector in North Carolina in line with the above principles and to keep it informed of developments in that regard.

Case No. 2547 (United States)

17. The Committee last examined this case – which concerns a decision of the National Labor Relations Board (NLRB) denying graduate teaching and research assistants at private universities the right, under the National Labor Relations Act (NLRA), to engage in organizing or collective bargaining – at its March 2014 meeting [see 371st Report, paras 54–58]. On that occasion, the Committee welcomed the information of a joint statement between New York University (NYU) and the United Automobile, Aerospace and Agricultural Implement Workers of America International Union (UAW), in which the parties indicate that they had reached a voluntary agreement to bargain in good faith. The Committee noted, however, that the decision of the NLRB in *Brown University* still excluded graduate students from collective bargaining rights set out in the NLRA and requested the Government to continue to provide information on any additional steps taken or envisaged to ensure that graduate teaching and research assistants, in their capacity as workers, are not excluded from the protection of freedom of association and collective bargaining.
18. In its communication dated 28 August 2014, the Government reiterates previous reports concerning the NLRB reversal of a Regional Director’s dismissal of a petition filed by the Graduate Student Organizing Committee/United Auto Workers (GSOC/UAW) seeking a representation election for 1,800 graduate teaching and research assistants at NYU stating that there were “compelling reasons for reconsideration of the decision in *Brown*”, and remanding the case to the Regional Director for a hearing and development of a “full evidentiary record”. On 22 June 2012, the Board granted a review in NYU and in a similar case, *Polytechnic Institute of New York University and the UAW*, 29-RC-12054 (2012). In the agreement reached by the GSOC/UAW and NYU, it was also agreed that the union would withdraw its request for NLRB review of *Brown University*. On 11 December 2013, NYU graduate teaching and research assistants elected GSOC/UAW as their representative 620-10. To date, the parties have not negotiated a contract.
19. The Government adds that challenges to the holding in *Brown University* continue. On 26 March 2014, the NLRB Director for Region 13 determined that student football players receiving football grant-in-aid scholarships qualify as employees under the NLRA and thus are due organizing and bargaining rights [*Northwestern University and CAPA*, 13 RC-121359 (2014)]. If the Regional Director’s decision is upheld, it will mark the first application of the NLRA to student athletes. Critically, in its review of *Northwestern University and CAPA* the Board again has the opportunity to overrule *Brown University*’s test of employee status. Inviting amicus briefs addressing six questions related to the student–athletes’ classification as “employees,” the Board asked: “Insofar as the Board’s decision in *Brown University*... may be applicable to this case, should the Board adhere to,

modify, or overrule the test of employee status applied in that case, and if so, on what basis?” The deadline for amicus briefs was 3 July 2014. Amicus curiae include universities, university faculty, student athletes’ associations, the AFL–CIO, parents of student athletes, and other interested parties.

20. *The Committee notes this information with interest. In particular, the Committee observes that there have been significant developments on this matter before the NLRB and as regards the agreement reached between the GSOC/UAW and NYU to bargain in good faith and the ensuing determination of the representative union through a representation election. The Committee requests the Government to continue to keep it informed of developments as regards the NLRB’s reconsideration of the decision in Brown University and in relation to the progress made under the GSOC/UAW agreement with NYU.*

Case No. 2741 (United States)

21. The Committee last examined this case concerning restrictions on the right to strike in the New York State Taylor Law in November 2011 [see 362nd Report, paras 740–775]. On that occasion, the Committee requested the Government to take steps aimed at bringing the state legislation into conformity with freedom of association principles so that only: (1) public servants exercising authority in the name of the state; and (2) workers of essential services in the strict sense of the term may be restricted in their right to strike. In addition, the Committee urged the Government to take measures without delay to ensure that the union was fully compensated in respect of the sanctions imposed and the withdrawal of check-off and to take steps for the compensation of Mr Toussaint for his ten-day detention and the additional sanctions imposed against the striking workers. Finally, the Committee expected that the Government would take all necessary measures to effectively enforce the decision of the Supreme Court with regard to the Public Employment Relations Board (PERB) arbitration award.
22. In its communication of 11 October 2012, the Government indicates that it has been in contact with the New York State Office of the Attorney-General and the New York City Law Department to explore potential avenues for response to the Committee’s decision. The Government adds that, following the New York City Transit Authority appeal of the PERB arbitration award, the New York Court of Appeals, the highest court in New York, upheld the PERB decision on 7 June 2012.
23. In a communication dated 28 August 2014, the Government informs the Committee that the New York State Legislature is considering multiple bills related to freedom of association in the public sector. The Government draws particular attention to Assembly Bill A3922 which would amend the Taylor Law’s sanctions for public sector striking to allow a court to consider, when determining the appropriate penalty, whether the union and employer had been at a collective bargaining impasse for over a year. Under the proposed legislation, such an impasse would be deemed an “act of extreme provocation”, relevant to determining how to respond to an unlawful public sector strike. In addition, Senate Bill S7773 would provide for: (1) a 30-day limit on some currently unlimited punishments for contempt citations involving employee organization acts (including strikes) in response to “extreme provocation”; and (2) assessing, in the light most favorable to the employee organization, the facts related to whether or not the violative acts, mentioned above, were a response to “extreme provocation”. With regard to the collective bargaining rights of transit workers in New York, the Metropolitan Transit Authority (MTA) continues to negotiate with the Transport Workers Union, Local 100 (TWU). On 17 July 2014, TWU and the MTA reached agreement on a new collective bargaining agreement (CBA) covering workers who staff the Long Island Railroad (a separate portion of the MTA system from the buses and subway trains affected in the 2005 strike). The agreement came

four years after the prior CBA expired and many believe it prevented a TWU strike on the railroad. The CBA is being considered for ratification by the covered TWU members.

24. *The Committee takes due note of the information provided by the Government and in particular the final upholding of the PERB award and the steps being taken in the New York State legislature to limit the sanctions that may be taken with respect to strikes in the public sector when they arise in situations of extreme provocation. The Committee trusts that the Government will continue to take steps aimed at bringing the state legislation into full conformity with the principles set out in its previous conclusions and will keep it informed of developments in this regard. The Committee also requests the Government to inform it of any steps taken to compensate the union and Mr Toussaint for the sanctions that had been imposed.*

Case No. 2616 (Mauritius)

25. The Committee last examined this case, which concerned alleged use of repressive measures against the trade union movement, including criminal prosecutions, in violation of the right to strike and to engage in protests, at its November 2012 meeting [see 365th Report, paras 105–108]. On that occasion, the Committee requested the Government and the complainants to keep it informed of the outcome of the application presented by Mr Sadien before the Commission on Prerogative of Mercy, and asked the Government in the meantime to indicate whether the passports have been returned to Messrs Benydin and Sadien. Furthermore, the Committee requested the Government to keep it informed of any development concerning the steps it has taken to review the application of the Public Gathering Act (PGA), in full consultation with the social partners concerned, so as to ensure that sections 7, 8 and 18 are not applied in practice in a manner so as to impede the legitimate exercise of protest action in relation to the Government's social and economic policy.
26. In communications dated 21 March and 18 December 2013, the Government indicates that the application submitted by Mr R. Sadien to the Commission on Prerogative of Mercy to have his conviction waived and his judicial file cleared, is still under consideration. The Government further confirms that the passports of Messrs Benydin and Sadien have been returned to them. As concerns the review of the PGA, the Government informs that the Prime Minister's Office has indicated, in a communication dated 9 December 2013, that consideration is being given to initiate consultations to amend the PGA.
27. *The Committee welcomes the Government's indication that the passports of Messrs Benydin and Sadien have been returned to them. It expects that Mr R. Sadien's application will be reviewed in the near future and requests the Government to keep it informed of the outcome. The Committee further notes with interest the Prime Minister's Office's indication that consideration is being given to initiate consultations to amend the PGA and requests the Government to keep it informed on any development in this regard.*

Case No. 2969 (Mauritius)

28. The Committee last examined this case at its October 2013 meeting [see 370th Report, paras 493–535], which concerned: (i) the alleged dismissal of the General Secretary and four members of the Organization of Hotel, Private Club and Catering Workers' Unity by the Blue Lagoon Beach Hotel, as well as the interdiction of all trade unions meetings within the premises and interdiction of all workplace representatives to communicate at the seat of the trade union during working hours; and (ii) the recognition by the Ireland Blyth Ltd of a new trade union (Ireland Blyth Ltd Staff Union – IBSU) for collective bargaining purposes, in violation of the Procedural Agreement signed between the company and Ireland Blyth Ltd Staff Association (IBLSA) and the applicable legislation.

29. On that occasion, the Committee: (a) requested the Government to institute an independent investigation into the alleged acts of anti-union discrimination suffered by the General Secretary and four members of the Organization of Hotel, Private Club and Catering Workers' Unity (Deepak Dassoo, Denis Manikion, Rakesh Judah, Ramjeeatoo Jootoo and Suresh Goomany) so as to ascertain their veracity, and to provide detailed information on its outcome, including as regards the claim of compensation for unjustified termination of employment which was before the Industrial Court; (b) requested the Government to intercede with the parties with a view to finding a mutually acceptable solution concerning the holding of union meetings inside the company premises; and (c) expected the Government to take the necessary measures to ensure respect in the future for the principle that workers' representatives in the undertaking should be afforded the necessary time off from work for carrying out their representation functions, without loss of pay or social and fringe benefits and without impairing the efficient operation of the undertaking concerned.
30. Concerning Ireland Blyth Ltd, the Committee: (d) expected that the Government would take the necessary steps to ensure the respect of the Procedural Agreement by the company in the future, as agreements should be binding on the parties; (e) requested the Government to make every effort to intercede with the parties to find a mutually satisfactory solution, in order to ensure that genuine and constructive negotiations between the company and the IBLSA are swiftly resumed, with a view to regulating terms and conditions of employment by means of collective agreements; and (f) requested the Government to institute an independent investigation into the alleged acts of anti-union interference so as to determine their veracity, and to provide detailed information on its outcome.
31. In its communication of 6 August 2014, the Government reports that the case lodged at the Industrial Court on behalf of the General Secretary and four members of the Organization of Hotel, Private Club and Catering Workers' Unity for a claim of compensation for unjustified termination of employment was split into two separate cases due to the different charges and has been fixed for trial on 17 September 2014. The Government further indicates that an agreement was reached on 24 July 2013 for trade union meetings to be held during lunchtime and time-off facilities have now been granted to workplace representatives. *The Committee notes this information with interest. It requests the Government to keep it informed of the outcome of the two trials before the Industrial Court.*
32. As regards the outstanding matters concerning Ireland Blyth Ltd, the Government indicates that the issue of the infringement of the procedural agreement and resumption of negotiation between the company and the IBLSA was referred to the Conciliation and Mediation Section of the Ministry of Labour, Industrial Relations and Employment for consideration and intervention, as provided for under section 68 of the Employment Relations Act 2008 as amended, along with the matter concerning the alleged anti-union interference. The Government further indicates that it was informed by the IBLSA on 29 April 2014 that some progress has been made in the relations between the parties and, in light of its disaffiliation from the complainant in the case (copy of relevant documents attached), the IBLSA requests that this element of the case be withdrawn from consideration.
33. *The Committee takes due note of this information and, in the absence of any information to the contrary from the complainant, considers that this aspect of the case does not call for further examination.*

Case No. 2478 (Mexico)

34. In its previous examination of this case at its March 2010 meeting, the Committee made the following recommendations on the matters still pending [see 356th Report, para. 959]:

- (a) The Committee requests the Government to keep it informed of the outcome of the criminal action for the falsification of documents brought by one of the members of the complainant union's General Vigilance and Justice Council.
- (b) The Committee reiterates its invitation to a tripartite discussion on the advisability of expediting the labour court proceedings in the case of internal union disputes.
- (c) The Committee awaits the ruling that will be issued in relation to the death of the worker Reynaldo Hernández González.
- (d) The Committee requests the Government to keep it informed of the outcome of the proceedings initiated by the complainant union against the decision of the Federal Conciliation and Arbitration Board to declare the SNTEEBMRM to be the accredited party to the collective agreements in place of the complainant union.
- (e) The Committee requests the Government to continue to supply information as to the situation with regard to the freezing of the accounts of the complainant union and – given that there are judicial decisions which point in different directions – concerning the arrest warrants against Napoleón Gómez Urrutia and other members of the executive committee of the complainant union, as well as to keep it informed of further developments in the penal proceedings.
- (f) The Committee invites the complainant organization to provide further information concerning the allegations of death threats, abductions, illegal arrest and beating of miners belonging to the union.
- (g) The Committee awaits the outcome of the consultations with the First Agency of the Public Prosecutor's Office of Lázaro Cárdenas concerning the case of alleged abduction, beating and death threats against the wife of the trade unionist Mario García Ortiz.
- (h) The Committee requests the Government to inform it of the outcome of the proceedings relating to acts of violence against trade unionists in the State of Michoacán.
- (i) The Committee requests the Government to pursue its efforts to resolve the dispute in the mining sector.

35. At its March 2011 meeting, in the absence of information from the Government and the complainant organizations, the Committee reiterated its previous recommendations and regretted that neither the complainant organizations nor the Government had provided any of the information requested when the case had last been examined. The Committee emphasized that the issues involved are very serious and requested the Government and the complainant organizations to transmit the requested information without delay. The Committee also indicated that it firmly expected that the issue of the acknowledgement of the executive committee of the mining trade union would be settled rapidly in accordance with the principles of Convention No. 87 [see 359th Report, paras 99–101].

36. In its communication of 1 October 2012, in relation to the Committee's recommendation (i), the Government reports that the Secretariat of Labour and Social Welfare (STPS) has supported and continues to organize various working groups with the members of the national executive committee of the mining union and that constructive dialogue between the Government and the leaders of the union has helped to resolve the issue of the acknowledgement of the mining executive committee. The Government reports that in June 2012 the STPS notified the mining union of its acknowledgment of the appointment of Napoleón Gómez Urrutia as Secretary-General and of Mario García Ortiz as Deputy Secretary-General, and that in July 2012 the STPS granted the union's request for the acknowledgement of the agreements adopted at the 37th Ordinary General Assembly. *The Committee notes this information with interest.*

37. Regarding the Committee's recommendation (d), the Government reports that a decision has been reached in respect of the appeals made by the National Union of Miners, Metalworkers and Allied Workers of the Republic of Mexico (SNTMMSSRM) against the decision of the Federal Conciliation and Arbitration Board (JFCA) to declare the National

Union of Mine Exploration, Exploitation and Production Workers of the Republic of Mexico (SNTEEBMRM) to be the signatory of the collective agreements that had been signed with the SNTMMSSRM. The Government indicates that six of the eight final rulings confirmed the SNTEEBMRM as the signatory and that SNTEEBMRM withdrew from the other labour proceedings. *The Committee notes this information.*

38. Regarding the Committee's recommendation (e), in relation to the freezing of the accounts of the complainant union, and the criminal proceedings and arrest warrants against Napoleón Gómez Urrutia and other members of the executive committee of the complainant union, in its communications of 20 April and 18 July 2011, the International Metalworkers' Federation (IMF) (now IndustriALL Global Union) reports that all the criminal charges brought against the union leader Napoleón Gómez Urrutia have been dismissed by the courts and that on 24 February 2011, after more than three years' illegal imprisonment, the union leader Juan Linares Montúfar was released after the three members of the trade union who had accused him withdrew their allegations. In its communication of 1 October 2012, the Government indicates that the Sixth Criminal Court of the First Circuit of the Federal District has not yet ruled on the arrest warrant against the trade union leader Napoleón Gómez Urrutia for the alleged mismanagement of US\$55 million from the miners' trust fund. The Government also reports that the precautionary freezing of the accounts of the complainant organization in relation to Case No. 216/2006 has been lifted, but that a ruling has not yet been issued in relation to the precautionary freezing of accounts in Case No. 498/2007. *The Committee regrets that the judicial proceedings relating to union leader Napoleón Gomez Urrutia have not yet been concluded, which constitutes an obstacle to the normal exercise of freedom of association which has now existed for a number of years. The Committee firmly expects that the proceedings relating to this leader and to the precautionary freezing will be resolved rapidly and requests the Government to keep it informed in this regard.*
39. Regarding the proceedings for murder and other acts of violence against trade union members in the State of Michoacán (recommendation (h)), the Government indicates the following: (1) with regard to the court proceedings for the murder of Héctor Álvarez Gómez (preliminary inquiry No. 83/2006–III–AEH), in May 2006 the court issued a release order for the two suspected police officers on the grounds of insufficient evidence, which was upheld by the High Court; (2) with regard to the proceedings for the murder of Mario Alberto Castillo Ramírez (preliminary inquiry No. 199/2006–VII), in April 2006 the court issued a release order for the suspected police officer on the grounds of insufficient evidence, which was upheld by the High Court; and (3) lastly, the Government reports that in January 2011 the criminal proceedings for abuse of authority and obstructing the administration of justice were set aside due to prescription to the benefit of the then Ministerial Police Coordinator, Jaime Liera Álvarez. *The Committee notes this information. While it observes that the judicial proceedings are closed, the Committee regrets to have to express particular concern at their length, and at the fact that the perpetrators of the crimes have not been identified. The Committee recalls that the absence of judgements 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 [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 52]. The Committee invites the complainant organizations to provide any additional information at their disposal which may help to identify those responsible for these acts.*
40. With regard to recommendation (a), concerning the outcome of the criminal action for the falsification of documents, brought by a member of the complainant union's General Vigilance and Justice Council against the labour authorities, the Government reports that a ruling has not yet been issued and that the investigation is confidential. In relation to the proceedings regarding the death of Reynaldo Hernández González (recommendation (c)),

the Government reports that no ruling has yet been issued and that the investigation is still under way. *The Committee notes this information and, while it regrets the delay in these proceedings, it hopes that they will be concluded in the very near future and requests the Government to keep it informed of developments.*

41. With regard to the Committee's recommendation (g), concerning the consultations which the Government was to carry out with the First Agency of the Public Prosecutor's Office of Lázaro Cárdenas on the case of the alleged abduction, beating and death threats against the wife of the union member Mario García Ortiz, the Government reports that the Office of the Attorney-General of the State of Michoacán has indicated that the preliminary investigation (identified by the IMF with reference No. 65/2007) is not related to Ms Maria Elena de los Santos Echeverría, wife of Mario García Ortiz. The Government also reports that the Office of the Attorney-General reviewed the register and index of the Agencies of the Public Prosecutor's Office of Lázaro Cárdenas and found no investigation relating to the abduction and injuries against Ms Maria Elena de los Santos Echeverría. *The Committee notes this information and requests the complainant organizations to once again identify the file number relating to the case of alleged abduction, beating and death threats against Ms Maria Elena de los Santos Echeverría, wife of union member Mario García Ortiz, to enable the Government to respond to these allegations.*

42. With regard to the Committee's recommendation (f), in its communication of 18 January 2012, the SNTMMSSRM reported that there has so far been no investigation, prosecution or punishment of those who carried out the repressive acts in Cananea on 11 January 2008, 6 June 2010 and 8 September 2010. In relation to the repressive acts of 6 June 2010, in its communication of 20 April 2011, the IMF indicates that a group of persons in civilian dress carrying firearms, grenade launchers and spotlights entered the premises of the Mexican Cananea mining company and attacked 300 persons (including workers and their families) who were guarding mine gate No. 1. According to these allegations, the workers and their families were beaten indiscriminately and Filiberto Salazar, Miguel Ángel Covarrubias and Martín Alfredo Zambrano Ureña were injured in the attack. The IMF also indicates that, on that same day, arrests were made of the union members Rodolfo Valdéz Serrano, Luis Alberto Torres, Luis Alfonso Borbón Pérez, Everardo Ochoa and Marcelo Lara López, who were kept in isolation, without water or food, and were beaten, before finally being released on 8 June. In relation to the repressive acts of 8 September 2010, the IMF indicates that a group of strikers tried to go back into the mine premises, as authorized by a court order, and that they were violently attacked by groups of enterprise contractors. The IMF indicates that the federal and state police were present, but that they did nothing to stop the attackers. The IMF adds that after the attack the police arrested 23 members of the SNTMMSSRM and charged them with disturbing public order. The IMF also insists on the need to investigate the murders of Mario Alberto Castillo Rodríguez and Héctor Álvarez Gómez on 20 April 2006, the murder of Juventino Flores Salas in June 2009, and the attack against the state delegate of the SNTMMSSRM, Mario Garcia Ortiz, who was shot at and beaten by the federal police on 23 May 2010 in the city of Lázaro Cárdenas, Michoacán. *The Committee notes with concern these serious allegations and is bound to deplore the acts of violence which, according to the complainants, occurred in June and September 2010 in the premises of the Mexican Cananea mining company. The Committee deeply regrets that the Government has not sent a reply in this regard and requests it, if it has not yet done so, to take the necessary measures to conduct judicial investigations to fully clarify these events, identify those responsible and punish the guilty parties. The Committee requests the Government to keep it informed of the results of these investigations.*

43. In its communications of 20 April and 18 July 2011, the IMF submits new allegations regarding acts of intimidation against workers of the Johnson Controls plant in Puebla and attacks on and threats to members of the NGO "Centro de Apoyo al Trabajador" (Worker

Support Centre) in August and December 2010 and in January 2011, after the workers decided to become members of the SNTMMSSRM. It also alleges acts of intimidation against workers in the La Platosa mine to make them give up their membership of the SNTMMSSRM, and the dismissal of one of the workers who had been elected Secretary-General of the mine. According to the IMF, these events took place in December 2010. *The Committee regrets to observe that the Government has not replied specifically to these allegations, declaring only that the issues have nothing to do with this case. The Committee, however, emphasizes that the allegations in question have been presented by the two complainant organizations in the present case and that they refer to allegations of intimidation, threats and anti-union discrimination against members of the complainant union in the mining sector. The Committee therefore requests the Government to respond to the allegations and to indicate whether investigations have been carried out in order to fully clarify these events, identify those responsible and punish the guilty parties.*

44. Lastly, with regards to recommendation (b), regarding the possibility of holding a tripartite discussion on the advisability of expediting labour court proceedings in the case of internal union disputes, the Government emphasizes that internal union disputes are referred to the JFCA, which is a tripartite body, and that various measures have been adopted in order to expedite labour court proceedings, such as the creation of 346 posts in August 2011 and the signing of a general agreement for collaboration between the Secretariat of Labour and Social Welfare and public bodies subject to the jurisdiction of the JFCA. *The Committee notes with interest the measures adopted by the Government to expedite labour proceedings before the JFCA. In this regard, the Committee also recalls that in its 370th Report of October 2013, regarding Case No. 2694 of Mexico, it observed in its conclusions that the reform of the Federal Labour Act, which came into force in November 2012, had a positive effect on the functioning of the JFCA. In particular, the Committee observed that the legislative reform provides for greater transparency and democracy in trade unions, the professionalization of the legal staff of the Federal Conciliation and Arbitration Boards, the adoption of rules to prevent irregular or corrupt practices in their proceedings, and moves to expedite and streamline procedures and to increase fines for deliberate delays. The Committee also referred to the Government's policy of tripartite and social dialogue and observed that the Secretariat of Labour and Social Welfare has established permanent dialogue with employers' and workers' groups, including dialogue or communication with national trade union organizations [see 370th Report, paras 560–566].*

Case No. 2694 (Mexico)

45. In its previous examination of the case at its October 2013 meeting, the Committee made the following recommendations on the matters still pending [see 370th Report, para. 567]:
- (a) While it appreciates the information provided by the Government, the Committee stresses that it is important that the impact of the reform of the Federal Labour Act on overcoming the problems raised in this case should be evaluated in terms of the legislation, but especially in terms of practice, by the most representative national employers' and workers' organizations and by the six organizations that presented or supported the complaint. The Committee therefore requests the Government, in dialogue with these organizations, to evaluate the impact of the legislative reform on the questions raised and to identify any issues that remain unresolved in law or practice.
 - (b) The Committee requests the Government and the complainant organizations to keep it informed in this regard.
 - (c) The Committee reminds the Government that it may avail itself, if it so wishes, of ILO technical assistance in the framework of the evaluation process of national law and practice.

46. In its communication dated 23 May 2014, the Government reports that it has held various meetings with national and international trade union organizations in which various issues on the labour agenda were addressed and in which the impact of the legislative reform on the problems raised in this case were analysed. In particular, the Government refers to the following four meetings: (1) in August 2013, the President of Mexico met with a delegation of international trade union organizations comprising representatives of the Trade Union Confederation of the Americas, IndustriALL Global Union and United Steelworkers to discuss the most relevant labour policy issues; (2) in April 2014, the President of Mexico met with the leaders of the National Union of Workers (UNT) to discuss matters relating to the restoration of the purchasing power of workers' wages; economic growth, strengthening the domestic market, and the defence of the rights of the working class; (3) in January 2014 a meeting was organized between the Minister of Labour and Social Security and the leaders of the UNT in which they reviewed and analysed the most important labour issues for the UNT; and (4) also in January 2014, the leadership of the Revolutionary Confederation of Workers and Peasants (CROC) and the Mexican Regional Confederation of Labour, met with the Minister of Labour and Social Security to analyse various issues on the labour agenda and establish labour agreements for 2014. Lastly, the Government reports that in October 2013, the Ministry of Labour and Social Security wrote to the Director-General of the ILO to express his interest in working on a supplementary agreement with a view to receiving technical assistance from the ILO to advance the implementation of the labour reform. The Director-General of the ILO reported that he had asked the ILO Country Office for Mexico and Cuba to initiate contacts and meetings with the Ministry of Labour and Social Security to make progress in that regard.
47. In its communication dated 2 June 2014, IndustriALL Global Union, which represents the collective interests of more than 50 million workers in the mining, energy and industrial sectors in more than 700 trade unions and in 140 countries, reports that in August 2013 a meeting was held with the International Trade Union Confederation (ITUC) and with the Government, in which the Government acknowledged that protection agreements existed, but indicated that they are not recognized as a legitimate instrument under the law. The Government committed itself to engaging in dialogue with the trade unions to find a solution in this regard and to take measures to ratify the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). As regards the impact of the new Federal Labour Act on conditions of labour and in particular with regards to the "legalization of subcontracting", the Government committed itself to consulting with the Director-General of the ILO as to whether it would be possible for ILO experts to carry out a technical review of the new Act. In the event of a positive response from the ILO, a technical assistance agreement is being developed. Lastly, IndustriALL Global Union reports that it is discussing with its Mexican member unions the signature of a declaration in which the unions declare their commitment to combating protection agreements and in which they request the Government to sign and ratify Convention No. 98.
48. *The Committee appreciates the information provided by the Government and by IndustriALL Global Union and notes with interest that the Government has held meetings with national and international trade union organizations in which the relevant labour issues were discussed, including the recommendations that the Committee made in relation to this case in its last report, and that the Government and IndustriALL Global Union report that a technical assistance agreement with the ILO is being developed with a view to a technical review of the new legislation. The Committee requests the Government to keep it informed in this regard.*

Case No. 2919 (Mexico)

49. The Committee examined the substance of this case concerning anti-trade union practices and interference by Atento Servicios SA de CV, particularly in connection with two ballots to determine the most representative union, at its June 2013 meeting [see 368th Report, paras 611–653]. On that occasion, it made the following recommendations:
- (a) The Committee requests the complainant union to provide information on any appeal filed by its members against dismissals or anti-union practices and their outcomes, and against the second ballot obtained from the authority to determine the union with bargaining rights.
 - (b) The Committee requests the Government to provide its comments on the claim of the JLCADF that the SPTCTRM union member voting list contains no record of any company worker.
 - (c) The Committee wishes to emphasize the importance it attaches, if there is a new ballot, to the authorities providing the safeguards necessary to avoid all alleged irregularities, thus guaranteeing that the affected workers have a full and fair opportunity to participate in an atmosphere of calm and security.
50. In its communication dated 28 October 2013, the Union of Telephone Operators of the Mexican Republic (STRM) states that it is prepared to request, once again, the bargaining rights for the collective agreement of the workers of Atento Servicios SA de CV. The STRM notes that, according to information received from the Federal District Local Conciliation and Arbitration Board (JLCADF), it has come to its attention that other trade union organizations have already submitted requests for the same bargaining rights. The STRM considers: that the presence of national and international observers is required at a new election; that the voting list must only include those workers who legally and legitimately have the right to vote, and not staff in positions of trust or from outside the company as was the case in previous elections; that there should be a commitment to non-violence and intimidation on the part of the company, the authorities and the trade unions; and that, on election day, all workers who have the right to vote are guaranteed to be able to do so. *The Committee notes that the complainant organization indicates that it is prepared to request, once again, the bargaining rights for the collective agreement of the workers of Atento Servicios SA de CV and requests the complainant organization to keep it informed in this respect. Once again, the Committee emphasizes the importance that it attaches, if there is a new ballot, to the authorities providing the safeguards necessary to avoid any allegation of irregularities, thus guaranteeing that the affected workers have a full and fair opportunity to participate, in an atmosphere of calm and security.*
51. In relation to recommendation (b), the Government states in its communication dated 23 May 2014 that it was the responsibility of the JLCADF to make sure that the ballot vote on 9 November 2011 was carried out in conformity with the applicable rules and with all the guarantees required to enable voters to cast their vote freely, directly and in secret. The Government stresses that the voting process complied with the rules set out in article 931 of the Federal Labour Act, which indicates that all workers who attend the election will be able to vote, *without* being required to be affiliated to one of the trade union organizations in the company. The Government highlights that the ballot vote was carried out, upon presentation of the employee–employer contribution assessment certificate to the Mexican Institute of Social Security. *The Committee notes that, as indicated by the Government, the Federal Labour Act provides that it is not necessary to be affiliated with one of the trade union organizations in the company to be able to vote. The Committee would welcome information on whether the complainant trade union filed a claim following the 2011 vote alleging that the Progressive Union of Communication and Transport Workers of the Mexican Republic (SPTCTRM) (rival of the complainant organization) had not registered any company worker.*

Case No. 2917 (Bolivarian Republic of Venezuela)

52. At its June 2013 meeting, the Committee made the following recommendations on the matters still pending [see 368th Report, para. 986, approved by the Governing Body at its 318th Session (June 2013)]:

... Regretting that the Commission entrusted with drafting the new Basic Act on Labour and Workers (LOTTT) excluded the most representative workers' and employers' organizations, the Committee requests the Government to submit to tripartite dialogue with the most representative organizations of workers and employers the provisions of the LOTTT respecting freedom of association and collective bargaining criticized by the Committee of Experts with a view to bringing those provisions into full conformity with ILO Conventions Nos 87 and 98 and to keep it informed of developments in this respect. The Committee requests the Government to comply in future with the principles relating to consultation and social dialogue set out in its conclusions.

53. In its communication dated 15 May 2014, the Government states that the complainant organization, the Confederation of Workers of Venezuelan (CTV), does not have the status of a majority trade union confederation and consequently did not participate in the Presidential Commission for the Elaboration and Drafting of the LOTTT (unlike – it says – the Bolivarian Socialist Workers' Confederation of Venezuela (CBST)). The Government adds that in the framework of the consultations conducted at the National Assembly with all the sectors over a period of 12 years, the CTV participated on a number of occasions; the Presidential Commission noted all the proposals submitted to the General Assembly and conducted broad consultations with the trade union organizations (in particular through the Tripartite Commission of 1997); the observations of the Committee of Experts on the Application of Conventions and Recommendations (CEACR) and the Committee on Freedom of Association were taken into account. For these reasons, the Government questions the criticisms of the CEACR regarding specific provisions and the request that the points in question be submitted to tripartite dialogue with the most representative organizations of workers and employers.

54. *The Committee notes the information provided by the Government. The Committee stresses the importance of the LOTTT provisions relating to freedom of association and collective bargaining being accepted to the maximum extent possible by the most representative organizations of employers and workers and being in full conformity with ILO Conventions Nos 87 and 98. The Committee therefore reiterates its earlier recommendation in which it emphasized the importance of the principles governing consultation and social dialogue and requested social dialogue on the LOTTT provisions criticized by the Committee of Experts in its examination of the application of Conventions Nos 87 and 98 [see 368th Report, para. 1018].*

* * *

55. Finally, the Committee requests the governments concerned to keep it informed of any developments relating to the following cases.

Case	Last examination on the merits	Last follow-up examination
1787 (Colombia)	March 2010	June 2014
1865 (Republic of Korea)	March 2009	March 2014
1962 (Colombia)	November 2002	June 2008
2096 (Pakistan)	March 2004	March 2011
2173 (Canada)	March 2003	June 2010
2304 (Japan)	November 2004	October 2013

Case	Last examination on the merits	Last follow-up examination
2341 (Guatemala)	March 2011	June 2014
2384 (Colombia)	June 2008	June 2014
2450 (Djibouti)	March 2011	June 2014
2512 (India)	November 2007	March 2014
2583 (Colombia)	June 2008	March 2010
2684 (Ecuador)	June 2014	–
2700 (Guatemala)	March 2010	March 2011
2715 (Democratic Republic of the Congo)	June 2014	–
2755 (Ecuador)	June 2010	March 2011
2797 (Democratic Republic of the Congo)	March 2014	–
2812 (Cameroon)	November 2012	June 2014
2820 (Greece)	November 2012	–
2836 (El Salvador)	November 2011	March 2013
2844 (Japan)	June 2012	October 2013
2854 (Peru)	March 2012	March 2014
2870 (Argentina)	November 2012	–
2872 (Guatemala)	November 2011	–
2914 (Gabon)	June 2013	June 2014
2924 (Colombia)	June 2014	–
2934 (Peru)	November 2012	–
2954 (Colombia)	June 2014	–
2964 (Pakistan)	June 2013	–
2973 (Mexico)	October 2013	–
2980 (El Salvador)	June 2013	–
2990 (Honduras)	June 2014	–
3011 (Turkey)	June 2014	–
3013 (El Salvador)	June 2014	–
3022 (Thailand)	June 2014	–
3033 (Peru)	March 2014	–
3037 (Philippines)	March 2014	–

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

57. In addition, the Committee has received information concerning the follow-up of Cases Nos 2086 (Paraguay), 2153 (Algeria), 2225 (Bosnia and Herzegovina), 2291 (Poland), 2400 (Peru), 2430 (Canada), 2434 (Colombia), 2453 (Iraq), 2488 (Philippines), 2528 (Philippines), 2533 (Peru), 2540 (Guatemala), 2602 (Republic of Korea), 2611 (Romania), 2637 (Malaysia), 2656 (Brazil), 2667 (Peru), 2678 (Georgia), 2679 (Mexico), 2699 (Uruguay), 2706 (Panama), 2710 (Colombia), 2716 (Philippines), 2719 (Colombia), 2725 (Argentina), 2745 (Philippines), 2746 (Costa Rica), 2750 (France), 2751 (Panama), 2752 (Montenegro), 2758 (Russian Federation), 2763 (Bolivarian Republic of Venezuela), 2765 (Bangladesh), 2768 (Guatemala), 2775 (Hungary), 2777 (Hungary), 2780 (Ireland), 2788 (Argentina), 2789 (Turkey), 2793 (Colombia), 2807 (Islamic Republic of Iran), 2808 (Cameroon), 2815 (Philippines), 2816 (Peru), 2827 (Bolivarian Republic of Venezuela), 2833 (Peru), 2837 (Argentina), 2838 (Greece), 2840

(Guatemala), 2843 (Ukraine), 2850 (Malaysia), 2852 (Colombia), 2854 (Peru), 2856 (Peru), 2860 (Sri Lanka), 2883 (Peru), 2892 (Turkey), 2895 (Colombia), 2900 (Peru), 2905 (Netherlands), 2907 (Lithuania), 2915 (Peru), 2916 (Nicaragua), 2929 (Costa Rica), 2944 (Algeria), 2947 (Spain), 2952 (Lebanon), 2953 (Italy), 2966 (Peru), 2972 (Poland), 2976 (Turkey), 2977 (Jordan), 2979 (Argentina), 2981 (Mexico), 2985 (El Salvador), 2991 (India), 2992 (Costa Rica), 2999 (Peru), 3006 (Bolivarian Republic of Venezuela), 3033 (Peru) and 3037 (Philippines), which it will examine at its next meeting.

CASE NO. 3002

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

**Complaint against the Government of the Plurinational State of Bolivia
presented by
the Federation of Medical Practitioners' Unions and Allied Branches
of the National Health Fund (FESIMRAS)**

*Allegations: The complainant organization
alleges non-compliance with a collective
agreement by the National Health Fund (CNS),
and retaliation against trade unionists*

58. The complaint is contained in a communication dated 20 December 2012 presented by the Federation of Medical Practitioners' Unions and Allied Branches of the National Health Fund (FESIMRAS). The complainant submitted fresh allegations in a communication of 15 February 2013.
59. The Government sent its observations in a communication of 10 May 2013.
60. The Plurinational State of Bolivia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

61. In its communications dated 20 December 2012 and 15 February 2013, FESIMRAS states that, in view of the unsatisfactory administration of the National Health Fund (CNS), it made representations seeking the regularization of administrative posts, improvement of the institution's infrastructure and respect for the social and economic rights of its members, and that, as a result of those representations, certain authorities of the CNS and the Government took steps to the detriment of its union officials and the trade union organization.
62. More concretely, the complainant organization refers to the CNS Executive Board's Decision No. 144/2012 of 6 September 2012 stating that it was considering initiating criminal proceedings against the Executive Secretary and the Public Relations Secretary of FESIMRAS for defamation, which in the complainant's view marks the initiation of a plan to harass key union officials. The complainant appends the text of the decision, in which the General Manager is instructed to submit to the CNS National Legal Department the complainant's vote of Censure No. 001/2012 of 31 August 2012 (in which FESIMRAS characterizes the work of the Executive Board as unsatisfactory and highlights the

economic harm it has caused the institution) for analysis and, on the basis of the outcome, to consider taking penal action against the FESIMRAS Executive Secretary and Public Relations Secretary for defamation.

- 63.** The complainant further alleges that the CNS Executive Board's Decision No. 149/2012 of 13 September 2012 contravenes the provisions of the collective agreement dated 26 December 2011. According to that decision: (1) on 22 November 2010, the CNS Executive Board issued Decision No. 299/2010 by which it approved a regulation authorizing the direct hiring of contractors at the operational level for vacancies on the institution's regular payroll; (2) on 29 September 2011, the Executive Board decided to apply said regulation and issued Decision No. 200/2011 by which it authorized the hiring of contractors at the operational level for 747 vacancies on the institution's regular payroll; (3) subsequently, on 26 December 2011, a collective agreement was signed by FESIMRAS and the CNS (represented by its Administrative and Financial Manager and two officials from the National Legal Department) – which was approved by Ministerial Decision No. 010/12 of 13 January 2012 – establishing that the regulation approved by the Executive Board in Decision No. 299/2010 (on the direct hiring of contractors at the operational level) would cease to apply in the CNS, and that the situation was consistent with Circular No. 078/2011 issued by the General Management, the Administrative and Financial Management, the Healthcare Management and the National Human Resources Department, which cancelled the recruitment and selection processes conducted under said regulation; and (4) the Union of Medical Practitioners and Allied Branches of the CNS of La Paz informed the Regional Administrator of La Paz that the Executive Board's Decision No. 200/2011 (on the direct hiring of contractors at the operational level) was null and void on account of the Ministerial Decision which approved the aforementioned collective agreement, and accordingly requested that the competitions in the hiring process for the contractors be declared null and void. It is noteworthy that the collective agreement in question contained only that clause. Notwithstanding the above, the complainant alleges that, almost a year after the collective agreement was signed, the CNS Executive Board issued Decision No. 149/2012 (of 13 September 2012) approving the report of the Legal Commission of the CNS Executive Board, which instructed the General Management to take legal action against Mr Luis Rivas Michel, Administrative and Financial Manager of the CNS; Dr Abdón Ramiro Laora Blanco, lawyer in the National Legal Department of the CNS; and Dr Clotilde Bohórquez Flores of the National Legal Department of the CNS, for acting in excess of their authority by signing the collective agreement. The Executive Board's Decision No. 149/2012 also states that Decision No. 200/2011 on the direct hiring of contractors at the operational level to 747 vacant positions on the institution's regular payroll is in force.
- 64.** In addition to the aforementioned allegations, the complainant criticizes the fact that the Government's Supreme Decree No. 1403 of 9 November 2012, which approves a plan to restructure the CNS, includes an appendix containing a series of anti-union statements. The complainant encloses the text thereof, which states that trade union organizations are “factors which impede solutions for: financial matters, health coverage, results management, human resources management, improving outdated existing provisions of the institution, and compliance with public health policies”. In the complainant's view, the inclusion of said anti-union statements in an official regulation of the national Government represents discrimination, which is prohibited under the Bolivian Constitution and is contrary to the spirit of ILO Conventions Nos 87 and 98.
- 65.** Lastly, in its communication of 15 February 2013, the complainant presents fresh allegations of anti-union practices against its members. Specifically, the complainant refers to a financial penalty of a deduction of three days' wages for dereliction of duty imposed on: (1) union official Ms Silvia R. Villaroel, who enjoys union immunity and who, according to FESIMRAS, requested leave from her employer's most senior departmental

authority to attend a meeting during work hours on 2 January 2013; and (2) Dr Dickson Stroebel Moreno, a former union official, for being absent from work without justification on Saturday, 26 January 2013: according to FESIMRAS, he refused to work an additional six hours per week on Saturdays, as article 16 of the statutes of medical staff and public servants defines the working week in the sector as 30 hours, from Monday to Friday.

B. The Government's reply

- 66.** In its communication of 10 May 2013, the Government states that the complainant refers to the unsatisfactory administration of the CNS and to matters which concern the CNS's budgetary resources and the management and placement of the available human resources in the institution, all of which are administrative, not union, matters. The Government states that it fails to comprehend the complainant's basis for including in a labour-related complaint aspects which are within the sole administrative purview of the authorities of the CNS.
- 67.** As to the CNS Executive Board's Decision No. 144/2012, which orders a study into initiating penal action against the Executive Secretary and the Public Relations Secretary of FESIMRAS for defamation, the Government explains that that decision does not order the initiation of any immediate legal proceedings, but instead an analysis of the content of the FESIMRAS vote of Censure No. 001/2012, and that the appropriate action should be taken on the basis of the outcome of the analysis. The Government explains that the CNS Executive Board found in the FESIMRAS vote of Censure No. 001/2012 indicia of the legal concept of defamation against its members, because it cast doubt on the professional capability and suitability of the members of the CNS Executive Board in the administration of the institution without any compelling evidence. Nevertheless, the Government states that legal report No. 140 of 31 January 2013, drafted by the CNS Legal Department, concluded that the CNS could not take any legal action against the FESIMRAS union officials as a result of vote of Censure No. 001/2012, because it impugns a legally protected interest attached to a "natural person and which is strictly personal in nature; it in no way affects the legally protected interest of the entity". Accordingly, it concluded that initiating legal proceedings against FESIMRAS or its officials for the aforementioned vote of censure would be inappropriate.
- 68.** As to the allegation that the CNS Executive Board's Decision No. 149/2012 contravenes the provisions of the collective agreement of 26 December 2011, the Government states that the subject matter of the negotiations had been decided on three months before the collective agreement was signed, specifically by means of the CNS Executive Board's Decision No. 200/2011, which had approved the hiring of contractors for 747 vacant operational posts.
- 69.** As to the complainant's allegation that the appendix to the Government's Supreme Decree No. 1403 approving the plan to restructure the CNS contains anti-union statements, the Government notes that trade union officials at the CNS had regrettably been broaching subjects unrelated to representing and defending the occupational interests of the workers for several years, and had been exerting pressure and making various threats when intervening in subjects of an administrative, management and executive nature, which are within the sole competency of the authorities of the CNS.
- 70.** Lastly, with regard to the additional allegations submitted by the complainant in its communication of 15 February 2013 on the financial penalties imposed on union official Ms Silvia R. Villaroel and former union official Dr Dickson Stroebel, the Government recalls the legal obligation to seek written authorization for absences from the workplace and to obtain the express permission of the competent authority of the employer institution to leave. In Ms Silvia R. Villaroel's case, the Government notes that none of the

documents appended by the complainant organization shows a written request from her to be absent from the workplace for the purpose of carrying out union activities nor do they include the requisite written authorization from the employer to the worker. With regard to Dr Dickson Stroebel Moreno, the Government states that his being Vice-President of his department's College of Medicine does not exempt him from the legal obligation to seek written authorization to be absent from the workplace and to obtain express permission to leave from the competent authority of the institution in which he works.

71. For all these reasons, the Government denies any breach of ILO Conventions Nos 87 and 98.

C. The Committee's conclusions

72. *The Committee observes that, in the present case, the complainant alleges: (1) that the Executive Board of the National Health Fund (CNS) threatened to take penal action against the Executive Secretary and the Public Relations Secretary of FESIMRAS for defamation; (2) that Decision No. 149/2012 by which the CNS Executive Board authorized the direct hiring of hundreds of contractual workers for vacant operational posts under the regular payroll of the institution contravenes the provisions of the collective agreement of 26 December 2011; (3) that the Government's Supreme Decree No. 1403 approving the plan to restructure the CNS includes an appendix containing a series of anti-union statements; and (4) that anti-union financial penalties were imposed on union official Ms Silvia R Villaroel and former union official Dr Dickson Stroebel Moreno.*

73. *As to the allegation that the CNS Executive Board issued a decision (No. 144/2012) ordering a study into taking penal action against the Executive Secretary and the Public Relations Secretary of FESIMRAS for defamation, the Committee notes that the Government indicates that: (1) in circumstances where the complainant organization complained of matters concerning the CNS's budget and the management of human resources in the institution – both of which are administrative, not union, matters – the complainant organization issued vote of Censure No. 001/2012 against the CNS Executive Board “for its unsatisfactory work and the economic harm caused to the institution”; (2) the CNS Executive Board found in FESIMRAS's vote of censure indicia of the legal concept of defamation against its members, since the vote cast doubt on the professional capability and suitability of the members of the CNS Executive Board in the administration of the institution without any compelling evidence, and the Board ordered a study of the content of the vote of censure and, depending on the outcome, the initiation of appropriate action; (3) however, the CNS Legal Department's Report No. 140 dated 31 January 2013 concluded that the CNS could not take penal action against the FESIMRAS union officials for defamation on the basis of vote of Censure No. 001/2012 because the vote impugns a legally protected interest attached to a “natural person and which is strictly personal in nature; it in no way affects the legally protected interest of the entity”. The Committee recalls that the full exercise of trade union rights calls for a free flow of information, opinions and ideas, and to this end workers, employers and their organizations should enjoy freedom of opinion and expression at their meetings, in their publications and in the course of other trade union activities. Nevertheless, in expressing their opinion, trade union organizations should respect the limits of propriety and refrain from the use of insulting language [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 154]. The Committee emphasizes in this regard that the authorities' threatening to press criminal charges in response to legitimate opinions of trade union representatives may have an intimidating and detrimental effect on the exercise of trade union rights. However, the Committee observes that the authorities ultimately followed the CNS Legal Department's recommendations and decided not to press any criminal charges against FESIMRAS or its officials for the aforementioned vote*

of censure. Accordingly, the Committee will not pursue its examination of this matter, and expects full observance of this principle.

- 74.** *As to the alleged failure to comply with the collective agreement signed by FESIMRAS and the CNS on 26 December 2011, which establishes that the regulation dated 22 November 2010 authorizing the direct hiring of contractual workers for vacant operational posts on the institution's regular payroll cannot be applied in the CNS, the complainant states that, almost one year after the collective agreement was signed, the CNS Executive Board issued Decision No. 149/2012, reiterating the provisions of Decision No. 200/2011 and confirming the direct hiring of contractors for 747 vacant operational posts on the regular payroll; furthermore, that decision instructs the General Management to take legal action against the Administrative and Financial Manager and two officials of the National Legal Department for acting in excess of their authority by signing the collective agreement. The Committee notes that the Government denies the alleged failure to comply with the collective agreement and states that the Executive Board had issued Decision No. 200/2011 and authorized the hiring of contractors for 747 vacant operational posts three months before the collective agreement was signed. The Committee notes with regret the lack of coordination between the CNS Executive Board and the persons representing the CNS at the signing of the collective agreement – that is, the Administrative and Financial Manager and two officials from the National Legal Department of the CNS – and requests the Government to inform it urgently of the outcome of the proceedings initiated against them for acting in excess or abuse of their authority by signing the collective agreement. In such circumstances, the Committee is mindful of the practical difficulty, owing to the years which have passed, of renegeing on the appointment of 747 contractors to vacant posts on the regular payroll. Nevertheless, the Committee recalls in general the principle that “[m]utual 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] and firmly expects that no situations of this nature will arise in the future.*
- 75.** *As to the allegation that the Government's Supreme Decree No. 1403 approving the plan to restructure the CNS includes an appendix containing a series of anti-union statements, the Committee observes that the complainant has enclosed the text of the Decree, the appendix to which states that “trade union organizations are factors which impede solutions for: financial matters, health coverage, results management, human resources management, improving outdated existing provisions of the institution, and compliance with public health policies of the National Health Fund”. The Committee notes that the Government states that trade union officials at the CNS had regrettably been broaching subjects unrelated to representing and defending the occupational interests of the workers for several years, and had been exerting pressure and making various threats when intervening in subjects of an administrative, management and executive nature, which are within the sole competency of the authorities of the CNS. While considering debate and criticism between social partners as legitimate, the Committee regrets that the authorities of the CNS made declarations annexed to a Decree concerning its view of the role of trade union organizations, which are contrary to a constructive spirit of social dialogue and collective bargaining. The Committee recalls the importance it attaches to mutual respect between the parties and to the promotion of dialogue and consultation on questions of mutual interest between the public authorities and the most representative occupational organizations of the sector involved [see **Digest**, op. cit., para. 1067] and expects that in the future the authorities of the CNS and the FESIMRAS will refrain from making statements which do not contribute to mutual respect or the harmonious development of labour relations.*

76. Lastly, concerning the penalty of a deduction of three days' salary imposed on union official Ms Silvia R. Villaroel, the Committee observes that, while the complainant organization alleges that the official requested permission from the highest departmental authority of the employer institution to attend a meeting during work time on 2 January 2013, the Government emphasizes that there is no documentary evidence that the official requested written authorization for time off from work to carry out union activities nor is there evidence of the written authorization which the employer was obliged to provide. The Committee observes that the penalty appears to be founded on Supreme Decree No. 22407 (appended by the complainant), which provides that union officials who are not on union leave must request authorization from their employer to absent themselves temporarily from their work in order to carry out activities within their mandate and that the employer must grant them the requisite leave for the time requested. The Committee recalls that, when examining an allegation concerning the denial of time off to participate in trade union meetings, it has recalled that, "while account should be taken of the characteristics of the industrial relations system of the country, and while the granting of such facilities should not impair the efficient operation of the undertaking concerned, Paragraph 10, subparagraph 1, of the Workers' Representatives Recommendation, 1971 (No. 143), provides that workers' representatives in the undertaking should be afforded the necessary time off from work, without loss of pay or social and fringe benefits, for carrying out their representation functions. Subparagraph 2 of Paragraph 10 also specifies that, while workers' representatives may be required to obtain permission from the management before taking time off, such permission should not be unreasonably withheld" [see *Digest*, *op. cit.*, para. 1110]. In such circumstances, in the absence of any evidence that the official in question requested written permission for time off from work in order to carry out trade union activities, the Committee will not pursue its examination of this allegation.
77. Regarding the penalty of the deduction of three days' salary imposed on former union official Dr Dickson Stroebel, the Committee observes that, according to the allegations, the reason why he did not request written permission for time off from work on Saturday, 26 January 2013 is that he did not agree to a six-hour increase in his weekly working time (on Saturdays) when the statutes of medical staff and public servants define the working week in the sector as 30 hours, "from Monday to Friday". The Committee notes that the Government states that his being Vice-President of the College of Medicine of his department does not exempt him from the legal obligation to request written authorization to be absent from the workplace and to obtain express permission to leave from the competent authority of the institution in which he works. The Committee observes that Dr Dickson Stroebel was not a union official at the time of the alleged events, that his absence from work is unrelated to the exercise of duties within the complainant organization but instead relates to duties within the College of Medicine, and that he did not request authorization to leave work as stipulated by law. Accordingly, the Committee will not pursue its examination of this allegation.

The Committee's recommendation

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

The Committee requests the Government to inform it urgently of the outcome of the proceedings initiated against the National Health Fund's Administrative and Financial Manager and two officials of its Legal Department for acting in excess of their authority in signing the collective agreement dated 26 December 2011.

CASE NO. 3041

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

**Complaint against the Government of Cameroon
presented by
the National Union of Electric Energy (SNEE)**

***Allegations: The complainant organization
alleges interference by the authorities and the
employer in an internal conflict concerning its
leadership***

79. The complaint is contained in communications dated 24 May and 19 October 2013 from the National Union of Electric Energy (SNEE).
80. Since there has been no reply from the Government, the Committee has been obliged to postpone its examination of the case on three occasions. At its May–June 2014 meeting [see 372nd Report, para. 6], the Committee made an urgent appeal to the Government indicating that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body, it could present a report on the substance of the case at its next meeting, even if the requested information or observations had not been received in time. To date, the Government has not sent any information.
81. Cameroon 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

82. In a communication dated 24 May 2013, the SNEE states that it was registered in January 2006 and that it represents 1,000 workers in the electricity sector, having as their main employer the enterprise AES SONEL, a subsidiary of the multinational AES Corporation. The complainant organization also states that it is the most representative organization in the sector, and in the enterprise in question, having achieved the following results in the elections of staff delegates: 61 per cent in 2007, 82 per cent in 2009 and 55 per cent in 2011.
83. The complainant organization alleges that its independence, its prevalence and its protest actions, started to disturb the enterprise, and that the labour administration authority did not adopt the neutral position that it should have in the circumstances.
84. The complainant organization indicates that the difficulties began when the labour administration authority convened the trade union organizations to the sixth session of the ad hoc tripartite committee set up to examine the criteria for awarding productivity bonuses to AES SONEL on 21 February 2012. The notice was sent to the Chairperson of the SNEE, Mr Julien Fouman. However, the administration authority also, for no valid reason, invited two members of the SNEE to the meeting, Mr Paul Monji, a simple member, and Mr Njourné Oyacka, a staff delegate elected in 2011, but without a defined function in the organization, although these two persons did not appear on the list of SNEE negotiators originally sent to the authorities. During the meeting, not only did the Chairperson of the SNEE contest the presence of the two members of his trade union, but the other trade unions present also expressed their discontent with the uneven

representation thus established in favour of the SNEE. As a result, the meeting did not go ahead.

- 85.** The SNEE indicates that, instead of suggesting to certain individuals, including Mr Monji, claiming to have been elected as the new representatives of the organization in January 2012, that they should take legal action in pursuit of their rights, the labour administration authority recognized them as such, thus creating confusion regarding the SNEE leadership. Subsequently, the labour administration authority proposed mediation, which the individuals claiming to be the new SNEE officers refused. This failure led the administration authority to threaten the SNEE, in a letter dated 23 May 2012 (attached to the complaint), that it would suspend its collaboration with the organization and pursue the work of the ad hoc committee set up to examine the criteria for awarding productivity bonuses to AES SONEL with the other trade unions at the enterprise.
- 86.** Faced with this threat, the Chairperson of the SNEE, Mr Fouman, proposed convening a unitary extraordinary congress on 31 July 2012, with the election of the national executive board and the appointment of five representatives of the SNEE for social dialogue forums as the only items on its agenda. This proposal received the support of the Ministry of Labour and Social Security, which sent the Chairperson of the SNEE a letter of encouragement dated 11 July (attached to the complaint).
- 87.** The opposing faction tried unsuccessfully to have the congress blocked by the courts, but it went ahead on 4 August 2012, in the presence of two scrutineers from the National Committee for Human Rights and Freedoms, a public body serving as a human rights observatory. Following the congress, the minutes and the related bailiff's report were sent to the Ministry of Labour and Social Security and to the registrar of trade unions. However, according to the complainant organization, there has been no response from these authorities.
- 88.** Three weeks after the extraordinary congress, the dissident faction initiated legal proceedings (interim relief judge and trial judge) to annul the resolutions adopted. The complainant organization submits copies of the exchange of correspondence between the enterprise, asking the labour administration authority how to proceed (letter dated 27 September 2012 attached to the complaint), and the Ministry of Labour, recommending that it wait for the ruling on the appeal lodged by the dissident faction and that in the meantime it adopt a strict neutrality vis-à-vis the two factions (letter dated 23 October 2012 attached to the complaint). On 1 November 2012, the interim judge indicated that he lacked jurisdiction in the case and ordered the dissident faction to pay the costs. In the meantime, the annulment proceedings lodged with the High Court are still pending and the hearings are repeatedly being postponed. At the time the complaint was presented to the Committee, the matter had once again been postponed (excerpt of hearing attached).
- 89.** The complainant organization has tried to contact the Ministry of Labour and Social Security on a number of occasions regarding the legal decision to refuse the suspension of the resolutions adopted by the congress in August 2012, and asking that the AES SONEL ad hoc committee resume its work. It was only in April 2013 that the administration authority replied, indicating that it was awaiting legal decisions on the matter; thus the decision of the interim judge has not been taken into account.
- 90.** Furthermore, the complainant organization indicates that, in the context of the conflict opposing the two factions, Mr Monji, declaring himself to be the elected national Chairperson of the SNEE since January 2012, brought legal proceedings against Mr Fouman in June 2012 for wrongful withholding of the property of another, misappropriation of office, attempted theft and breach of trust. However, on 18 April 2013,

the Court of First Instance of Douala-Ndokoti issued a ruling acquitting Mr Fouman, judging him not guilty of the facts of the case and ordering Mr Monji to pay the costs.

91. The SNEE questions the conduct of the labour administration authority in respect of the internal conflict in which it has been embroiled. The SNEE, recalling that an extraordinary congress, supported by the administration authority, was held in August 2012 to settle the conflict, questions the Government's neutrality in view of its refusal to recognize the resolutions issued by the congress, while the legal system refuses to suspend them, and its blocking of social dialogue within an enterprise that penalizes trade union action. The SNEE thus denounces a situation of confusion intentionally created by the Government to weaken action by the majority trade union in the enterprise and undermine it in the next elections.
92. In a communication dated 19 October 2013, the complainant organization indicates that it has brought legal proceedings against the AES Corporation, which owns 56 per cent of AES SONEL, before the Federal Court of Virginia (United States), for breach of social rights. The enterprise is accused of not having paid back 5 per cent of share capital to workers, although it was contractually committed to do so when it was privatized in 2001. It is also accused of abusively withholding productivity bonuses (an element in its staff's wages) since March 2005, to a value of 25 billion CFA francs.
93. The complainant organization denounces the fact that in its August 2013 defence before the United States courts, the AES Corporation focuses on Mr Fouman's lack of legal capacity to act on behalf of the SNEE, on the grounds that he had been replaced as Chairperson by Mr Monji, who is therefore explicitly recognized by the enterprise as the Chairperson of the SNEE. Thus, in the documents submitted to the United States courts by the enterprise, Mr Monji appears in the capacity of Chairperson of the SNEE. According to the complainant organization, by taking sides, the employer is not adhering to the position of neutrality to be adopted vis-à-vis the internal conflict within the SNEE advised by the Government in its letter of October 2012. The complainant organization notes that the dual leadership situation in the trade union has furthered the enterprise's cause before the courts and questions the link between the actions taken by Mr Monji to take over the leadership of the trade union and the defence of the enterprise's interests.
94. In this connection, the complainant recalls a case previously examined by the Committee on Freedom of Association involving the same enterprise and relating to interference in the affairs of a newly constituted trade union, harassment of its officers and favouritism towards a rival trade union (Case No. 2439).

B. The Committee's conclusions

95. *The Committee regrets that, despite the time that has elapsed since the presentation of the complaint, the Government has not replied to the complainant's allegations, even though it has been requested several times to do so, including through an urgent appeal. Noting, furthermore, that this is the fourth consecutive case on which the Government has failed to provide any information in response to the allegations presented, the Committee urges the Government to be more cooperative in the future.*
96. *Hence, in accordance with the applicable procedural rules [see 127th Report, para. 17, approved by the Governing Body at its 184th Session (1972)], 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.*
97. *The Committee reminds the Government that the purpose of the whole procedure established by the International Labour Organization for the examination of allegations of*

violations of freedom of association is to ensure respect for trade union rights in law and in practice. The Committee is confident that, while this procedure protects governments against unreasonable accusations, they must recognize the importance of formulating, for objective examination, detailed replies concerning allegations brought against them [see First Report of the Committee, para. 31].

98. The Committee observes that the present case relates to allegations of interference by the authorities and the employer in an internal conflict within an organization, opposing two factions.
99. The Committee recalls, firstly, that conflicts within a trade union should be resolved by its members, and that a matter involving no dispute between the Government and the trade unions, but which involves a conflict within the trade union movement itself, is the sole responsibility of the parties themselves. In the case of internal dissension within one and the same trade union federation, by virtue of Article 3 of Convention No. 87, the only obligation of the Government is to refrain from any interference which would restrict the right of the workers' and employers' organizations to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programmes, and to refrain from any interference which would impede the lawful exercise of that right [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, paras 1113 and 1117].
100. The Committee notes that the case concerns the SNEE, an organization that says it represents 1,000 workers in the electricity sector and that it is the most representative organization in the enterprise AES SONEL (hereinafter the enterprise).
101. According to the information provided by the complainant organization, the Committee notes that a dissident faction of the SNEE organized an extraordinary congress in January 2012 that dissolved the existing board under the chairmanship of Mr Fouman and installed new officers under the chairmanship of Mr Monji. These events resulted in the SNEE having dual leadership.
102. In view of this situation, the labour administration authority decided to convene the two factions to an ad hoc tripartite committee set up to examine the criteria for awarding productivity bonuses in the enterprise on 21 February 2012. However, the meeting could not go ahead due to the dual leadership of the SNEE, contested by all parties. The Committee notes that, according to the complainant organization, the labour administration authority contributed to the confusion by endorsing the situation. According to the documents submitted with the complaint, the Committee notes that, following the Government's threat to suspend its collaboration with the trade union organization, the Chairperson of the SNEE, Mr Fouman, proposed holding a unitary extraordinary congress. This proposal received the encouragement of the Ministry of Labour and Social Security. The congress was held on 4 August 2012; however, the dissident faction initiated legal proceedings to invalidate it.
103. The Committee notes that, in the meantime, the enterprise asked the labour administration authority how to proceed in these circumstances and that in its reply the Ministry of Labour suggested that it wait for the legal ruling on the appeal lodged by the dissident faction and that until then it adopt a strict neutrality vis-à-vis the two factions.
104. The Committee notes that, on 1 November 2012, the interim judge indicated that he lacked jurisdiction in the case. According to the complainant organization, the decision on the merits of the case is still pending as the hearings scheduled before the High Court in question are repeatedly being postponed. Furthermore, the Committee notes that, in June 2012, Mr Monji brought legal proceedings against Mr Fouman for wrongful withholding

of the property of another, misappropriation of office, attempted theft and breach of trust. In April 2013, the Court of First Instance of Douala-Ndokoti issued a ruling acquitting Mr Fouman, judging him not guilty.

- 105.** *The Committee observes that, following the request by the complainant organization for the enterprise's ad hoc committee to resume its work, the Ministry of Labour and Social Security indicated that it was still awaiting legal decisions on the matter. The Committee notes that, according to the complainant organization, the situation of confusion was maintained to weaken action by the trade union in the enterprise and to undermine it in the next elections.*
- 106.** *The Committee observes that, in Decision No. 571 dated 31 December 2013, the Court of First Instance of Douala-Ndokoti ruled null and void the extraordinary congress of the SNEE held on 4 August 2012 and the resolutions adopted during its work. The Committee recalls that it has pointed out in previously examined cases that, in the event of internal conflicts, judicial intervention would permit a clarification of the situation from the legal point of view for the purpose of settling questions concerning the management and representation of the trade union federation concerned [see **Digest**, *op. cit.*, para. 1116]. Noting the legal decision handed down, the Committee urges the Government to indicate without delay the consequences of this decision on the SNEE leadership. The Committee also urges the Government and the complainant organization to indicate whether an appeal has been lodged against this judicial decision and, if so, to inform it of the outcome of the relevant judicial proceedings.*
- 107.** *The Committee notes that the SNEE, represented by Mr Fouman, brought legal proceedings against the AES Corporation, which owns 56 per cent of the enterprise, before the Federal Court of Virginia (United States), for breach of social rights. The Committee notes that, according to the complainant organization, its defence before the United States courts in August 2013, focuses on Mr Fouman's lack of legal capacity to act on behalf of the SNEE, on the grounds that he had been replaced as Chairperson by Mr Monji, who is therefore explicitly recognized by the enterprise as the Chairperson of the SNEE. The Committee indeed notes that, in the documents submitted to the United States courts by the enterprise, Mr Monji appears in the capacity of Chairperson of the SNEE. Noting that these elements occurred prior to the decision dated 31 December 2013 being handed down by the Court of First Instance of Douala-Ndokoti, the Committee observes that they can be interpreted as a lack of neutrality by the enterprise. Consequently, the Committee urges the Government to ensure that the principles of freedom of association are fully respected in the enterprise with regard to the neutrality to be observed when a conflict occurs within a trade union, given that any premature endorsement by an employer constitutes serious interference.*

The Committee's recommendations

- 108.** *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) *Noting the judicial decision of 31 December 2013 handed down by the Court of First Instance of Douala-Ndokoti, the Committee urges the Government to indicate without delay the consequences of this decision on the leadership of the National Union of Electric Energy (SNEE). The Committee also urges the Government and the complainant organization to indicate whether an appeal has been lodged against this judicial decision and, if so, to inform it of the outcome of the relevant judicial proceedings.*

- (b) The Committee urges the Government to ensure that the principles of freedom of association are fully respected in the AES SONEL enterprise with regard to the neutrality to be observed when a conflict occurs within a trade union, given that any premature endorsement by an employer constitutes serious interference.*

CASE NO. 3000

DEFINITIVE REPORT

**Complaint against the Government of Chile
presented by
the National Federation of University Professionals
in the Health Service (FENPRUSS)**

Allegations: The complainant organization alleges anti-union practices with regard to wages, changes in duties, the use of union leave, restrictions to union officials' right to submit claims, reprisals against a union official at the end of her contract and the harassment of union officials

- 109.** The complaint is contained in a communication dated 7 November 2012 presented by the National Federation of University Professionals in the Health Services (FENPRUSS).
- 110.** The Government sent its observations in a communication dated 31 January 2014.
- 111.** Chile has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Labour Relations (Public Service) Convention, 1978 (No. 151).

A. The complainant's allegations

- 112.** In its communication of 7 November 2012, FENPRUSS alleges that various national health service departments have adopted anti-union practices against the officials of the FENPRUSS Association of Public Servants. Those anti-union practices include lowering the wages of union officials. In particular, the complainant alleges that La Serena Hospital lowered the wages of the union official Ms Dina Imaña Choque by approximately 800,000 Chilean pesos (CLP) for having made use of her union leave and failing to work the hospital shifts that had been assigned to her. The complainant also alleges that the San Carlos de Concepción Hospital changed the working hours of the official Mr Leoncio Zarate Acuña and that, as a result of that change, the official stopped being assigned shifts and suffered a pay cut. According to the complainant, the immunity of union officials should necessarily extend to their wages.
- 113.** Another of the anti-union practices alleged by the complainant concerns changes to the duties of trade union officials. In particular, the complainant alleges that: (1) in making use of its management and coordination rights, the Viña del Mar-Quillota Health Services arbitrarily transferred the union official, Mr José Salomón Silva, to the recently created Pre-Investment Studies and Projects Department of the Petorca Hospital; (2) the Concepción Health Services abruptly, and for no reason, removed the architect and union

official, Mr Johnny Villouta, from his leadership role in the technical inspection of various projects, thereby exposing the community and the health services to fines and accidents; (3) the union official Ms Karem Egle Kruberg, who works for the Valparaíso Health Services, was put under pressure by the former director of the department, Mr Víctor Ayala, to carry out bidding processes which violated the legal regulations on procurement procedures; and (4) lastly, a reorganization in the Quellón Hospital resulted in the transfer of the union official Mr Octavio Fernando Soto Leal, from the maternity department, where he worked shifts as a senior nurse, to the hospital clinic, resulting in a pay cut and constituting a clear violation of trade union immunity.

- 114.** The complainant also alleges that the Lebu hospital management refused to grant the request made by the union official Ms Andrea Osorio Pena for 33 hours' union leave and filed administrative proceedings against her for unjustified absences. The complainant organization insists that section 31 of Act No. 19296, of 1994, establishes a minimum number of hours' leave to which the directors of associations are entitled, without however establishing a maximum limit, which means that it can be argued that there is no legal impediment to granting leave exceeding the minimum number of hours.
- 115.** The complainant also alleges that union officials have been restricted in their right to make claims. It reports that a group of union officials of the Viña del Mar-Quillota Health Services publicly had requested to meet the health service authorities and that, after their request was rejected, they held a peaceful sit-in inside the health service premises, at which the hospital instituted criminal proceedings against various union officials for "encroachment on state property". The complainant insists that their presence in the offices of the health service directorate was peaceful, that they did not obstruct workers' movements, and that they only requested to meet with the authorities.
- 116.** Another anti-union practice reported by the complainant relates to reprisals taken against a union official at the end of her contract. In particular, the complainant organization alleges that the Félix Bulnes Hospital terminated the contract of Ms Sheila Mena Zumarán, who was employed as a medical technician, immediately after the expiry of her trade union immunity. The complainant indicates that she was notified of the termination on 14 June 2012, without being given a reason.
- 117.** Lastly, the complainant alleges anti-union harassment against union leaders. In particular, the complainant indicates that the Minister of Health initiated legal proceedings against Ms Gabriela Farías, the current President of FENPRUSS, for putting herself forward as an alternative minister in her trade union capacity. FENPRUSS reports that the proceedings were dismissed.
- 118.** In conclusion, FENPRUSS indicates that neither Act No. 19296, regulating associations of public sector employees, nor Act No. 18834, establishing the Administrative Statute, provide sanctions for those who adopt anti-union practices, thereby allowing total impunity. Accordingly, FENPRUSS considers that the legislation has not been brought into line with the provisions of ILO Conventions Nos 87 and 151.

B. The Government's reply

- 119.** In its communication dated 31 January 2014, the Government transmits the comments made by the health services concerned and by the Ministry of Health regarding the allegations made by FENPRUSS and it denies that any anti-union practices have been adopted against the leaders of the FENPRUSS Association of Public Servants.
- 120.** As regards the allegation that the union official Ms Dina Imaña Choque suffered a pay cut of approximately CLP800,000 for having made use of her union leave, and for failing to

work the hospital shifts that had been assigned to her, the management of La Serena Hospital and the Coquimbo Health Services explain that the decision to lower the worker's wages by that amount followed an express order from the Office of the Regional Comptroller of Coquimbo. For its part, the Government explains that the health services and the hospital network are part of the Chilean public sector, and that they are therefore subject to the authority of the Office of the Comptroller-General, which is a constitutional body. The Government indicates that the Office of the Regional Comptroller of Coquimbo issued a report in 2011 in which it indicated that "public servants registered on a shift rota who are union officials and who, in that capacity, do not perform their duties, are only entitled to receive payment for an ordinary working day, but not the compensation paid for the performance of duties during extraordinary or special hours, since this payment requires the effective performance of such work". The Government indicates that the Ministry of Health has held meetings with the Office of the Comptroller-General and with the Budget Directorate of the Ministry of Finance to streamline the requirements of the Office of the Comptroller-General with regard to the assignment of shifts and to facilitate the exercise of union duties alongside the effective performance of the professional services required in the area of public health. Lastly, the Government indicates that Ms Imaña initiated court proceedings against the Coquimbo Health Services, but then withdrew her complaint, and that the proceedings have now concluded without any decision as to the substance of the matter.

- 121.** As regards the allegation that the change in the working hours of the union official Mr Leoncio Zárate Acuña at the San Carlos de Concepción Hospital meant that he stopped being assigned to shifts, which resulted in a pay cut, the Ministry of Health indicates that in 2012 Mr Zárate Acuña joined the shift system and that he has since been working on daytime shifts. The Ministry also indicates that in August 2012 a new FENPRUSS executive committee was set up in that establishment and that Mr Zárate Acuña was not re-elected to the position which he formerly held, thereby losing his status as a union official.
- 122.** As regards the transfer of the union official, Mr José Salomón Silva, to the new Pre-Investment Studies and Projects Department of the Petorca Hospital, the Viña del Mar-Quillota Health Services report that although the transfer was carried out in accordance with the Administrative Statute, the Supreme Court of Justice upheld an appeal for protection filed by Mr Salomón against the transfer and ordered its suspension. The Government reports that the health services complied with the order and that Mr Salomón is now working at the San Martín de Quillota Hospital.
- 123.** As regards the alleged administrative irregularity brought about by the director of the Concepción Health Services when he reassigned the architect and union official Mr Johnny Villouta to other department projects, the head of the Concepción Health Services explains that the reassignment of projects occurred during an internal restructuring and that it also took into account certain problems that had arisen in the project for which the architect was the technical inspector and project manager. The head of the Concepción Health Services insists that the architect was never assigned to duties that were not inherent to his profession and that he never stopped working in the commune of Concepción. For its part, the Government indicates that the architect presented claims before the Bío Bío Regional Comptroller and filed an appeal for protection before the Court of Appeal of Concepción in which he presented claims in this regard, but that to date none of these claims have been upheld.
- 124.** As regards the allegation that the union official Ms Karem Egle Kruberg, who held the position of head of logistics in the Valparaíso Health Services, was put under pressure by the former director of the department, Mr Víctor Ayala, to carry out bidding processes violating the legal regulations on procurement procedures, the Ministry of Health reports

that the accusations are being investigated and that Mr Víctor Ayala was relieved of his duties in December 2012.

125. As regards the transfer of the union official Mr Octavio Fernando Soto Leal, who stopped working shifts as a senior nurse in the maternity department and was moved to the hospital clinic, the Quellón Hospital reports that the director of the department decided to revoke the transfer and that Mr Soto returned to his normal duties.
126. As regards the alleged refusal by the Lebu Hospital management to grant the request made by the union official Ms Andrea Osorio Pena for 33 hours' union leave, the Ministry of Health indicates that in no event has a request for union leave been rejected arbitrarily or without cause; the union official was able to justify her absences and she was able to take union leave over the period 23 to 27 April 2012.
127. As regards the allegation that a group of union officials in the Viña del Mar-Quillota Health Services had publicly request to meet the health service authorities and that after their request was rejected they held a peaceful sit-in inside the health service premises, at which the hospital instituted criminal proceedings against various union officials for "encroachment on state property", the Ministry of Health indicates that: (1) the occupation was not peaceful, that it prevented the entry of other employees working in those premises and that they closed the door and prevented normal access to the premises; (2) the hospital filed standard criminal proceedings in order to let the Public Prosecutor's Office decide whether a crime had been committed; and (3) notwithstanding the fact that the criminal proceedings were dismissed on the grounds that the events did not constitute a crime, this way of attempting to get the authorities' attention should be energetically rejected.
128. As regards the allegation that the Félix Bulnes Hospital terminated the contract of Ms Sheila Mena Zumarán, employed as a medical technician, immediately after the expiry of her trade union immunity, the Ministry of Health reports that Ms Mena Zumarán's contract at that institution ran until 30 June 2012 and that the termination operated in the due course of law. The Ministry of Health observes that the expiry of the period for which workers are employed results in the immediate termination of their duties.
129. Lastly, regarding the allegation that the Minister of Health initiated legal proceedings against Ms Gabriela Farías, the current President of FENPRUSS, for putting herself forward as an alternative minister in her trade union capacity, the Ministry of Health reports that the proceedings against Ms Gabriela Farías have been dismissed by the courts, so that no disciplinary action has been taken against the union official.
130. In view of the above, the Government denies that it has violated ILO Conventions Nos 87 and 151.

C. The Committee's conclusions

131. *The Committee observes that this case concerns allegations that various national health service departments adopted anti-union practices against officials of the FENPRUSS Association of Public Servants, including pay cuts, changes in duties, restrictions on the use of union leave and on union officials' right to submit claims, reprisals against a union official at the end of her contract and harassment. The Committee observes that the Government's reply indicates that many of the problems have been resolved, as is evident in the following conclusions.*
132. *As regards the allegation that the union official Ms Dina Imaña Choque suffered a pay cut of approximately CLP800,000 for having made use of her union leave and for failing to work the hospital shifts that had been assigned to her, the Committee notes that the*

hospital management of the Serena Hospital and the Coquimbo Health Services explain that the decision to lower the worker's wages by that amount followed an express order from the Office of the Regional Comptroller of Coquimbo. The Government explains that the health services and the hospital network are part of the Chilean public sector and that they are therefore subject to the authority of the Office of the Comptroller-General. The Committee also notes that the Government indicates that Ms Imaña initiated court proceedings against the Coquimbo health services, but then withdrew her complaint, and that the proceedings have now concluded without any decision as to the substance of the matter. The Committee also notes that the Government indicates that the Ministry of Health has held meetings with the Office of the Comptroller-General and with the Budget Directorate of the Ministry of Finance to streamline the requirements of the Office of the Comptroller-General with regard to the assignment of shifts and to facilitate the exercise of union duties alongside the effective performance of the professional services required in the area of public health. The Committee notes this information with interest and firmly expects that the problems in question may be resolved as a result of these meetings.

- 133.** As regards the allegation that the change in the working hours of the union official Mr Leoncio Zárate Acuña at the San Carlos de Concepción Hospital meant that he stopped being assigned to shifts, which resulted in a pay cut, the Committee notes that the Ministry of Health indicates that, in 2012, Mr Zárate Acuña joined the shift system and that he has since been working on daytime shifts. The Committee also observes that the Government indicates that in August 2012, a new FENPRUSS executive committee was set up in that health establishment and that Mr Zárate Acuña was not re-elected to the position which he formerly held, thereby losing his status as a union official. The Committee takes due note of this information.
- 134.** As regards the transfer of the union official Mr José Salomón Silva to the new Pre-Investment Studies and Projects Department of the Petorca Hospital, the Committee notes that the Viña del Mar-Quillota Health Services report that, although the transfer was carried out in accordance with the Administrative Statute, the Supreme Court of Justice upheld an appeal for protection filed by Mr Salomón against the transfer and ordered its suspension. The Committee notes with interest that the health services complied with that order and that Mr Salomón is now working at the San Martín de Quillota Hospital.
- 135.** As regards the alleged administrative irregularity brought about by the director of the Concepción Health Services when he reassigned the architect and union official Mr Johnny Villouta to other department projects, the Committee takes note of the explanation provided by the head of the Concepción Health Services, who indicates that the reassignment of projects occurred during internal restructuring and that it also took into account certain problems that had arisen in the project for which the architect was the technical inspector and project manager. The Committee also takes note of the Government's indication that the architect was never assigned to duties that were not inherent to his profession and that he never stopped working in the commune of Concepción. The Committee also notes that the Government indicates that the architect presented claims before the Bío Bío Regional Comptroller and filed an appeal for protection before the Court of Appeal of Concepción in which he presented claims in this regard, but that to date none of these claims have been upheld. The Committee requests the Government, if the court appeal processes brought by Mr Johnny Villouta find that his reassignment to other projects constituted anti-union discrimination, to take the necessary steps to adequately remedy the situation.
- 136.** As regards the allegation that the union official Ms Karem Egle Kruberg (who held the position of head of logistics in the Valparaíso Health Services) was put under pressure by the former director of the department to carry out bidding processes which violate the regulations on procurement procedures, the Committee notes that the Ministry of Health

reports that the accusations are being investigated and that the former director, referred to in the complaint, was relieved of his duties in December 2012. The Committee takes note of this information.

- 137.** *As regards the transfer of the union official Mr Octavio Fernando Soto Leal, who stopped working shifts as a senior nurse in the maternity department and was moved to the hospital clinic, the Committee notes with interest that the Quellón Hospital reports that the director of the department decided to revoke the transfer and that Mr Soto returned to his normal duties.*
- 138.** *As regards the alleged refusal by the management of the Lebu Hospital to grant the request made by the union official Ms Andrea Osorio Pena for 33 hours' union leave and the alleged administrative proceedings for unjustified absences, the Committee notes that the Ministry of Health indicates that in no event has a request for union leave been rejected arbitrarily or without cause, and that, in the aforementioned administrative proceedings, the union official was able to justify her absences and was able to take union leave over the period 23–27 April 2012. The Committee draws attention to the fact that initiating administrative proceedings without sufficient grounds might have an intimidating effect on union officials.*
- 139.** *As regards the allegation that a group of union officials in the Viña del Mar-Quillota Health Services had publicly requested to meet the health service authorities and that after their request was rejected they held a peaceful sit-in inside the health service premises, at which the hospital instituted criminal proceedings against various union officials for “encroachment on state property”, the Committee notes that according to the Ministry of Health: (1) the occupation was not peaceful, it prevented the entry of other employees working in those premises and the doors were closed preventing normal access to the premises; (2) the hospital filed standard criminal proceedings in order to let the Public Prosecutor’s Office decide whether a crime had been committed; and (3) notwithstanding the fact that the criminal proceedings were dismissed on the grounds that the events did not constitute a crime, this way of attempting to get the authorities’ attention should be energetically rejected. The Committee takes note of this information, which indicates that there are currently no ongoing criminal proceedings against union members.*
- 140.** *As regards the allegation that the Félix Bulnes Hospital terminated the contract of Ms Sheila Mena Zumarán, employed as a medical technician, immediately after the expiry of her trade union immunity, the Committee notes that the Ministry of Health reports that Ms Mena Zumarán’s contract at that institution ran until 30 June 2012, and that the termination operated in the due course of law. The Committee notes that the Ministry of Health observes that the expiry of the period for which workers are employed results in the immediate termination of their duties. In the absence of any concrete information or proof indicating anti-union motives of the non-renewal of the contract of this official, the Committee does not consider that this matter calls for further examination.*
- 141.** *Lastly, as regards the allegation that the Minister of Health initiated legal proceedings against Ms Gabriela Farías, the current President of FENPRUSS, for having put herself forward as an alternative minister in her trade union capacity, the Committee notes that the Ministry of Health reports that the proceedings against Ms Gabriela Farías have been dismissed by the courts, so that no disciplinary action has been taken against the union official.*

The Committee’s recommendation

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

The Committee expects that if the court appeal processes lodged by the union official Mr Johnny Villouta due to his reassignment to new projects find anti-union discrimination, the Government will take the necessary steps to adequately remedy the situation.

CASE NO. 3005

DEFINITIVE REPORT

**Complaint against the Government of Chile
presented by
the Union of Specialized Maritime Port Employees (SEMPE)**

Allegations: Union members were pressured to give up their union membership; six union members were not paid compensation for job losses as a result of the concession of the El Espigón port terminal in San Antonio to a new enterprise; the complainant trade union was excluded from the negotiation process concerning the workers' claims, in which only the federations of portworkers took part

- 143.** The complaint is contained in a communication from the Union of Specialized Maritime Port Employees (SEMPE) of October 2012.
- 144.** The Government sent its observations in a communication dated 23 January 2014.
- 145.** Chile 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

- 146.** In a communication of October 2012, SEMPE, which represents workers of the El Espigón port terminal in San Antonio, explains at length the various stages in the modernization of the port sector since Act No. 19542 of 1997. It alleges that that process resulted in the loss of thousands of jobs; decisions which seriously prejudiced and discriminated against the El Espigón port terminal compared with other terminals; acts or omissions on the part of the authorities to the benefit of other trade unions; and practices of the federation to which SEMPE was affiliated (but broke away from) and other trade union federations, to the detriment of SEMPE, which ultimately splintered and a breakaway union was created, in the context of conflicts of interests and disputes among trade union organizations.
- 147.** More specifically, the complaint concerns the process of determining the conditions governing the second bidding process and how the public port enterprise will handle the workers' proposals and establish the conditions for future port work, which under a 2008 Order of the Minister of Labour and Social Welfare must be conducted "together with the workers". Therefore, in June 2009, the complainant requested the Board of Directors of the San Antonio Port Enterprise (EPSA) to include it in the initial phase of the negotiation

process, and the enterprise informed the complainant that it would be included in the bargaining panel alongside the other trade unions which were represented by their respective federations. The negotiations broke down and a 40-day strike was called. On 10 January 2011, the federations signed an agreement with the trade union federations operating in the El Espigón port terminal to secure compensation for the portworkers who would be affected by the imminent bidding process, subject to conditions of age, accredited years of service in port work, inclusion on the list approved by the Maritime Authority in the period from 2007 to 2010, and place of work, it being understood that a distinction would be made between the workers from the San Antonio International Terminal (STI) and workers from the El Espigón port terminal. Furthermore, two unions would be protected – including the San Antonio Union of Customs Clerks (*aforistas*), whose members are contracted by customs agencies for cargo handling for containers, that is, to support the customs work itself – who are not portworkers pursuant to Labour Directorate Order No. 4413/172. SEMPSAI, the splinter union from SEMPE also benefited.

- 148.** SEMPE adds that, after 16 months had elapsed since its June 2009 request to the EPSA operations manager, and owing to the union's repeated attempts to have its officials participate in the negotiation panel, in late December 2010 it called an extraordinary assembly to inform its members of the union's situation and EPSA's indifference towards its requests. Finally, SEMPE decided that its members would each manage their own application for benefits resulting from the bidding process for the state terminal. However, in January 2011, the EPSA operations manager informed SEMPE, on behalf of EPSA's officials, that only workers belonging to the Alliance of Port Workers' Federations (FTP) could apply for the benefits obtained by the federations. Consequently, SEMPE members were excluded from the payment of compensation due to the fact that SEMPE did not belong to that alliance.
- 149.** SEMPE also alleges that the EPSA operations manager incited various SEMPE members to resign from the union as a prerequisite to receiving application forms for compensation. Those concerned finally gave up their membership as they were in need of the benefits. In addition, other members silently left the union (for example, one former SEMPE member submitted a voluntary statement and resignation letter, which was received by EPSA). However, the members who resigned from the union expecting to receive compensation were not considered by EPSA.
- 150.** On 11 March 2011, the SEMPE secretary, Eduardo Rojas Muñoz, met the EPSA operations manager and explained the situation of the trade union organization. At the end of the meeting, the operations manager made offers which were not specific. On the contrary, they did not include guarantees that SEMPE members would be able to receive the compensation payments that were guaranteed to other trade union organizations, thereby demonstrating favouritism towards the other unions mentioned above. Since the representative of the enterprise did not offer any guarantees, on 14 March 2011, SEMPE replied to him by email, insisting that the union and EPSA reach a formal agreement ensuring that SEMPE members would receive the benefits.
- 151.** In June 2011, the enterprise informed SEMPE that the EPSA Board had decided to extend the protocol agreement to include all portworkers, whether unionized or not, under the same conditions that applied to workers who were members of the signatory federations. In so doing, the EPSA general manager, together with the operations manager, made a verbal commitment that they would be considered as exceptions in the process.
- 152.** SEMPE adds that the application forms were submitted to the state enterprise within the prescribed time limits, on the understanding that, according to EPSA's verbal commitments, SEMPE members would benefit from the extension of the agreement; in

particular, clause 7 provided that workers to whom the agreement applied on an exceptional basis would “have the status of selected workers and receive the benefit set out in clause 6, on the condition that they provided evidence to EPSA that they fulfilled the requirements of clause 5(e) and (f) above”.

- 153.** The complainant emphasizes that, in the application of the general terms of the agreement to its members, only three members were able to provide evidence of fulfilling all of the general requirements set out in the protocol agreements, as a result of their having taken work in other port enterprises to support themselves, and that the specific circumstances of the majority of SEMPE members that made them eligible to be considered as exceptions alongside SEMPSAI and the Union of Customs Clerks were not taken into account.
- 154.** This arbitrary decision, which excluded SEMPE members from the process, was challenged in a document dated 7 October 2011 that was submitted to the President of the Board of the state enterprise, Patricio Arrau Pons; however, the Board never provided a response.
- 155.** Finally, in November 2011, EPSA proceeded to pay out the compensation, excluding SEMPE’s members once and for all since, according to EPSA, they did not meet the requirements, which were imposed arbitrarily.
- 156.** In view of such blatant arbitrary discrimination, SEMPE appealed to various parliamentary and ministerial authorities.
- 157.** The Ministry of Transport and Telecommunications responded on 21 December 2011, stating that in accordance with section 31 of Act No. 19542, it is for the port enterprises’ directors to manage the processes for the concession of the docks and hence the resulting compensatory measures, for which they were granted absolute autonomy under the law. It was “not for the Ministry of Transport and Telecommunications to participate” in determining such measures.
- 158.** The Ministry of Transport and Telecommunications subsequently confirmed that EPSA was autonomous in the bidding processes (given that the matter in question was the compensation process), thereby avoiding responsibility to exercise its powers of monitoring and supervising the actions of EPSA, an enterprise which is under the responsibility of the Ministry of Transport and Telecommunications.
- 159.** In response, union leader Eduardo Rojas Muñoz began a hunger strike on 3 January 2012 in protest against the anti-union practices and breaches of labour rights by EPSA and the State of Chile, and seeking payment of compensation for the years he had worked at the State port terminal of San Antonio. The hunger strike lasted 74 days and had a serious impact on his health, seriously endangering his life. Throughout the strike, the government authorities took various steps with a view to resolving the dispute; however, the argument that EPSA was an autonomous enterprise always prevailed.
- 160.** The Ministry of Labour stated that by law it is the Office of the Comptroller-General which is responsible for interpreting the Labour Code, ensuring that it is applied correctly and exercising supervisory control over public or state enterprises, and accordingly is the competent authority to rule on the illegalities at the root of the dispute.
- 161.** Decision No. 16812 of the Office of the Comptroller-General was issued on 23 March 2012 and addressed only the terms of the protocol agreement and the application forms received by EPSA, making no reference to the state enterprise’s failure to negotiate with the union, the arbitrary application of the terms of the agreement to SEMPE’s members or EPSA’s anti-union practices. In other words, the Office of the Comptroller-General

considered only EPSA's arguments and made no finding on the arguments presented by the trade union.

- 162.** In light of the foregoing, SEMPE requests that the violations of its members' labour and union rights and the discrimination they suffered be remedied and that its members be awarded compensation forthwith.

B. The Government's reply

- 163.** In its communication dated 23 January 2014, the Government refers to the complaint of SEMPE and states that it has sought the opinion of EPSA and, on the basis of its response, makes the following observations: the SEMPE trade union relies on Act No. 19542 of 1997 governing the modernization of the state port sector. It explains how the actions of EPSA resulted in the dock that it was operating (El Espigón) becoming less competitive than the Molo South Terminal (STI). Moreover, it refers to the facts which, in its view, led to SEMPE's split from the Federation of Temporary Contractors and Allied Workers in Maritime Ports (FETRAMPEC), which did receive compensation from EPSA. It then describes the compensation process put in place by EPSA and refers to the judicial and administrative proceedings which were initiated when the union was not awarded compensatory measures and the disputes with other unions.

Comments from EPSA on SEMPE's allegations

- 164.** EPSA states that in the exercise of its legal functions, its Board launched a public bidding process for the concession of the Costanera Espigón dock of the San Antonio port. The concession was awarded to Puerto Lirquén SA and transferred to the operator that was established for the purpose, called Puerto Central SA, on 7 November 2011.
- 165.** The enterprise notes that the concession for the dock was awarded under the port operation system known as the "single-operator system", which replaced the "multi-operator system". This situation led to a change in demand for port work and the wharf enterprises located in El Espigón ceased to operate as a result.
- 166.** EPSA states that, even though no portworkers have a subordinate or dependent relationship with EPSA, but instead work for the enterprises responsible for moving and transferring cargo, the EPSA Board considered it appropriate to establish a compensation scheme to ensure that the bidding process could be completed without any social or labour-related impediments.
- 167.** Accordingly, and after conducting the corresponding consultations, the Office of the Comptroller-General issued Decision No. 34218 of 24 June 2010, ruling that as part of the terms of the bidding process, EPSA had the authority to establish a sum to fund a compensation scheme for the portworkers whose source of work would be affected by the change from the multi-operator to the single-operator system.
- 168.** In the light of the above, under the heading "Provision of funds", section 3.11.2 of the relevant terms of the bidding process placed an obligation on the successful bidder to earmark funds amounting to a maximum of US\$18,500,000 to cover such compensation schemes.
- 169.** Under these circumstances, and after an arduous negotiation process that included a prolonged standstill, on 10 and 22 January 2011, EPSA signed two protocol agreements with the six workers' federations in the sector providing for the establishment of a compensation scheme for those portworkers who fulfilled certain requirements pertaining

to age, years of service in the port sector and place of work, to be borne by the successful bidder.

- 170.** Furthermore, the enterprise's Board considered it appropriate to extend the benefits provided for in the protocols to include non-unionized workers who both met the age requirement and performed work comparable to that of the workers covered by the agreements.
- 171.** In order to be eligible for the compensation scheme, portworkers (whether unionized or not) had to fulfil the following cumulative requirements:
- (a) have been portworkers in the years 2007, 2008, 2009 and until September 2010, as demonstrated by the corresponding red card for each of those years;
 - (b) have been included on the payroll or classified as "designated" workers approved by the harbour master's office of the San Antonio port in the years 2007, 2008, 2009 and until September 2010 or, alternatively, provide evidence of their income from the port precinct by means of a valid contract and social security contributions for such periods;
 - (c) have worked 36 or more shifts in each of the years 2007, 2008 and 2009, and 27 or more shifts until September 2010, in port enterprises operating during those periods in the San Antonio port;
 - (d) have possessed a valid portworker's card issued by the maritime authority of Chile (DIRECTEMAR) since 31 December 2010 and until the time of applying for and receiving the benefit;
 - (e) not have received previous compensation from the State as a former worker of the former port enterprise of Chile or as a result of previous port terminal concession processes or the restructuring or modernization of the state port sector.
- 172.** The following forms of proof were established:
- (a) years of service in the system: statements of contributions from the Social Security Institute (IPS) or the Pension Fund Administration (AFP);
 - (b) minimum number of shifts: workers "designated" by the Maritime Authority;
 - (c) proof of employment as a portworker: red card, valid until 2010 and accredited for each of the years 2007, 2008, 2009 and 2010;
 - (d) employment in a port enterprise: certified by the Maritime Authority.
- 173.** Both the relevant protocols and the beneficiaries of the compensation scheme were published clearly and transparently on the EPSA website, and the workers who were on the relevant lists were invited to contact the enterprise's offices to resolve any doubts.
- 174.** A total of 1,207 applications from workers seeking to be included in the compensation scheme were received. The data underwent an exhaustive checking and auditing process, which produced a final list of 1,020 workers; only 187 applications, or 15.4 per cent of the total, were rejected.
- 175.** Finally, by letter No. 255 dated 25 October 2011 EPSA sent the successful bidder, Puerto Central SA, the relevant instructions to pay the selected workers compensation totalling 7,744,500,000 pesos. The subsequent payment process ran smoothly.
- 176.** In the case of SEMPE, considering that it did not belong to any of the six signatory federations, some months after the protocol agreements had been signed, its union officials met EPSA executives to request negotiations in parallel to the ongoing negotiations, under

conditions differing from those agreed. Considering the request to be out of time and invalid, EPSA informed the union that that would not be possible, but that the Board of the enterprise had decided to extend the benefits of the agreements to other portworkers who fulfilled the same requirements, as stated above. It was then invited to submit applications for its members. Having accepted the invitation, in a letter to EPSA dated 17 August 2011, the President of SEMPE provided a list of nine of its members. The outcome of the subsequent examination of their applications is set out in the following table.

Shifts					
Name	Outcome of application	2007	2008	2009	2010
Funzalida Hernández, Luis Andrés	Does not meet required No. of shifts	151	15	44	0
González Gaete, Juan Carlos	Meets requirements. Received 6,000,000 pesos	405	301	234	262
González Gaete, Roberto Carlos	Does not meet required No. of shifts. Is not a portworker	0	0	0	0
Lois Barrera, Manuel Eduardo	Does not meet required No. of shifts	295	101	22	87
Lucero Pinats, Nelson Patricio	Does not meet required No. of shifts	99	13	0	0
Quinteros Escorza, Juan Carlos	Meets requirements. Received 5,000,000 pesos	325	300	87	91
Rojas Muñoz, Alejandro Mario	Does not meet required No. of shifts	81	18	1	25
Rojas Muñoz, Eduardo Antonio	Does not meet required No. of shifts	124	23	0	16
Saenz-Diez Soto, Juan José	Meets requirements. Received 5,000,000 pesos	209	178	122	49

177. As can be seen, three of the nine workers met the requirements and received compensation payments. Since the remaining workers had not worked the minimum number of shifts, their applications were rejected and they were informed by a letter to their home addresses. Despite the fact that the enterprise provided objective reasons why three applications were granted and the remaining six were rejected, the President of SEMPE, Alejandro Rojas Muñoz, began a hunger strike that lasted more than two months. However, his state of health remained unchanged, as certified by the Director of the San Antonio hospital.

178. Moreover, he submitted a complaint on the matter to the Office of the Comptroller-General, which rejected the complaint by Decision No. 016812 of 23 March 2012, finding that:

... there are no objections to be made as to the lawfulness of the objective and generally applicable criteria considered by the San Antonio Port Enterprise in order to define the form, timing and beneficiaries of the resources that the successful bidder provided in accordance with the terms of the bidding process to fund the payments in question and, consequently, to deny payment to persons failing to meet the criteria.

179. In its complaint to the Committee on Freedom of Association, SEMPE alleges that EPSA refused to meet SEMPE officials, took steps designed to weaken the union by requiring workers to give up their membership in order to receive compensation, and refused to negotiate the terms under which compensation would be awarded.

180. In this regard, EPSA notes that neither SEMPE nor its members have any contractual relationship with EPSA. Furthermore, it bears repeating that EPSA began the negotiation

process voluntarily, despite being under no obligation to do so. That being said, representatives of EPSA met SEMPE officials on many occasions and responded to their claims. Under no circumstances were workers required to give up their union membership in order to obtain a compensation payout, as was claimed. On the contrary, in order to demonstrate respect for freedom of association, the EPSA Board extended the benefits of the protocol agreements signed with the six federations of portworkers in San Antonio to include all workers, whether unionized or not, who fulfilled the requirements. Consequently, since there was no requirement for workers to be unionized or to be a member of a particular organization, SEMPE's claim that its members were required to give up their union membership in order to submit an application is unfounded. The enterprise considers such an assertion to be very serious and wholly untrue and unjustified.

181. Moreover, the enterprise fails to understand why SEMPE considers that it should have been treated differently from the other first-level unions in the sector that an exclusive, parallel negotiation process should have been undertaken. The negotiation process included all of the workers' federations in the sector, thereby covering the vast majority of trade unions since, contrary to SEMPE's claims, it was not practical or possible to negotiate with each of the first-level unions in the sector.
182. As to the complaints of anti-union practices and the call to pay compensation, the enterprise notes, firstly, that there were no possible anti-union practices, as EPSA has no contractual relationship of any kind with SEMPE, and SEMPE members were not treated arbitrarily, since the agreements were applied objectively to the applications submitted by the nine SEMPE members.
183. The enterprise emphasizes that the administrative proceedings were concluded when it sent the successful bidder, Puerto Central SA, a communication setting out the relevant instructions for the payment of the compensation. The payment process ran smoothly. It is therefore not possible to conduct a new payment process, since EPSA has neither the resources nor the contractual basis to make such a request of Puerto Central SA.

Observations of the Government of Chile

184. The Government considers that the comments submitted by EPSA speak for themselves, and only require certain clarifications, which further undermine SEMPE's position.
185. The trade union claims to have appealed to both the ordinary courts (labour tribunals, the Court of Appeal and the Supreme Court) and the Office of the Comptroller-General, none of which found in its favour, which is why it submitted the present complaint.
186. As a result, it is rather difficult to argue that the State of Chile has failed to comply with ILO Conventions, considering that only six persons of a total of nine did not receive compensation payments made voluntarily by a state enterprise.
187. In conclusion, in the light of all of these additional clarifications and considering the information provided by EPSA, the Government rejects and considers unfounded SEMPE's claims of violations of freedom of association.

C. The Committee's conclusions

188. *The Committee observes that in this case, which concerns facts dating from 2011, the complainant alleges that EPSA excluded it from the collective bargaining process relating to the compensation for portworkers that was decided following the bidding process for the El Espigón terminal port in San Antonio, and that only three of its members were eligible*

for the said benefits, in particular the compensation payments. The complainant also makes allegations of anti-union practices consisting of pressure on members to leave the union as a condition for receiving the document and data required to apply for compensation.

- 189.** Furthermore, the Committee notes that, according to the complainant, the authorities failed to fulfil their oversight function and the enterprise refused to recognize verbal commitments from the management that clause 7 of the collective agreement signed with the six federations with respect to the workers covered by the said collective agreement would apply to the union's members on an exceptional basis; however, other workers who did not meet the minimum requirements for the payouts and who were members of two different unions were granted compensation. The Committee observes that, according to the complaint and the information provided by the Government, the administrative decisions and court rulings on the complainant's appeals did not find in the union's favour.
- 190.** Regarding the alleged anti-union practices and the complainant's alleged exclusion from the collective bargaining process concerning training and compensation as a result of the concession for the El Espigón port in San Antonio being awarded to a single enterprise, during which the criteria were set for determining the benefits of the legal compensation resulting from different enterprises ceasing to operate in the port, the Committee notes the information from EPSA provided by the Government, according to which: (1) the criteria for compensation were set out in an agreement with six federations in the sector and require certain conditions (for example, recipients must not have previously received compensation arising from restructuring processes); (2) as a result of conversations with the complainant, the benefits of the compensation were extended to include all workers meeting the requirements, regardless of whether or not they were members of the signatory trade unions – a situation which precluded any discrimination against or pressure to leave a union, and in no case did the enterprise require anyone to give up their union membership; (3) the enterprise met with officials of the complainant trade union on many occasions and its claims were responded to through negotiations with all of the federations in the sector, as it was neither possible nor practical to negotiate with each union separately; (4) compensation was paid to three members of the complainant organization who fulfilled the requirements agreed with the federations, but not to the six other workers who did not meet the requirements.
- 191.** The Committee considers that it cannot criticize the fact that the authorities and the enterprise negotiated the compensatory measures with the federations of portworkers, excluding the complainant trade union, as the problems raised concerned the entire port sector; nor can it find fault with the enterprise for not including the complainant in the bargaining panel. Moreover, the Committee notes a discrepancy between the versions of the complainant and the enterprise concerning alleged anti-union practices (pressure to give up union membership as a prerequisite for receiving the application form for compensation and refusal to meet with union officials), but observes that both the complainant and the Government agree that the enterprise ultimately extended the possibility to receive the negotiated compensation to all portworkers, whether unionized or not, meaning that the potential beneficiaries also included those members of the complainant trade union who fulfilled the negotiated requirements.
- 192.** The Committee notes that, according to the complainant union, only three of its members received compensation, and that the enterprise states that the remaining six members did not fulfil the negotiated requirements concerning the number of shifts and did not receive compensation for that reason. The Committee notes that the complainant argues that the enterprise made verbal commitments that those workers would be considered under clause 7 of the agreement reached with the federations concerning the workers to whom

*the agreement would apply on an exceptional basis, and that the enterprise awarded compensation to workers of two trade unions who did not fulfil the requirements. The Committee observes that the parties differ in their interpretation of whether the agreement reached, and in particular clause 7, applies to the members of the complainant union and whether the members fulfil the requirements set out in the collective agreement to be eligible for compensation. The Committee recalls that “the solution to a legal conflict as a result of a difference in interpretation of a legal text should be left to the competent courts” [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 532]. The Committee observes in this regard that the legal action and this appeals made by the complainant with a view to obtaining payment of compensation for all of its members did not succeed and that those decisions confirm the legality of the criteria negotiated with the trade union federations.*

193. *In these circumstances, the Committee considers that this case does not call for further examination.*

The Committee’s recommendation

194. *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. 2995

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

Complaint against the Government of Colombia presented by

- **the Single Confederation of Workers of Colombia (CUT) and**
- **the General and Related Services Workers’ Trade Union (SINTRASEGA)**

Allegations: The complainants report various anti-union acts within the general cleaning services and general services of the district of Bogota by service providers, including restrictions preventing union officials from accessing those enterprises, the discriminatory non-renewal of the contracts of various union officials, and the routine use of short-term contracts preventing the free exercise of freedom of association by the workers of the service in question

195. The complaint is contained in a communication dated 15 November 2012, submitted by the Single Confederation of Workers of Colombia (CUT) and the General and Related Services Workers’ Trade Union (SINTRASEGA).

196. The Government sent its observations in communications dated 6 and 25 March 2014.

197. 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

198. The complainants allege that the freedom of association of the female workers of the general cleaning service and general services of the district of Bogota is being violated by service providers in that district. In this regard, the complainants indicate that: (i) in 2010 and 2011, the Office of the Mayor of Bogota signed a service contract with the enterprise Internacional de Negocios SA for cleaning services in public schools, for which the enterprise hired 3,884 workers; (ii) in September 2011, the enterprise started to fall behind with the payment of wages and the Secretariat for Education of the Office of the Mayor of Bogota (SED), was accordingly requested to adopt measures to oblige the enterprise to comply with its labour obligations; (iii) on 24 November 2011, cleaning and general service workers mainly attached to schools in the Usme, Ciudad Bolívar and Sumapaz district divisions created the National Union of Workers of the enterprise Internacional de Negocios SA; (iv) the workers in Usme launched demonstrations on 29 December 2011 due to the non-payment of their wages, which triggered acts of stigmatization against union members; (v) at the end of January 2012, the enterprise Internacional de Negocios SA requested the district Secretariat for Education to transfer the contract, which was awarded on 7 February 2012, for the one part, to the joint venture Asepclean and, for the other, to the joint venture Mr Clean SA and Mantenimiento Aseo Servicios SA; (vi) the aforementioned enterprises did not renew the contracts of pregnant women or of workers suffering from some form of work-related disability, which prompted the CUT to file a complaint before the Ministry of Labour on 30 January 2012; (vii) on 9 February 2012, the cleaning workers created the new occupation-based union, SINTRASEGA; (viii) as of February 2012, the President of SINTRASEGA, Ms Yamila Guerrero García, and the General Secretary of the organization ceased to be contracted by Internacional de Negocios SA and by the enterprises to which the service contract had been transferred. The President of SINTRASEGA was also obliged to abandon her work monitoring the employment status of the workers in the sector, which she carried out together with a lawyer of the Colombian Commission of Jurists, after being banned from entering the workplaces of the workers of the aforementioned enterprises and joint ventures; (ix) since then, the exercise of freedom of association in those enterprises and joint ventures continues to be restricted by acts of harassment and anti-union persecution, including threats to dismiss workers who meet with union officials; (x) in March and May 2012, SINTRASEGA, with the support of the CUT, reported the aforementioned violations before the Ministry of Labour, the Office of the Mayor of Bogota and the Counsel-General's Office, but the situation was not resolved owing to a lack of political and judicial will; and (xi) owing to a general fear of anti-union reprisals, SINTRASEGA has not claimed the deduction of union fees, and the majority of its 500 members prefer to keep their membership secret.

199. In the light of the above, the complainants allege the following violations of ILO Conventions Nos 87 and 98: (i) major restrictions on the communication of union information and the freedom of access by union officials to the aforementioned enterprises, which hampers the right of the workers of the general cleaning service and general services of the district of Bogota to become union members, in the absence of appropriate mechanisms to denounce such irregularities; (ii) anti-union acts against SINTRASEGA officials and members, in particular the non-renewal of contracts in the absence of effective remedies to address such situations in so far as labour inspectors are not competent to guarantee workers' rights and make them effective, and (iii) the generalized use of public works contracts over very short time periods (three, six or nine months),

which weakens the freedom of association of cleaning service workers due to fear that their contracts will not be renewed.

B. The Government's reply

200. In a communication of 6 March 2014, the Government transmits the reply of the joint venture Mr Clean SA and Mantenimiento Aseo Servicios SA, which indicates that: (i) it was awarded the transfer of the cleaning contracts for the district divisions of Usme and Ciudad Bolívar by the Secretariat for Education of the district of Bogota on 7 February 2012, once the enterprise Internacional de Negocios SA was no longer able to provide the service; (ii) under the terms of that transfer, the Secretariat for Education accepts no responsibility for the workers assigned to provide those services, whereby the service provider maintains full independence in that regard; (iii) the previous service provider continued to owe all outstanding payments for work up to the date of the transfer of the contract; (iv) following the transfer, 98 per cent of staff were kept on; (v) the few cases of non-renewal were due to failure to pass the physical examination on recruitment and were in no case due to the workers' membership of a trade union organization, the existence of which was not known to the enterprise during the recruitment process; (vi) *tutela* (protection) proceedings filed by some workers have resulted in a ruling against the previous service provider; and (vii) there are no grounds for the allegations of discrimination.
201. On the basis of the information provided by the aforementioned enterprise, the Government indicates that: (i) the Ministry of Labour ordered Internacional de Negocios SA to comply with the legal provisions concerning the termination of the contracts of workers with disabilities; (ii) progress is being made on the administrative labour proceedings filed in January 2013 against the aforementioned enterprise and the SED, and the relevant information will be sent to the Committee once the required inquiries have been carried out; (iii) however, as of 10 December 2012, SINTRASEGA had filed no administrative labour proceedings against the joint ventures Asepclean, and Mr Clean SA and Mantenimiento Aseo Servicios SA; and (iv) the complainants have not provided evidence of anti-union acts during the transfer of workers to the new service providers and the Committee on Freedom of Association is therefore not competent to examine this case.
202. In a communication of 25 March 2014, the Government transmits a reply from the SED, which indicates that: (i) the alleged violations of the principles of freedom of association concern the actions of the service providers and not those of the Office of the Mayor itself; (ii) the enterprise Internacional de Negocios SA was sanctioned for its failure to comply with the labour regulations, as reported in the CUT's complaint; (iii) the service providers' obligation to enter into employment relationships with its workers does not extend beyond the end of the service contract; (iv) the SED was witness to the agreements signed by the union officials and the enterprise Internacional de Negocios SA, which included the payment of outstanding wages and the commitment to refrain from reprisals against the workers who lodged complaints; and (v) the SED will be vigilant against acts of interference to undermine the freedom of association of workers who have signed contracts with the service providers.

C. The Committee's conclusions

203. *The Committee observes that this case concerns allegations of violations of freedom of association in the general cleaning services and general services of the district of Bogota by service providers. The alleged violations consist, firstly, of a series of anti-union acts which include major restrictions on the communication of union information and on*

freedom of access by union officials to the aforementioned enterprises, and the discriminatory non-renewal of the contracts of SINTRASEGA officials, in the absence of appropriate and effective mechanisms to put an end to those anti-union acts, and secondly, the generalized use of short-term contracts, preventing the free exercise of freedom of association by the cleaning service workers due to fear that their contracts will not be renewed.

- 204.** *The Committee takes note of the replies sent by the Government, the SED and the joint venture Mr Clean SA and Mantenimiento Aseo Servicios SA, which indicates that the public authorities have taken measures to address failures to comply with labour obligations (payment of wages) by the initial service provider (Internacional de Negocios SA), and that there is no evidence of anti-union acts by the various enterprises in relation to the implementation of the service contract signed by the SED.*
- 205.** *Regarding the allegations of a series of anti-union acts by the service providers of the SED, especially those triggered by the creation of SINTRASEGA in February 2012 and the transfer of the cleaning contract to new companies, the Committee takes note of the Government's reply, which indicates that the complainants have not provided evidence of anti-union acts during the transfer of workers to the new service providers and that no administrative labour proceedings have been filed by SINTRASEGA against the enterprises which were awarded the cleaning service contract, the only administrative labour proceedings currently pending being those brought against the initial enterprise and the SED. In this regard, the Committee notes that on 5 and 8 March 2012, the CUT and SINTRASEGA submitted two identical communications to the Ministry of Labour and to the Office of the Mayor of Bogota reporting, among other things, acts of anti-union persecution by the aforementioned service providers, including the discriminatory dismissal of the President of SINTRASEGA, Ms Yamila Guerrero García, and of two other union officials and requesting immediate intervention by the public authorities to put an end to the violation of freedom of association.*
- 206.** *The Committee observes that in its reply, the Government does not mention the measures taken in relation to the two aforementioned complaints of March 2012, and it does not indicate whether the administrative labour proceedings that are pending in relation to the enterprise Internacional de Negocios SA and the SED include the complaints regarding the violation of freedom of association. Recalling that in cases of alleged anti-union discrimination the competent authorities should begin an inquiry immediately and take suitable measures to remedy any effects of anti-union discrimination brought to their attention [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 835], the Committee requests the Government to ensure that all anti-union acts reported in this complaint are followed up without delay by independent inquiries. The Committee requests the Government to keep it informed of the aforementioned inquiries and of their outcomes.*
- 207.** *Regarding the specific allegations of discriminatory non-renewal of the contracts of various SINTRASEGA officials, and in particular of its President, Ms Yamila Guerrero García following the transfer of the cleaning service contract, recalling that the non-renewal of a contract for anti-union reasons constitutes a prejudicial act within the meaning of Article 1 of Convention No. 98 [see **Digest**, op. cit., para. 785], the Committee requests the Government to ensure that the inquiries mentioned in the previous paragraph address the contractual situation of Ms Guerrero García. Recalling the general principle that if reinstatement is not possible, the Government should ensure that the workers concerned are paid adequate compensation which would represent a sufficient dissuasive sanction for anti-trade union dismissals [see **Digest**, op. cit., para. 845], the Committee requests the Government to ensure that, in the event of a finding that her contract was not renewed for anti-union reasons, a new contract is offered to her or, if this is not possible,*

that she is paid adequate compensation which would represent a sufficiently dissuasive sanction.

- 208.** *Regarding the allegations concerning the generalized use of short-term contracts in the general cleaning services and general services of the district of Bogota, preventing the free exercise of freedom of association in that service, the Committee recalls the principle according to which, while it does not have the mandate and will not pronounce itself with respect to the advisability of recourse to fixed-term or indefinite contracts, the Committee wishes to highlight that, in certain circumstances, the employment of workers with successively renewed fixed-term contracts for several years may affect the exercise of trade union rights [see 368th Report, Case No. 2884 (Chile), para. 213]. The Committee requests the Government to take this principle into consideration in its inquiries and, in the event of finding the alleged dissuasive effect, if necessary, to take appropriate measures, in consultation with the social partners concerned, to ensure that the workers in the sector are able to exercise their trade union rights freely. The Committee requests the Government to keep it informed in this regard.*

The Committee's recommendations

- 209.** *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) The Committee requests the Government to ensure that all anti-union acts reported in this complaint are followed up without delay by independent inquiries. The Committee requests the Government to keep it informed of the aforementioned inquiries and of their outcomes.*
 - (b) The Committee requests the Government to ensure that the inquiries mentioned in paragraph (a) address the contractual situation of Ms Guerrero García and that, in the event of finding that her contract was not renewed for anti-union reasons, that a new contract is offered to her or, if this is not possible, that she is paid adequate compensation which would represent a sufficiently dissuasive sanction. The Committee requests the Government to keep it informed in this respect.*
 - (c) Regarding the allegations concerning the generalized use of short-term contracts in the general cleaning services and general services of the district of Bogota, preventing the free exercise of freedom of association in that service, the Committee, while recalling that it does not have the mandate and will not pronounce itself with respect to the advisability of recourse to fixed-term or indefinite contracts, requests the Government to take this issue into consideration in its inquiries and, in the event of finding a dissuasive effect to take, if necessary, appropriate measures, in consultation with the social partners concerned, to ensure that the workers in the sector are able to exercise their trade union rights freely. The Committee requests the Government to keep it informed in this regard.*

CASE NO. 3020

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

**Complaint against the Government of Colombia
presented by
the National Union of Public Servants of Colombia (Sintraestatales)**

Allegations: The complainant alleges that various union officials were the subject of anti-union dismissals as a result of competitive examinations in the civil service

- 210.** The complaint is contained in a communication dated 14 February 2013 from the National Union of Public Servants of Colombia (Sintraestatales).
- 211.** The Government sent its observations in a communication dated 4 October 2013.
- 212.** 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 complainant's allegations

- 213.** The complainant alleges that ten union officials of the Cauca branch of Sintraestatales – Eliseo Ortiz Argoty (employed since April 2007), Janeth Patricia González Jiménez (employed since March 2005), Víctor Mario Mondragón (employed since February 2007), María Nuren Sánchez de Perdomo (employed since April 2005), Ana Rubiela Vásquez Daza (employed since April 2005), Luz Margoth Embus (employed since March 1993), César Orlando Bolaños (employed since January 2007), Hernán Adelmo Urriaga Fajardo (employed since May 2003), Nora Esperanza Vásquez Legarda (employed since July 2007) and Yoney Artunduaga Moreno (employed since May 2008) were dismissed in 2011 and 2012 by the Education and Culture Secretariat of Cauca department and the Municipal Education Secretariat of Popayán municipality without the prior authorization of the labour court, which would have been required on account of their trade union immunity. The union and its officials sought reinstatement on the basis of their union immunity, but their application was denied.
- 214.** The complainant adds that the aforementioned workers, who were civil servants employed on a temporary basis, were dismissed as a result of a competitive examination to fill posts in the civil service, although there were many other vacant posts in the two administrations, identical to those held by the union officials, to which the persons who passed the examination could have been appointed without affecting the union and its officials. The complainant argues that the dismissal of the union officials therefore constitutes an act of anti-union discrimination, in breach of ILO Conventions Nos 87 and 98.
- 215.** The complainant adds that, in accordance with the case law of the Constitutional Court of Colombia, section 24 of Legislative Decree No. 760 of 2005 (establishing the procedure which must be followed before, and by, the National Civil Service Commission (CNSC) in the discharge of its functions), which provides that judicial authorization to lift trade union

immunity is not required when a post held temporarily by a person protected by union immunity is opened up to a public competitive examination and the protected person does not pass the examination, did not apply to the ten dismissed workers. The complainant argues that, in the light of constitutional case law, that provision applies only where the number of persons selected by means of a competitive examination (eligible persons) is not lower than the number of vacant posts in the type of job which is opened up to a competitive examination in the corresponding administration and which is held by a union official on a temporary basis. The complainant notes that where the number of vacant posts exceeds the number of eligible persons having passed the competitive examination, the continuous employment of temporary civil servants in particular social categories – including those with trade union immunity – must be safeguarded.

B. The Government's response

- 216.** In a communication dated 4 October 2013, the Government transmits the observations of the Municipal Education Secretariat of Popayán municipality and of the Education and Culture Secretariat of Cauca department. The Municipal Education Secretariat of Popayán municipality states that Nora Esperanza Vásquez Legarda's employment relationship was terminated following a decision of the CNSC, dated 17 March 2011, publishing the list of persons eligible to fill administrative posts in the Popayán municipality, and that in order to recruit those persons who had passed all stages of the public competitive examination, it had to terminate the temporary appointment of Ms Vásquez Legarda. The secretariat adds that, according to Colombian case law, trade union immunity cannot obstruct the appointment of a person who has passed a public competitive examination; that there was no dismissal in this case; and that there is therefore no requirement to show just cause.
- 217.** The Education and Culture Secretariat of Cauca department states that the termination of the employment relationships of the remaining nine Sintraestatales officials referred to in the complaint, who were appointed on a temporary basis, occurred as a consequence of the results of the public competitive examinations conducted pursuant to Act No. 909 of 2004 governing posts in the public administrations and in conformity with the criteria set out by the CNSC in competition notice No. 001 of 2005, as a competitive examination had been held for the posts occupied by the aforementioned officials. It adds that, pursuant to section 24 of Legislative Decree No. 760 of 2005 establishing the procedure which must be followed before, and by, the CNSC in the discharge of its functions, no judicial authorization is required to terminate the employment relationship of employees with union immunity where the posts occupied on a temporary basis are opened up to a competitive examination and the employees in question do not hold posts which enable them to be appointed in strict order of merit. The Education Secretariat states that in Decision No. C-1119 of 2005, the Constitutional Court held that no judicial authorization is required to terminate the employment relationship of civil servants with trade union immunity who hold temporary posts. Lastly, it states that Janeth Patricia González Jiménez and César Orlando Bolaños filed separate special petitions for reinstatement on the grounds of trade union immunity, which were rejected by the courts.
- 218.** In its follow-up to the observations of the Municipal Education Secretariat of Popayán municipality and the Education and Culture Secretariat of Cauca department, the Government emphasizes that various decisions pertaining to the complainant's allegations have been issued by the courts and labour administration: (i) the petitions for legal protection filed separately by César Orlando Bolaños and Eliseo Ortiz Argoty were declared inadmissible by the courts of first instance, as the plaintiffs had not exhausted the other regular channels to seek protection of their rights; (ii) the special petition for reinstatement on the grounds of trade union immunity filed by Janeth Patricia González Jiménez was rejected at both first and second instance; and (iii) in the case of the termination of Hernán Adelmo Urriaga Fajardo's employment, Miguel Eduardo González, the Chairperson of Sintraestatales, filed an administrative labour complaint against the

Cauca administration and the Education Secretariat for an alleged breach of the provisions of the Labour Code concerning trade union immunity. In a decision of November 2011, the Ministry of Labour absolved the two authorities of labour administrative responsibility. The Ministry founded its decision on: the aforementioned section 24 of Legislative Decree No. 760 of 2005, the various past rulings stating that it is not necessary to lift the union immunity of temporary employees; and the fact that the Ministry of Labour, as the administrative authority for labour matters, cannot establish the lawfulness or validity of the administrative decision to terminate the employment of union leaders, because only the judiciary is competent to do so. On the basis of the foregoing, the Government submits that: (i) an investigation of the labour administration absolved the Cauca administration and the Education Secretariat of responsibility; (ii) the Colombian courts have ruled on the petitioners' claims and found against them; (iii) the Constitutional Court held that section 24 of Legislative Decree No. 760 of 2005 is constitutional; and (iv) accordingly, the termination of the employment relationships of the civil servants with trade union responsibilities was constitutional and lawful and was not intended to violate the right to freedom of association.

C. The Committee's conclusions

- 219.** *The Committee notes that this case concerns the termination by the Education and Culture Secretariat of Cauca department and the Municipal Education Secretariat of Popayán municipality of the employment relationships of ten trade union officials who were civil servants appointed on a temporary basis, as a result of competitive examinations conducted to fill administrative positions in the said institutions. The Committee observes that the complainant alleges that the terminations did not comply with the legal obligation to seek judicial authorization to lift the officials' trade union immunity and that, given that the number of eligible persons who were selected as a result of the competitive examination was well below the number of vacant posts, and given that there were many vacant posts identical to those held by the dismissed union officials to which the successful candidates could have been appointed without affecting the union and its officials, the terminations constitute anti-union dismissals.*
- 220.** *The Committee takes note of the Government's response, in which it states that the terminations of the union officials' employment relationships complied with the constitutional and legal regulations for the civil service and did not result in any violations of freedom of association. The Committee also observes that the Government appends three judicial decisions by which the applications for reinstatement on the grounds of trade union immunity filed by three of the ten union officials concerned by this complaint were rejected.*
- 221.** *The Committee observes that the complainant and the Government both agree that, at the time that their employment relationships were terminated, the ten persons listed in the complaint were civil servants employed on a temporary basis – nine of whom by the Education and Culture Secretariat of Cauca department and one of whom by the Municipal Education Secretariat of Popayán municipality – and that they had the status of officials of the Sintraestatales trade union. Both parties also state that the terminations of the employment relationships followed the conclusion of public competitive examinations to fill administrative posts in the two administrations; that those competitive examinations pertained to all of the categories of the positions occupied by the union officials; and that, as a result of the tests, the union officials were not included in the list of persons eligible to fill the administrative posts.*
- 222.** *The Committee observes that the complaint presented by the complainant is founded primarily on the alleged violation of the Labour Code of Colombia, which provides that workers who enjoy trade union immunity may not be dismissed without prior judicial authorization to lift their immunity. In this respect, the Committee notes the Government's*

statements that, pursuant to Legislative Decree No. 760 of 2005 and the related constitutional case law, the obligation to seek judicial authorization to lift trade union immunity does not apply where a competitive examination is held for a post occupied temporarily by a union official and the official in question does not occupy one of the posts which would enable him or her to be appointed in strict order of merit. The Committee notes that the sole basis for the judicial decisions cited by the Government which dismissed the claims of some of the union officials whose employment relationship was terminated was that the requirement for judicial authorization to lift their trade union immunity did not apply in their cases.

- 223.** *The Committee observes that the complainant further alleges that the number of persons eligible as a result of the competitive examination for the category of posts occupied by each of the union officials whose employment relations was terminated was well below the number of vacant posts, and that, since there were many vacant posts identical to those occupied by the terminated union officials to which those who passed the competitive examination could have been appointed without affecting the union and its officials, the terminations constitute anti-union dismissals.*
- 224.** *The Committee notes that neither the Government's response nor the observations of the two public administrations which it transmitted address this second issue. The Committee also observes that both the aforementioned judicial rulings and the decision of the Ministry of Labour following a complaint from Sintraestatales focus solely on the issue of the lifting of trade union immunity. However, the Committee observes that the documents appended to the Government's response contain details on how the CNSC's competition process No. 001 of 2005 was applied within the Education and Culture Secretariat of Cauca department and the consequences on eight of the ten union officials to whom this complaint pertains (Eliseo Ortiz Argoty, Janeth Patricia González Jiménez, María Nuren Sánchez de Perdomo, Ana Rubiela Vásquez Daza, Víctor Mario Mondragón, Yoneyf Artunduaga Moreno, César Orlando Bolaños and Hernán Adelmo Urriaga Fajardo). In this regard, the Committee notes that: (i) the competitive examinations linked to the termination of the employment relationships of those eight union leaders covered all the posts in a particular professional category in the Secretariat and not any specific post; (ii) for the various professional categories in which the eight union officials were employed, the number of persons selected as a result of the competitive examination was well below the number of posts to be filled in the Secretariat (for the five posts of administrative assistants covered by the competition, two persons were selected; for the 87 posts of administrative technicians covered by the competition, 18 persons were selected; and for the 34 posts of security guards covered by the competition, six persons were selected); and (iii) the decision on the specific posts to which the eligible persons would be appointed (and on the resultant termination of the employment relationships of the workers temporarily occupying those posts) was made subsequently, with the selected persons being offered their choice of post in order of merit. The Committee notes that it does not have similar information concerning Luz Margoth Embus and Nora Esperanza Vásquez Legarda or the details of the competitive examinations which preceded the termination of their employment relationships.*
- 225.** *On the basis of the foregoing, the Committee notes, however, that the competitive examinations which resulted in the termination of the union officials' employment relationships did not refer to individual posts, but to a series of posts belonging to the same job category. It can be seen from the information available for eight of the ten union officials that 26 persons were selected for a total of 126 posts opened up to competitive examinations, and that of the 26 posts ultimately chosen from the 126 available, eight were occupied by Sintraestatales officials, resulting in the termination of the employment relationships of the said eight union officials.*

226. *In the light of the foregoing, the Committee considers that it does not have sufficient information to enable it to conclude whether there was any anti-union discrimination in the determination of the posts to which the persons selected as a result of the competition would be appointed and of the persons whose employment relationships would be terminated as a result. However, the Committee notes that continuity in the collective representation of the workers was not one of the criteria considered in the process. In this regard, the Committee recalls that it has emphasized the advisability of giving priority to workers' representatives with regard to their retention in employment in case of reduction of the workforce, to ensure their effective protection [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 833]. In the present case, where the competitive examinations were held not for a specific post, but for a whole category of jobs, and where the number of persons selected was well below the number of posts for which the competitions were held, the Committee considers that it was feasible to strike a balance between the principle of merit-based selection and the protection of trade union activity by retaining union representatives in their jobs.*

227. *Indeed, the Committee observes that, as is stated in the appendices to the complaint, a few months after the events of the present case, the Government adopted Decree No. 1894 of September 2012 (amending sections 7 and 33 of Decree No. 1227 of 2005), section 33 of which provides:*

When the list of eligible persons drawn up at the outcome of a selection process comprises fewer candidates than available posts, prior to making the corresponding appointments on probation and terminating the employment of temporary staff, the administration shall take into account, in order, the following factors providing protection: 1. Persons with a serious illness or any form of disability; 2. Persons with the confirmed status as the father or mother at the head of a family, in accordance with the provisions of the regulations in force and the relevant case law; 3. Persons in pre-retirement, in accordance with the provisions of the regulations in force and the relevant case law; 4. Employees who enjoy trade union immunity.

228. *On the basis of the principles and information set out above, and noting that at the time of the complaint the number of persons selected as a result of a competitive examination was well below the number of posts available in the categories in which the terminated union officials were employed, the Committee requests the Government to take the necessary measures in the spirit of Decree No. 1894 of September 2012 to ensure that the relevant administrative authorities engage in dialogue with the complainant organization with a view to reinstating the trade union officials to their posts or to similar posts. The Committee requests the Government to keep it informed in this regard.*

The Committee's recommendation

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

Noting that, at the time of the complaint, the number of persons selected by competitive examination was substantially lower than the number of posts available in the categories in which the terminated union officials were employed, the Committee requests the Government to take the necessary measures in the spirit of Decree No. 1894 of September 2012 for the relevant administrative authorities to engage in dialogue with the complainant organization with a view to reinstating the trade union officials to their posts or to similar posts. The Committee requests the Government to keep it informed in this regard.

CASE NO. 3039

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

**Complaint against the Government of Denmark
presented by
the Danish Union of Teachers (DUT)
supported by
the Salaried Employees and Civil Servants Confederation (FTF)**

Allegations: The complainant organization alleges that the Government violated the principle of bargaining in good faith during the collective bargaining process and extended and renewed the collective agreement through legislation without consultation of the workers' associations concerned

- 230.** The complaint is contained in communications from the Danish Union of Teachers (DUT), supported by the Salaried Employees and Civil Servants Confederation (FTF), dated 29 August and 15 October 2013.
- 231.** The Government forwarded its response to the allegations in communications dated 15 October and 25 November 2013.
- 232.** Denmark has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Labour Relations (Public Service) Convention, 1978 (No. 151).

A. The complainant's allegations

- 233.** In its communications dated 29 August and 15 October 2014, the DUT alleges the violation by the Government of Conventions Nos 87, 98 and 151, all ratified by Denmark.
- 234.** The complainant indicates that the DUT negotiates the collective agreements for teachers every second or third year with two employers' organizations: Local Government Denmark (LGDK) and the Ministry of Finance. The LGDK is the organization representing the municipalities, i.e. the employers for teachers in primary and lower secondary schools; in this regard, the Government has legislative power with regard to curricula, syllabus, etc., as well as issues related to the content of teaching. In relation to other educational institutions such as colleges, universities, vocational education, training institutions and private but state-funded schools, the Government carries both legislative and employer tasks; its function as an employer is carried out by a department within the Ministry of Finance called "The Agency for the Modernization of Public Administration" (Modernization Agency).
- 235.** This complaint relates to two matters arising from the collective bargaining in 2012–13 between the Danish Union of Teachers on the one side, and the LGDK and the Modernization Agency on the other side: (i) the start-up and initial preparations for the 2012–13 collective bargaining; and (ii) the drafting and preparation of the Government's regulatory intervention in spring 2013 (Act No. L409).

- 236.** In the complainant's view, the negotiations with the DUT have been carried out by the Modernization Agency and LGDK in a very tight cooperation and with involvement of the Government. Albeit absolutely vital to keep the balance between the legislator and the employer, the role of the employer and the role of the legislator have not been strictly separated and have even been mixed during the negotiations. From a very early stage in the collective negotiations, LGDK could not carry out free, voluntary and true negotiations.
- 237.** The complainant indicates that the negotiations concerning renewal of the collective agreements with effect from 1 April 2013 began in autumn 2012. The finance agreement with the LGDK and the Government for 2012 stated as follows: "the Government and LGDK agree on strengthening focus on obtaining more teaching time for the current resources in primary and lower secondary schools and in upper secondary schools. As part of this process, on the basis of, amongst other things, existing analyses of teachers' working hours, there will be collaborative work to assess whether legislation and the relevant collective agreements provide a good framework for the efficient utilization of teachers' resources". According to the complainant, in the autumn of 2012, the DUT became aware of a document of 18 October 2012 written by a working group of representatives from both the Modernization Agency and LGDK and called Annex 11 – Reform of Content lifting the Danish Folkeskole, which basically stated that the Government's new School Bill should be financed by changes in the agreement on teachers' working hours. This agreement had been negotiated in 2008 between LGDK and the DUT, and the Ministry of Finance and the Modernization Agency were not part of it. The complainant denounces that, even before the negotiations started, the employers and the Government had determined with which result they would settle, and that the Government had a clear interest in the outcome of the negotiations with the DUT in order to ensure conditions and financing of their new School Bill, as mentioned in the 18 October paper. In accordance with the Access to Information Act, the DUT sought access to the working papers including the 18 October 2012 paper but access was denied; this was recently criticized by the Danish Ombudsperson, but without any change in the decision.
- 238.** According to the complainant, negotiations took place in parallel identical sequences, with the same collective bargaining demands being made by the two employer partners for both state schools or institutions and municipal schools, and with the same denial of true negotiations. During the negotiations, the DUT tabled several proposals that met some of the requirements from both LGDK and from the Modernization Agency. However, in the complainant's view, the employer parties showed no interest in the actual negotiations, and the union's proposals for changes or additions to the employers' demands were not negotiated in reality. In all negotiation sessions, the employers only presented the proposal they had presented at the first meeting in December 2012. The complainant criticizes that the employers requested the removal of all rules on working hours (including special rules for older workers) preferring that future rules only regulate the "external environment" for working hours; but at the same time, they were unwilling to elaborate in detail on the requested new rules on working hours and repeatedly refused to submit a draft agreement or other written material that could describe how working hours could be organized. The complainant therefore believes that by unilaterally determining the outcome of collective bargaining in advance, the Government and LGDK clearly undermined a long-standing well-functioning system of free negotiation as stated in ILO Conventions.
- 239.** Furthermore, the complainant indicates that an agreement for upper secondary (high school) teachers was reached in mid-February 2013 between the relevant organization and the Modernization Agency, and this agreement complied with demands from the Modernization Agency. A vote among upper secondary teachers showed that 85 per cent were against the agreement, but because of certain rules on coordination of votes, the agreement was adopted. According to the complainant, LGDK presented the DUT with a

draft agreement with the exact same content as the agreement with upper secondary teachers. This was the first time during the negotiations that LGDK presented a written description or example of their demands.

- 240.** The complainant states that, at the end of February 2013, during an interruption of a meeting, where the parties were working on documents separately, LGDK announced surprisingly by telephone that the negotiations had collapsed. According to the rules, they subsequently issued a notice of lockout of all teachers to start on 1 April 2013. The DUT faced exactly the same situation, when the Modernization Agency announced a collapse in negotiations and issued the same notice of lockout for the teachers employed in state schools only three days later.
- 241.** The complainant adds that, after the lockout notice had been issued, the continuing negotiations in March were led by the Conciliation and Arbitration Institution. However, even in this forum and with the power and authority of the conciliator, there was still no movement from the employers at all, and it was not possible even under these circumstances to reach an agreement. Subsequently, 55,000 teachers were locked out on 1 April 2013. Approximately 800,000 students from public schools, private but state-funded schools and vocational education and training institutions were affected.
- 242.** It is the complainant's view that the lockout was a very drastic step to take. Lockouts and strikes are legal means of action, but a lockout of this extent – from two public employer organizations – had never been seen before. This was the first time ever that public employers had implemented the lockout option without the unions having at first called a strike.
- 243.** The complainant indicates that the lockout lasted until 27 April 2013, when it was stopped by a new Act. The Prime Minister announced on 25 April 2013 that the Government would submit a Bill, and the Act was adopted on 26 April 2013 and entered into force on 27 April 2013. Act No. L409 extends and renews the collective agreements for certain groups of employees in the public sector, including members of the DUT (copy enclosed with the complaint).
- 244.** Whereas the Act was presented as a "balanced intervention that satisfied both parties", the complainant completely disagrees with this point of view stating that the changes and conditions in the entire Act only correspond to the demands tabled by LGDK and the Modernization Agency during the negotiations. The complainant claims notably that: (i) the technical calculations underlying the intervention were made solely in consultation with the employers; (ii) the calculations do not take into account the high amounts of money allocated in connection with the previous collective bargaining to lower pay increases to ensure more working time for specific tasks (e.g. preparation and duties as a form teacher) or additional time for teachers of pupils with special needs; in the complainants' opinion, the Government has expropriated funds from collective agreements amounting to several hundred million Danish kroner; (iii) for the first time in the context of a legislative intervention in collective agreements, only the employers have assisted the Ministry of Employment in the extensive work of drafting the Bill; (iv) the Act met the employers' demands for greater flexibility and removing the conditions agreed with the union regarding planning and performance of working hours; and (v) the Act also introduced a change in conditions for teachers over 60 years old, who were entitled to a reduction in working time since 1910 (initially only a reduction in the number of annual teaching hours, it evolved after many years of negotiations into a general reduction of compulsory working hours); the entitlement, which has nothing to do with the working hour agreement, has been withdrawn by the Government's intervention with a phase-out over three years and a compensation for teachers with an annual supplement that the complainants do not consider to correspond to the value of the age reduction.

- 245.** The complainant denounces that, although the DUT had tried to influence the outcome up to the adoption of the Act, the Union was not involved in the work on the Bill, and its proposals were not heard or considered, in stark contrast to LGDK, who in fact helped the Government to draw up the main content of the Bill. When presenting the Bill, the Minister of Finance and the Minister of Employment stated, that in the course of preparation of the Bill, the Government had consulted both LGDK and the Modernization Agency, and that the relevant ministries did not and had no plans of consulting the DUT. According to the complainant, the Act repeals working hour rules, making Denmark an exception in the Western world, with no regulation of teachers' teaching hours by either contract or law. No other public servants have rules on working hours and vacation like those to which teachers will be subject to. The working hour rules (for teachers) take their starting point in rules on working hours for government employees; but deviations from those rules are in the employer's favour. The complainant states that the demands for increased flexibility, for example in relation to working hours, often submitted by employers during collective bargaining, are usually met by employees in exchange for concessions in other areas. In its view, the adopted Act favours only the employers, as it gives full flexibility without any concessions in return.
- 246.** In conclusion, the complainant feels that there has been an inappropriate and dangerous blurring of the role of the Government as both legislator and employer, and that the public employers – both LGDK and the Modernization Agency – have used all the means at their disposal to impose their own demands contrary to the democratic process that is normal procedure as well as the right to free and equal negotiations.
- 247.** Firstly, the Government neglected the right to free talks and instead took control of the negotiations with the sole purpose of ensuring that the agreement on working hours was repealed in its entirety and replaced by new rules for teachers' working hours, making it possible to finance the Government's new School Bill. According to the complainant, it has been clear from the start that the negotiations have been unilaterally organized by the LGDK, the Modernization Agency and the Government, and that there was no intention to hold collective discussions or negotiations at all. Even negotiations in the presence of the conciliation institution did not involve real collective bargaining or discussions. The Government's behaviour has de facto served to hamper the freedom of collective bargaining. Thus, the Government has failed to observe the obligation to encourage and promote the development of collective bargaining between public authorities and employers' and employees' organizations. It is also the complainant's view, that the industrial action chosen by the Government and LGDK was disproportionate to the objective; the 4-week lockout was excessive.
- 248.** Secondly, the complainant claims that this is the first time in Danish history that, when introducing a Bill to end industrial action, the Government legislator has to such an extent only listened to one party during the entire process. When governments have previously put an end to industrial action by introducing a new law, they have always sought to meet both parties and to balance the Bill in accordance with their different demands. In the complainant's view, Act No. L409, however, only addresses the demands from the Government and LGDK, who have used all means to impose their demands as public employers and have ignored the normal democratic, negotiation process.
- 249.** The complainant calls on the Committee to adopt a serious criticism of the negotiations; to condemn the unilateral drafting of the adopted legislative intervention; to make recommendations on the appropriate guarantees in order to protect the interests of employees which have been effectively stripped during the collective bargaining; and to ask the Government to present a report within a reasonable time limit on any corrective measures that might be taken.

B. The Government's reply

- 250.** In its communication dated 15 October 2013, the Government first provides general information on the collective bargaining system in the public sector in Denmark. The public sector is composed by municipalities, regions and state. With regard to collective bargaining, the municipalities are represented by LGDK and the State is represented by the Modernization Agency of the Ministry of Finance. While the LGDK is a private organization that has been established in order to attend to the interests of the municipalities, the Modernization Agency is a government institution. When the collective agreements in the public sector expire – normally every second or third year – LGDK and the Modernization Agency negotiate with their counterparts in order to ensure a renewal of the collective agreements.
- 251.** The Government indicates that the framework for these negotiations is no different from the framework in the private sector. In Denmark there is no legislation on how the social partners conduct their negotiation neither in the private sector nor in the public sector. The bargaining system is based on voluntarism and free bargaining between the two sides. In order to underpin the collective bargaining system, the machinery for voluntary negotiations between the employers and the workers, the Parliament has adopted an Act on Conciliation in Industrial Disputes which aims at conciliating the parties, especially in connection with the renewal of collective agreements. Therefore, if the parties to the negotiations cannot themselves agree on renewing the collective agreements and prepare for industrial action in accordance with the rules, the negotiations continue under the auspices of the Institution for Conciliation and Arbitration. The tasks and powers of the Official Conciliator are laid down in the Act on Conciliation in Industrial Disputes. The Government has no influence on the actions of the Official Conciliator in connection with renewal of collective agreements. The Official Conciliator is, inter alia, empowered to postpone the industrial action and to put forward a mediation proposal.
- 252.** According to the Government, in those rare and exceptional situations where the Government submits a bill to intervene legislatively in lawful strikes or lockouts, the intervening bill will normally be drafted in accordance with the mediation proposal that was put forward by the Official Conciliator. This is quite natural since the purpose of legislative intervention in these exceptional situations is not to regulate pay and working conditions legislatively but to put an end to the dispute in circumstances where it would be irresponsible to let the dispute continue. Furthermore, the mediation proposal will normally be technically well laid out and, accordingly, a good underlying basis for drafting the legislation.
- 253.** As regards the role of the Ministry of Employment, the Government states that the Ministry of Employment does not in any way participate in collective bargaining. The role of the Ministry of Employment is strictly limited to monitoring the collective bargaining and in particular occurrences the succeeding industrial dispute and, with regard to the industrial dispute, to keeping the Government informed about the consequences of the dispute for the population and for society in general. If the Government decides that the consequences of the industrial dispute for the population and society in general are excessively grave and that the dispute should be brought to an end through legislative intervention, it is the Ministry of Employment that drafts the legislative intervention in accordance with the government decision. In these rare and exceptional situations, it is the task of the Minister of Employment to submit the bill to the *Folketing* (Danish Parliament). It is the *Folketing* who may put an end to the industrial dispute by adopting the bill. The Government stresses that it is instrumental and fundamental that the Ministry of Employment does not go beyond its neutral role of monitoring and informing as long as collective bargaining is taking place or the succeeding industrial dispute is going on without any Government decision to intervene. Regardless as to whether the bargaining or

dispute is in progress in the private or the public sector, any further involvement by the Ministry of Employment could be regarded as interference in a process that is definitively the domain of the two sides of industry.

- 254.** According to the Government, the Ministry of Employment: (i) has not taken part in the preparation of the collective bargaining process; (ii) has not been informed or called in in any way with regard to the cooperation or coordination that may have taken place on the employer side; and (iii) has not been involved in e.g. the decision to lock out the teachers. The Ministry of Employment has been very aware that there must be a cast iron fence between the Government's role as employer and the Government's duty to monitor and eventually, if the consequences of the industrial dispute are unacceptably harmful for the population and the society in general, to intervene in the industrial dispute.
- 255.** The Government considers that the role of the Ministry of Employment changed when the Government decided to intervene in the industrial dispute by submitting a bill to the *Folketing*. The Ministry of Employment must draft the bill and do it in a very short period of time to end the industrial dispute as soon as possible. The drafting of the bill was technically complicated and in the absence of a mediation proposal from the Official Conciliator it may be necessary to obtain technical assistance from relevant experts outside the ministry. It must be underlined, however, that it is the Government that lays down the contents of the bill that is to be submitted to the *Folketing*. The role of the Ministry of Employment and of the experts that may assist with necessary information for the drafting of the bill in accordance with the Government's decision is solely of a technical, not a political, nature.
- 256.** The Government notes that the complaint basically relates to the question about the Government's intervention and overall management in primarily the initial phase of the negotiations and along the way and to the question of the drafting and preparation of the regulatory intervention which is seen to be biased towards the employer's side.
- 257.** Regarding the first question, the "arms-length principle" which has been described above and has been adhered to in this matter should be borne in mind. There has been no intervention from the Government in the negotiations and the overall management of the negotiations has on the employer's side been strictly a task for the Modernization Agency and LGDK. The Modernization Agency is a government agency and as such this agency of course implements government policies but this cannot be considered intervention. It is normal practice that there is cooperation between employers' organizations on the one side and between workers' organizations on the other side. Therefore the Government considers it understandable and certainly not condemnable if there has been close cooperation between LGDK and the Modernization Agency before and during the negotiations but to the extent that such cooperation has taken place it is clear that it is not the Government as such who has been negotiating. Bearing in mind the "arms-length principle" and the fact that the negotiations on the employers' side have been carried out by the abovementioned employers, it is not possible for the Government as such to comment further on the complainants' allegations that the negotiations were not "true" or "free" negotiations. It would constitute a dangerous path of interference if the Ministry of Employment or the Government as such should enter into some kind of supervisory role with regard to these negotiations.
- 258.** Regarding the second question, the Government points out that the content of this kind of intervening legislation is solely a political question, and that it is a parliamentary decision to actually adopt such a bill. The Government recognizes that, in the absence of a mediation proposal from the Official Conciliator, it was necessary to seek technical support from the Modernization Agency. It was no secret for the *Folketing* that the Modernization Agency had supported the drafting of the bill, and it would not have been

possible to serve the purpose of the intervening legislation without this support. The bill was adopted in the *Folketing* with a large majority. The Government agrees with the complainant that this negotiation process and also the drafting and preparation of the legislative intervention have been unusual in some ways. In most of the rare and exceptional situations where the Government submits a bill in order to intervene legislatively, the content of the bill is generally based on the mediation proposal from the Official Conciliator but in this particular case there was no such mediation proposal to build on. Noting that the complainant does not agree with the government view that the bill was “a balanced intervention that satisfied both parties”, the Government considers it fully understandable that any of the two sides of industry does not consider an intervening piece of legislation satisfactory and absolutely legitimate such that the legislation is therefore criticized. It should be borne in mind, however, that the basis for such criticism is political rather than legal.

- 259.** In conclusion, the Government states that it cannot – without interfering in the autonomy of the social partners – comment as to whether there has been a bona fide will to negotiate by any of the two sides of industry. It can, however, emphasize that there has been no intervention from the Government in the negotiations and in the industrial dispute before the decision that a bill should be submitted to the *Folketing* to bring an end to the dispute. The Government further acknowledges that it has been using technical assistance from the Modernization Agency in the drafting and preparation of the bill, which has been openly admitted and communicated to the *Folketing* when the bill was adopted. The Government considers however that, due to the circumstances, it did not have any choice regarding the use of this technical assistance, if the purpose of the bill was to be achieved. In its view, since it was merely technical assistance that was used, it does not constitute a violation or a neglect of any of the ILO Conventions mentioned by the complainants. The Government considers it regrettable that intervening legislation had to be adopted and that the two sides of industry could not reach agreement on a renewal of the collective agreement; but, in the circumstances, the Government believes that it had to act and do it in a way that was politically responsible and could obtain support from the *Folketing*.

C. The Committee’s conclusions

- 260.** *The Committee notes that, in the present case, the complainant alleges that the Government violated the principle of bargaining in good faith during the collective bargaining process and extended and renewed the collective agreement through legislation without consultation of the workers’ associations concerned. The Committee notes that the complaint relates to matters arising from the collective bargaining in 2012–13 between, on the worker side, the DUT and, on the employer side, the LGDK (organization representing the municipalities, i.e. the employers for teachers in primary and lower secondary schools) and the Modernization Agency (department within the Ministry of Finance carrying out the function of employer for teachers in other educational institutions such as colleges, universities, vocational education, training institutions and private but state-funded schools).*

- 261.** *In particular, the Committee notes the complainant’s allegations that:*

(a) *the negotiations were carried out by the Modernization Agency and LGDK (employers) in a very tight cooperation and with involvement and intervention of the Government (legislator). The two roles have not been separated during the negotiations thus not allowing for free, voluntary and true negotiations. Even before negotiations commenced in autumn 2012, the result had been unilaterally determined (in a paper of 18 October 2012) by the employers and the Government who had a clear interest in changes being made to the 2008 agreement on teachers’ working hours between LGDK and the union to ensure financing of its new School Bill. The*

above is illustrated by the fact that the negotiations in parallel with the two employers took place in identical sequences: (i) with the same collective bargaining demands being made by the two employer partners for both state schools and municipal schools (only one proposal, the proposal made at the first meeting to remove all existing rules on working hours for teachers, was repeatedly presented); (ii) with the same denial of genuine and fair negotiations (from the start no intention or attempt and lack of interest in the negotiation of the several proposals tabled by the union meeting some of the employers' demands or of the changes or additions to the employers' demands suggested by the union; unwillingness to elaborate further upon the requested new rules on working hours); (iii) with the first written proposal presented by the LGDK end of February being identical to the agreement for upper secondary teachers reached in mid-February 2013 between another union and the Modernization Agency; (iv) with the surprising announcement end of February 2013 by the LGDK followed by the Modernization Agency of a collapse in negotiations and issuance of a lockout notice for all teachers as of 1 April 2013; (v) without any movement from the employers even during the negotiations led by the Conciliation and Arbitration Institution; and (vi) the lockout which lasted four weeks and affected 55,000 teachers and 800,000 students from public and private state-funded schools and vocational education and training institutions was disproportionate to the objective, excessive and implemented for the first time by public employers without the unions having first called a strike; and

- (b) the lockout was stopped by a new Act (No. L409), announced by the Prime Minister on 25 April 2013, adopted by Parliament on the following day and entered into force on 27 April 2013, which amends and extends the collective agreements for certain groups of employees in the public sector, including members of the DUT. The Act is not, as presented by the Government, a "balanced intervention that satisfied both parties", since its provisions solely address the demands tabled by LGDK and the Modernization Agency for greater flexibility and repeal of working hour rules previously agreed with the union, without any concessions in return. For the first time in the context of a legislative intervention in collective agreements, the Government was assisted only by the employers in the extensive work of preparing and drafting the Bill, and the technical calculations underlying the regulatory intervention were made solely in consultation with LGDK and the Modernization Agency. The Union was not involved in the work on the Bill, and its proposals were not heard or considered, in stark contrast to the employers.

262. Furthermore, the Committee notes the Government's indications that: (i) the Ministry of Employment has not taken part in the preparation of the collective bargaining process, has not been informed or called in in any way with regard to the cooperation or coordination that may have taken place on the employer side, and has not been involved in e.g. the decision to lock out the teachers; (ii) the "arms-length principle" has therefore been adhered to in this matter, and there has been no intervention from the Government in the negotiations, the overall management of the negotiations on the employer's side being strictly a task for the Modernization Agency and LGDK; (iii) the Modernization Agency as a government agency of course implements government policies which cannot be considered intervention, and, since it is normal practice that there is cooperation between employers' organizations on the one side and between workers' organizations on the other side, it is understandable and certainly not condemnable if there has been close cooperation between LGDK and the Modernization Agency before and during the negotiations, which to the extent that such cooperation has taken place does not mean that it is the Government as such who has been negotiating; (iv) bearing in mind the "arms-length principle" and the fact that the negotiations on the employer's side have been carried out by the above employers, it is not possible for the Government as such – without interfering in the autonomy of the social partners – to comment as to whether there has

been a bona fide will to negotiate by any of the two sides of industry; (v) the Government has only intervened in the industrial dispute when it took the decision that a bill should be submitted to the Folketing to bring an end to the dispute; (vi) the role of the Ministry of Employment then changed, as it had to draft the bill, which was technically complicated, in a very short period of time; (vi) it is the Government that lays down the contents of this kind of intervening legislation to be submitted to the Folketing (political question), it is a parliamentary decision to actually adopt such a bill, and the role of the Ministry of Employment and of the relevant experts outside the ministry that may assist with necessary information for the drafting of the bill in accordance with the Government's decision is solely of a technical nature; (vii) in most of the rare and exceptional situations where the Government submits a bill in order to intervene legislatively, the content of the bill is based on the technically well laid-out mediation proposal from the Official Conciliator but in this case there was no such mediation proposal to build upon; (viii) albeit unusual, it was necessary to seek technical assistance in the drafting and preparation of the bill from experts, i.e. the Modernization Agency, if the purpose of the intervening legislation was to be achieved; (ix) since it was merely technical assistance that was used, it does not constitute a violation or a neglect of any of the ILO Conventions mentioned by the complainant; (x) while it is regrettable that the two sides of industry could not agree on a renewal of the collective agreement, in the circumstances, the Government had to act through legislative intervention and do it in a way that was politically responsible and could obtain support from the Folketing (the bill was adopted with a large majority); and (xi) it is understandable that any of the two sides of industry does not consider an intervening piece of legislation satisfactory and it is legitimate to criticize it; but the basis for such criticism is political rather than legal.

263. With regard to the matters raised in the complaint concerning the initial phase of collective bargaining, the Committee notes the divergence of views of the complainant and the Government as to the involvement of the latter in the negotiations. Whereas the complainant finds that the Government has intervened and controlled the negotiations in such a way as to blur the roles of employer and legislator, predetermine the desired outcome and preclude free and genuine negotiations, the Government claims that the "arms-length principle" has been respected throughout (which is why it cannot comment on the bona fide of the parties) while it acknowledges a non-condemnable cooperation between the two employers of which one was a government agency implementing government policies. In this regard, the Committee emphasizes that it has always held that it is important that both employers and trade unions bargain in good faith and make every effort to reach an agreement; moreover genuine and constructive negotiations are a necessary component to establish and maintain a relationship of confidence between the parties. The Committee also recalls that the public authorities should promote free collective bargaining and not prevent the application of freely concluded collective agreements, particularly when these authorities are acting as employers or have assumed responsibility for the application of agreements by countersigning them. In particular, state bodies should refrain from intervening to alter the content of freely concluded collective agreements [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, paras 935, 1001 and 1011]. Observing that the collective agreements have been extended until 31 March 2015, the Committee expects that, during the 2014–15 collective bargaining rounds between the parties, the Government will endeavour, in line with the principles enounced above, to promote and give priority to free and voluntary good faith collective bargaining as the means of determining employment conditions in the education sector, including working time. The Committee requests to be kept informed of developments.
264. With regard to the matters raised in the complaint concerning the preparation and drafting of the bill, the Committee notes that the Government recognizes that it has consulted the Modernization Agency (employer) during the preparation of the intervening legislation

which it justifies with the absence of a mediation proposal as underlying basis for the bill and the lack of necessary expertise for its speedy drafting. Regretting that the Government does not provide any explanation as to why it did not consult the DUT, the Committee recalls that it is essential that the introduction of draft legislation affecting collective bargaining or conditions of employment should be preceded by full and detailed consultations with the appropriate organizations of workers and employers. The Committee has previously considered it useful to refer to the Consultation (Industrial and National Levels) Recommendation, 1960 (No. 113), Paragraph 1 of which provides that measures should be taken to promote effective consultation and cooperation between public authorities and employers' and workers' organizations without discrimination of any kind against these organizations. In accordance with Paragraph 5 of the Recommendation, such consultation should aim at ensuring that the public authorities seek the views, advice and assistance of these organizations, particularly in the preparation and implementation of laws and regulations affecting their interests. In any case, any limitation on collective bargaining on the part of the authorities should be preceded by consultations with the workers' and employers' organizations in an effort to obtain their agreement [see *Digest*, *op. cit.*, paras 999, 1068 and 1075]. The Committee considers that the above principles are all the more valid, when a Government opts, in exceptional circumstances, for legislation to put an end to a dispute; and with a view to avoiding any impression of favouritism. In light of the above, the Committee expects that, during the 2014–15 collective bargaining rounds between the parties, the principles set out above will be fully respected. The Committee requests to be kept informed of developments.

The Committee's recommendations

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

- (a) The Committee expects that, throughout the 2014–15 collective bargaining negotiations between the parties, the Government will endeavour, in line with the principles set out in the Committee's conclusions, to promote and give priority to free and voluntary good faith collective bargaining as the means of determining employment conditions in the education sector, including working time. The Committee requests to be kept informed of developments.**
- (b) The Committee expects that, during the 2014–15 collective bargaining rounds, the principles concerning consultation with the organizations of workers and employers set out in its conclusions will be fully respected. The Committee requests to be kept informed of developments.**

CASE NO. 2893

DEFINITIVE REPORT

**Complaint against the Government of El Salvador
presented by
the Autonomous Confederation of Salvadorian Workers (CATS)**

Allegations: Action taken by the Mayor's Office of Santa Ana regarding the dismissal of a union leader for her participation in a strike, and her prior suspension from work and of her pay

- 266.** The complaint is contained in a communication from the Autonomous Confederation of Salvadorian Workers (CATS) dated 24 June 2011.
- 267.** The Government sent its observations in communications dated 15 January and 16 October 2012 and 7 May 2014.
- 268.** 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

- 269.** In a communication dated 24 June 2011, CATS alleges that the Mayor and the Council of the Municipality of Santa Ana, in the department of Santa Ana in El Salvador, were in violation of ILO Convention No. 87, in the case of Ms Karla Beatriz López Contreras, Secretary of the Organization and Statistician of the Executive Committee of the Union of Municipal Workers of Santa Ana (SITRAMSA).
- 270.** CATS explains that the problem began on 20 October 2010 when an indefinite strike took place, demanding higher salaries and the payment of the social security contributions that the municipality owed banks, the office of the Public Prosecutor, the Salvadorian Social Security Institute (ISSS) and pension fund administrators, due to the failure to pay to these institutions the deductions made.
- 271.** The Labour Court declared the strike illegal and, in order to prevent contract terminations for which the employer could not be held responsible, the workers agreed in their general assembly to return to work.
- 272.** CATS adds that, on 15 November 2010, by means of an administrative agreement, the Mayor suspended Ms Karla Beatriz López Contreras, Secretary of the Organization and statistician, from work without pay for going on strike and due to her union work.
- 273.** On 10 February 2011, representatives of the Municipal Council of Santa Ana filed a request in the Labour Court for authorization to dismiss Ms Karla Beatriz López Contreras under section 71 of the Municipal Administrative Careers Act, which is in violation of ILO Convention No. 87 and article 47 of the Constitution.
- 274.** On 14 February 2011, the Santa Ana Labour Court handed down its ruling, ordering the Municipal Council of Santa Ana to reinstate Ms Karla Beatriz López Contreras to her post

of computer operator and to pay her the wages which had been stopped on 16 November 2010, when she had been suspended from work.

- 275.** The Municipal Council did not comply with the ruling of the Labour Court and lodged an appeal with the First Labour Chamber, which on 31 March 2011, set aside the ruling for procedural reasons, which meant that the Santa Ana Labour Court had to begin the process again and issue a new ruling.

B. The Government's reply

- 276.** In a communication dated 15 January 2012, the Government declares, with regard to the allegations made by CATS concerning what the Government describes as the dismissal of Ms Karla Beatriz López Contreras, that, on 17 November 2010, the Municipal Council of Santa Ana filed a request with the Labour Court of Santa Ana to dismiss Ms Karla Beatriz López Contreras, alleging suspected dereliction of duty to participate in a strike called in the municipality during the week of 19–23 October 2010, and for not obeying the order by the authorities to return to work within the period indicated by administrative order, as the strike had been declared illegal. It also accused her of action that seriously endangered the physical safety of another municipal official.

- 277.** In accordance with the legal procedure, the Labour Court of Santa Ana issued a ruling on 10 February 2011, declaring the dismissal of Ms Karla Beatriz López Contreras unlawful and ordering the municipal authorities of Santa Ana to reinstate her in her job, and to pay her the wages that she had not received for reasons attributable to her employer, from the date that she was suspended from work (a copy of the ruling is attached). Subsequently, the general legal representatives of the municipal authorities of Santa Ana appealed to the First Labour Chamber of San Salvador to review the ruling which, on 31 March 2011, set aside the ruling, with all legal consequences, from the time of the notification of the opening of the investigation. Following this ruling, a representative of the Municipal Council of Santa Ana filed an appeal against the ruling of the Santa Ana Labour Court regarding the authorization to dismiss Ms Karla Beatriz López Contreras. On 29 June 2011, the First Labour Chamber of San Salvador found the appeal unreceivable as it was without merit.

- 278.** In a communication dated 16 October 2012, the Government indicates that, on 29 November 2011, after reviewing the evidence, the Labour Court of Santa Ana issued a final ruling, which found the authorization to dismiss Ms Karla Beatriz López Contreras unlawful and ordered the Municipal Council of Santa Ana to reinstate her in her position and pay her the wages owed since 16 November 2010. In view of the above, as the Municipal Council objected to the ruling, it appealed for the decision to be reversed in accordance with section 78 of the Municipal Administrative Careers Act, but the appeal was not successful as the ruling was found to have been made in accordance with the law.

- 279.** In a communication dated 7 May 2014, the Government reports that the Santa Ana municipal authorities informed it that it implemented the ruling handed down by the First Labour Chamber of the city of San Salvador, reinstating Ms Karla Beatriz López Contreras as of 24 January 2012, in her post as computer operator in the Engineering Department of the Mayor's Office of Santa Ana, and paying her the wages that she had not received since her dismissal.

C. The Committee's conclusions

- 280.** *The Committee observes that, in the present complaint, the complainant alleges that, following a decision by the Mayor's Office and Municipal Council of Santa Ana, union leader Ms Karla Beatriz López Contreras was suspended from her job without pay on 15 November 2010 for participating in a strike calling for higher wages and other claims, and that those authorities requested authorization from the judicial authorities, to dismiss her. The Committee also observes that, according to the complaint and the Government's reply, three separate appeals were made by the Municipal Council against the ruling of the first-level court ordering the reinstatement of the union leader and the payment of her outstanding wages (February 2011), the final ruling dated 29 November 2011, confirmed the reinstatement and the payment of the wages due since she had been suspended from work (November 2010). The Committee observes that in its latest reply the Government confirms that the final ruling has been given effect by the Mayor's Office as of 24 January 2013.*
- 281.** *Even though the Committee observes that the case of Ms Karla Beatriz López Contreras has been resolved, it deeply regrets that, while she was suspended from work without pay in November 2010, the final ruling was issued on 24 January 2012, which is more than one year after her suspension. The Committee therefore regrets the negative consequences of this situation on the union leader who was suspended from work without pay for a long period of time. It also emphasizes the principle that justice delayed is justice denied [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 105]. The Committee requests the Government, in consultation with the most representative workers' and employers' organizations, to consider measures to speed up the operations of its legal system in cases involving alleged acts of anti-union discrimination.*

The Committee's recommendation

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

While observing that the situation of the union leader who had been suspended from work without pay since November 2010 has been resolved, the Committee emphasizes the principle that justice delayed is justice denied and requests the Government, in consultation with the most representative workers' and employers' organizations, to consider measures to speed up the operation of its legal system in cases involving alleged acts of anti-union discrimination.

CASE NO. 2957

INTERIM REPORT

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

Allegations: The complainant organization alleges threats and the detention of trade unionists in the context of a dispute relating to collective bargaining in the Ministry of Finance and excessive delays in collective bargaining

283. The Committee examined this case at its meeting in October 2013 and presented an interim report to the Governing Body [see 370th Report, paras 401–412, approved by the Governing Body at its 319th Session (October 2013)].

284. The Government sent its observations in a communication dated 19 May 2014.

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

A. Previous examination of the case

286. At its meeting in October 2013, the Committee made the following recommendations on the matters still pending [see 370th Report, para. 412]:

- The Committee requests the Government to provide as a matter of urgency full information on all of the allegations (including the two union officers' arrest and detention, their current situation and the police's alleged failure to take action on death threats which three union members received from transport workers) and on the administrative or judicial proceedings initiated in this regard.

...

- The Committee requests the complainant and the Government to send information about the current status of the collective bargaining process.

B. The Government's reply

287. In its communication dated 19 May 2014, the Government states in relation to the alleged detention of Ms Krissia Meny Guadalupe Flores and Ms Odilia Dolores Marroquín Cornejo, who, according to the complaint presented, are the Secretary for Women's Issues and the Secretary-General of the executive committee of the Union of Workers of the Ministry of Finance (SITRAMHA), on 30 November 2011, at the El Amatillo customs office, that the Ministry of Labour and Social Welfare has conducted the relevant consultations, from which it appears that the allegations of the arrest and detention of the trade unionists are untrue and without any legal basis. The documentation provided by the National Civil Police indicates that the procedure followed on 30 November 2011 at the El Amatillo customs office by police officers consisted of providing protection to the

persons referred to above, who were inside the customs administrator's office, when a mob of road transport workers tried to enter and assault them. The police officers took them into custody as a safety measure until a vehicle from the General Directorate of Customs, which transports customs officials, arrived to evacuate them. At no time were they detained. The Office of the Public Prosecutor of the Republic has also indicated that the persons referred to above were never reported as detainees by the National Civil Police and no complaints against them are either currently under investigation or have been closed.

- 288.** In view of the above, the Government considers that there is no legitimate basis for the complaint and that the case should be closed.

C. The Committee's conclusions

- 289.** *With regard to the allegations concerning: (1) the detention of two trade union leaders (Ms Krissia Meny Guadalupe Flores and Ms Odilia Dolores Marroquín Cornejo); (2) the alleged sexual intimidation suffered by the Secretary-General Ms Krissia Meny Guadalupe Flores; and (3) the refusal to provide protection to two trade unionists and to a trade union leader (Mr Jorge Augusto Hernández Velásquez), who had received death threats from some road transport workers; the Committee notes the Government's statements to the effect that the trade unionists were not detained, but were protected from a mob of road transport workers threatening to assault them when they were in the customs administrator's office, and were taken to a vehicle used to transport employees of the General Directorate of Customs in order to evacuate the trade unionists as a safety measure.*
- 290.** *The Committee notes this information and also that, according to the Government, no proceedings have been initiated against these trade unionists. Given that the versions of the complainant and the Government relating to the alleged detentions are contradictory, the Committee invites the complainant union to provide additional information.*
- 291.** *The Committee notes with regret that, despite being expressly requested to do so, the Government has not sent any information about the current status of the collective bargaining process that began in November 2010 between the complainant trade union and the Ministry of Finance. In this respect, the Committee recalls that the Civil Service Tribunal had issued an order initiating arbitration procedures, which were delayed as a result of the reallocation of the arbitrators appointed by the Ministry of Finance [see 370th Report, para. 404]. The Committee therefore requests the Government to keep it informed in this respect.*
- 292.** *The Committee regrets that the Government has not sent its observations on the death threats against three trade unionists, who were allegedly threatened by international road transport workers with being burned alive, and to whom the police allegedly denied police protection [see 370th Report, para. 406]. The Committee notes in this respect that the complainant organization only indicated the full name of one of the threatened trade unionists (Mr Jorge Augusto Hernández Velásquez), but not of the other two. The Committee requests the complainant organization to provide additional information to the Government and the Committee, and to indicate the names of the other two trade unionists and whether a criminal complaint has been lodged with the Office of the Public Prosecutor in respect of the alleged threats. The Committee also requests the Government to provide full information on these allegations and, if the allegations are confirmed, to provide protection to the trade unionists in question.*

The Committee's recommendations

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

- (a) *As the versions of the complainant organization and the Government relating to the alleged detention of two trade unionists are contradictory, the Committee invites the complainant union to provide additional information.*
- (b) *The Committee requests the complainant organization to provide additional information to the Government and the Committee, and to indicate whether it has lodged a criminal complaint with the Office of the Public Prosecutor in respect of the alleged threats made by road transport workers to kill three trade unionists, who were denied police protection, and to indicate the full names of the trade unionists in question (only the name of Mr Jorge Augusto Hernández Velásquez was mentioned in the allegations). The Committee requests the Government to provide detailed information on these allegations and, if the allegations are confirmed, to provide protection to the trade unionists in question.*
- (c) *The Committee requests the Government to keep it informed about the result of the arbitration procedures initiated by the Civil Service Tribunal regarding collective bargaining between the complainant trade union and the Ministry of Finance.*

CASE No. 3012

DEFINITIVE REPORT

Complaint against the Government of El Salvador presented by the Trade Union of Workers of the Supreme Electoral Tribunal (STRATSE)

Allegations: The complainant organization alleges obstacles and excessive delays in the collective bargaining of the first collective agreement between the complainant trade union and the Supreme Electoral Tribunal

294. The complaint is contained in a communication from the Trade Union of Workers of the Supreme Electoral Tribunal (STRATSE) dated 2 October 2012. This organization sent additional information in a communication dated 30 April 2013.

295. The Government sent its observations in a communication dated 7 July 2014.

296. 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

- 297.** In its communication dated 2 October 2012, the STRATSE alleges that it initiated the collective bargaining process with the Supreme Electoral Tribunal on 23 July 2010, and the representatives of both parties signed the first collective agreement on 17 December of the same year.
- 298.** However, this collective agreement had to be sent to the Ministry of Finance for validation (section 119 of the Civil Service Act), which on 16 March 2011, stated that the benefits granted in the collective agreement were not viable from a budgetary point of view as the cost was significantly higher than the budget available to the Supreme Electoral Tribunal, and consequently it was issuing an unfavourable opinion regarding the collective agreement.
- 299.** Bargaining consequently resumed between the parties and alternatives were submitted to address the unfavourable opinion issued by the Ministry of Finance. The Supreme Electoral Tribunal asked the trade union to adjust its claims to US\$1 million and the trade union approved this proposal at an extraordinary assembly on 4 June 2011. In October 2011, the renegotiated collective agreement was sent to the Ministry of Finance, but in December 2011, the Ministry of Finance again failed to approve the collective agreement and recommended that it be negotiated a third time.
- 300.** In its communication dated 30 April 2013, the STRATSE indicates that the Civil Service Tribunal ordered that the matter be submitted to conciliation and, when this failed, to arbitration, but that the arbitrators have not yet been sworn in.
- 301.** The complainant trade union considers that the decisions made by the Ministry of Finance and the excessive delays that have occurred in the collective bargaining process infringe the ratified ILO Conventions on freedom of association and collective bargaining.

B. The Government's reply

- 302.** In its communication dated 7 July 2014, the Government refers to the allegation by the STRATSE concerning the 2011 notification by the Ministry of Finance stating that the financial evaluation conducted into the benefits agreed in the collective labour agreement concluded by the STRATSE and the Supreme Electoral Tribunal indicated that the cost of the agreement in question was significantly higher than the budget available to the Supreme Electoral Tribunal and that consequently it was issuing an unfavourable opinion regarding its approval.
- 303.** The Government states in this respect that the allegations presented by the STRATSE lack any basis in fact or relevance, as according to the registers of the National Department of Social Organizations of the General Labour Directorate of the Ministry of Labour and Social Welfare, the STRATSE was granted the collective labour agreement through the registration on 15 July 2013 of the arbitration award handed down by the respective arbitration tribunal, which put an end to the collective labour dispute initiated by the STRATSE against the Supreme Electoral Tribunal. The Government notes that the arbitration award contains the final consolidated version of the clauses approved at the direct discussion and arbitration stages, which have been numbered by the Civil Service Tribunal from 1 to 66, and that in accordance with section 156 of the Civil Service Act: "The award puts an end to the collective dispute and has the status of a collective labour agreement." Consequently, the abovementioned department, without further administrative paperwork or formalities, proceeded to register the arbitration award in the corresponding register, and it will remain valid for three years as from the date of registration.
- 304.** On the basis of the above, the Government asks that the case be closed.

C. The Committee's conclusions

305. *The Committee observes that the complainant trade union alleges delays of over two years and obstacles to the collective bargaining process it initiated with the Supreme Electoral Tribunal in July 2010, resulting from the legal requirement for the Ministry of Finance to approve the collective agreement, which it refused to do on two successive occasions, citing budgetary reasons in violation of the right to collective bargaining.*
306. *The Committee notes the Government's statement that: (i) the cost of the collective agreement was significantly higher than the budget available to the Supreme Electoral Tribunal for the purpose, and that consequently the Ministry of Finance issued an unfavourable opinion regarding its approval; and (ii) the problem raised in the complaint was settled by way of an arbitration award registered on 15 July 2013, which ended the collective dispute and which has the status of a collective labour agreement.*
307. *The Committee observes that it has examined similar allegations on previous occasions. For example, at its June 2014 meeting it examined a case relating to obstacles and delays in collective bargaining within the civil service (National Centre of Registries) in which the Ministry of Finance also issued an unfavourable opinion regarding the collective agreement concluded with the complainant trade union and more specifically its economic clauses [see 372nd Report, Case No. 2986 (El Salvador), paras 204 et seq.], and on that occasion it highlighted that the examination of collective agreement clauses with a financial or budgetary impact by the financial or budgetary authorities should take place during the collective bargaining process and not, as has occurred in this, and in other cases brought before the Committee, after the collective agreement has been signed by the parties, as this is incompatible with the principle of free and voluntary collective bargaining and the principle according to which agreements should be binding on the parties [see 372nd Report, Case No. 2986, para. 206, and **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 939].*
308. *The Committee notes that, while after the failure of conciliation proceedings, the matter was submitted to compulsory arbitration, which put an end to the dispute, and there is currently a collective agreement in place that was registered in July 2013, it must express regret regarding the excessive delay that occurred in the collective bargaining process and settlement of this dispute (three years). It therefore reiterates in this case the conclusions it formulated in June 2014 and requests that in future the principles mentioned in the previous paragraph be taken into account. Furthermore, observing that the problems mentioned keep recurring in the public sector, the Committee invites the Government to consider availing itself of ILO technical assistance in order to overcome these problems.*

The Committee's recommendations

309. *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) *While noting that the collective bargaining process was submitted to arbitration and that there is presently a collective agreement in place at the Supreme Electoral Tribunal, the Committee regrets the excessive delays in the bargaining process and requests the Government to take into account in future the principles mentioned in the conclusions on interference by the financial authorities in collective bargaining processes.*

- (b) *In this respect, the Committee invites the Government to consider availing itself of ILO technical assistance in order to overcome the problems raised in this and previous cases it has been called upon to examine.*

CASE NO. 2445

INTERIM REPORT

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

- **the World Confederation of Labour (WCL) and**
- **the General Confederation of Workers of Guatemala (CGTG)**

Allegations: Murders, threats and acts of violence against trade unionists and their families; anti-union dismissals and refusal by private enterprises and public institutions to comply with judicial reinstatement orders; harassment of trade unionists

- 310.** The Committee last examined this case at its June 2013 meeting, when it presented an interim report to the Governing Body [see 368th Report, approved by the Governing Body at its 318th Session (June 2013), paras 411–424].
- 311.** The Government provided partial observations in communications dated 4 and 8 July 2013 and 14 March and 7 and 25 May 2014.
- 312.** Guatemala has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

- 313.** At its June 2013 meeting, the Committee made the following recommendations [see 368th Report, para. 424]:
- (a) The Committee regrets that, despite the time that has elapsed since its last examination of the case, the Government has not sent observations on all the allegations pending from its examination of the case at its March 2010, March 2011 and June 2012 meetings. Emphasizing that some of the alleged events are extremely serious and occurred in 2004, the Committee urges the Government to send all the information requested without delay.
 - (b) With regard to the investigations into the murder of union official Mr Julio Raquec, the Committee urges the Government to take all necessary steps to identify the instigators and perpetrators of this murder and the motives for the crime and to ensure that the guilty parties are prosecuted and punished by the courts. The Committee requests the Government to keep it informed of any developments.
 - (c) With regard to the situation of Mr Julio Raquec's widow, the Committee expects that the Government will take the appropriate steps to guarantee her safety and that of her children.

- (d) With regard to the death threats against members of the Trade Union Association of Itinerant Vendors of Antigua, the Committee urges the Government to take immediate steps to establish a protection mechanism for the persons who receive these threats and to institute an independent and expeditious judicial inquiry into these allegations without delay. The Committee requests the Government to keep it informed of the outcome of these actions.
- (e) As regards the allegations concerning the attempted murder of trade unionist Mr Marcos Álvarez Tzoc, the Committee once again requests the Government to keep it informed with respect to the enforcement of the penalty imposed by the ruling of the Court of Criminal Judgment and urges the Government to take immediate steps to establish a mechanism to protect Mr Marcos Álvarez Tzoc.
- (f) As to the remaining allegations, in the absence of the Government's observations, the Committee yet again reiterates its recommendations, which are reproduced below:
- the Committee once again requests the Government to communicate the outcome of the inquiries carried out by the national police and the Prosecutor General for Human Rights into the allegation concerning the selective surveillance and theft of laptop equipment belonging to Mr José E. Pinzón, Secretary-General of the CGTG;
 - with regard to the alleged dismissal of workers at the El Tesoro Estate (municipality of Samayac) for submitting lists of claims during negotiations on a collective agreement, despite a judicial reinstatement order, the Committee again requests the trade union to which these trade unionists belong, to request the competent legal authority to implement the reinstatement order; and
 - with regard to the alleged threats against the employees of the General Directorate of Civil Aviation who participated in a protest in front of the building against the constant abuse by the administration (according to the allegations, the General Directorate's chief maintenance officer threatened that they would be reported and subsequently dismissed, if they were five minutes late back to work, and then took photographs of them) and with regard to the intimidation by security officers against the members outside the room where the union's general assembly was to be held, the Committee regrets that the Government has not sent its observations and urges it to do so without delay.
- (g) The Committee firmly expects that the commitments assumed by the Government in the Memorandum of Understanding signed on 26 March 2013 between the Government of Guatemala and the Workers' group of the ILO Governing Body will be translated into actions and tangible results with respect to the allegations still pending in this case. The Committee urges the Government to inform it of the results of these actions as soon as possible.
- (h) The Committee draws the Governing Body's attention to the extreme seriousness and urgent nature of this case.

B. The Government's reply

314. In communications dated 7 and 25 May 2014, the Government sent information on the status of the investigations into the murder, on 28 November 2004, of Mr Julio Rolando Raquec Ishen, Secretary-General of the Trade Union Federation of Informal Workers. As noted in the previous communications sent by the Government in this regard and taken into consideration by the Committee during its last examination of the case, prior to the murder the victim's widow was the target of extortion by gangs. It is indicated once again that the accounts given by eyewitnesses, especially the victim's widow, made it possible to identify one of the suspects, whose identity was confirmed by another person who was allegedly passing by the scene of the crime; however, given the lack of cooperation from the widow, and in the absence of other evidence, it is not possible to prosecute the suspect, and for this reason the investigation is considered to have been exhausted, pending new lines of investigation. In a communication dated 30 July 2014, the Government sent the report of the International Commission against Impunity in Guatemala (CICIG) on the status of the

investigations into the deaths of trade unionists in Guatemala, in which the CICIG provided an analysis of the investigations conducted by the Office of the Public Prosecutor of Guatemala into 56 of the 58 murders reported to the Committee on Freedom of Association, including the murder of Mr Julio Rolando Raquec Ishen. The CICIG report indicates that the motive for the crime was the victim's resistance to extortion in the area in which he lived and that the case is under investigation.

- 315.** In a communication of 8 June 2013, the Government provides information supplied by the Metropolitan Prosecution Service of the Office of the Public Prosecutor regarding the theft of the portable computer equipment belonging to Mr José E. Pinzón, Secretary-General of the CGTG. The Metropolitan Prosecution Service indicates that, in accordance with the provisions of the Code of Criminal Procedure (Amendment No. 7-2011), considering that to date there is no evidence that would lead to a conviction of the individuals responsible for the crime, and that because of the time that has elapsed it is not possible to introduce any new evidence, the case has been set aside.
- 316.** In the communications referred to above, the Government also reports that, as of this year, the Office of the Public Prosecutor is participating in a working group set up by the Ministry of Labour involving representatives of the judiciary, the Ministry of the Interior and the Ministry of Foreign Affairs to give effect to Convention No. 87, which involves resolving the crimes committed against trade unionists. The Government further indicates that it has engaged a group of investigators and support staff which, under the guidance of the relevant prosecution services and the Public Prosecutor, to speed up the investigation and resolution of such crimes.

C. The Committee's conclusions

- 317.** *The Committee regrets that, despite the time that has elapsed since its last examination of the case, the Government has not sent observations on all the allegations pending from its examination of the case at its March 2010, March 2011, June 2012 and June 2013 meetings. Emphasizing that some of the alleged events are extremely serious and occurred in 2004, the Committee again urges the Government to send in the very near future all the information requested.*
- 318.** *The Committee notes the information provided by the Government concerning the investigations into the murder of trade union leader Mr Julio Rolando Raquec, which indicates once again that the motive for the crime could be the extortion of money suffered by the victim's widow. The Committee also notes the report of the CICIG which analyses the investigations conducted by the Office of the Public Prosecutor of Guatemala into 56 of the 58 murders reported to the Committee on Freedom of Association, and which indicates that the motive for the murder of Mr Raquec was the victim's resistance to extortion in the area in which he lived and that the case is under investigation.*
- 319.** *The Committee once again regrets that, despite the investigations having identified a suspect, they have not led to those responsible being prosecuted or punished. The Committee observes in particular that the Government makes no mention of the new efforts to obtain the cooperation of the eyewitnesses to the murder, even though in its last examination of the case it noted the Government's indication that it hoped that a second eyewitness to the crime would cooperate in future. The Committee recalls 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 [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, para. 52]. The Committee emphasizes that it is essential in combating impunity for those who planned and carried out this murder and the motives of the crime to be clarified once and for all and for the perpetrators to be*

prosecuted and punished by the courts. In addition, the Committee deeply regrets that it has not received further observations from the Government with regard to the measures taken to ensure the safety of Ms Mérida Coy, the widow of Mr Julio Raquec, and that of her children. The Committee once again expects that, regardless of whether or not Ms Mérida Coy participates in the investigation into her husband's murder, the Government will take, without delay, the appropriate measures to ensure her safety and that of her children. The Committee requests the Government to keep it informed of any developments.

- 320.** *With regard to the allegation concerning the selective surveillance and theft of portable computer equipment belonging to José E. Pinzón, Secretary-General of the CGTG, the Committee notes the information provided by the Government indicating that the Metropolitan Prosecution Service of the Office of the Public Prosecutor shelved the case relating to the theft of computer equipment because there is no evidence that would lead to the identification of the individuals responsible for the crime and because, given the long period of time that has elapsed, it was not possible to introduce any new evidence.*
- 321.** *With respect to the remaining allegations, in the absence of the Government's observations, the Committee once again reiterates its previous recommendations, as reproduced in paragraph 4 of the present report.*
- 322.** *When it last examined this case, the Committee noted the Government's indication that the Public Prosecution Services of Guatemala had decided to institute a high-level round table with the country's main trade union federations to analyse cases of violence against trade unionists and of the signing on 26 March 2013 of a Memorandum of Understanding between the Government of Guatemala and the Workers' group of the ILO Governing Body, in which the Government of Guatemala undertook, among other things, to: institute independent and expeditious judicial inquiries as soon as possible to determine responsibilities and punish those who planned and carried out the murders of trade union members; and guarantee the safety of workers through effective measures to protect trade union members and leaders from violence and threats so that they can pursue their union activities. The Committee also notes the new information provided by the Government with regard to the engagement of a group of investigators and support staff by the Office of the Public Prosecutor to help speed up the investigation and resolution of crimes against trade unionists, as well as to the cooperation between the Office of the Public Prosecutor and the CICIG. While it welcomes this information, the Committee regrets, however, that the commitments and efforts mentioned have not been translated into tangible results with respect to the allegations still pending in this case. The Committee once again firmly expects that the commitments assumed by the Government in the Memorandum of Understanding signed on 26 March 2013, as well as the efforts made to implement it, will be translated into tangible results with respect to the allegations in this case. The Committee urges the Government to inform it of the outcome of these efforts without delay.*

The Committee's recommendations

- 323.** *In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) *With regard to the investigations into the murder of union leader Julio Raquec, the Committee once again urges the Government to take all the necessary measures to identify once and for all the instigators and perpetrators of this murder and the motives for the crime and to ensure that the guilty parties are prosecuted and punished by the courts. Additionally, the Committee once again expects the Government to take, without delay,*

the appropriate measures to guarantee the safety of Mr Julio Raquec's widow and that of her children. The Committee requests the Government to keep it informed of any developments in this regard.

- (b) *The Committee regrets that, despite the time that has elapsed since its last examination of the case, the Government has not sent observations on all the allegations pending from its examination of the case at its March 2010, March 2011, June 2012 and June 2013 meetings. Emphasizing that some of the alleged events are extremely serious and occurred in 2004, the Committee expects the Government to send all the information requested in the very near future. In this regard, the Committee once again reiterates the following recommendations:*
- *with regard to the death threats against members of the Trade Union Association of Itinerant Vendors of Antigua, the Committee once again urges the Government to take immediate steps to establish a protection mechanism for the persons who receive these threats and to institute an independent inquiry into these allegations without delay. The Committee requests the Government to keep it informed of the outcome of these actions;*
 - *with regard to the allegations concerning the attempted murder of trade unionist Marcos Álvarez Tzoc, the Committee once again requests the Government to keep it informed with respect to the enforcement of the penalty imposed by the ruling of the Court of Criminal Judgment and urges the Government to take immediate steps to establish a mechanism to protect Mr Marcos Álvarez Tzoc;*
 - *with regard to the alleged dismissal of workers at the El Tesoro Estate (municipality of Samayac) for submitting lists of claims during negotiations on a collective agreement, despite a judicial reinstatement order, the Committee again requests the trade union to which these trade unionists belong to request the competent legal authority to implement the reinstatement order; and*
 - *with regard to the alleged threats against the employees of the General Directorate of Civil Aviation who participated in a protest in front of the building against the constant abuse by the administration (according to the allegations, the General Directorate's chief maintenance officer threatened that they would be reported and subsequently dismissed, if they were five minutes late back to work, and then took photographs of them) and with regard to the intimidation by security officers against the members outside the room where the union's general assembly was to be held, the Committee regrets that the Government has not sent its observations and urges it to do so without delay.*
- (c) *The Committee once again firmly expects that the commitments assumed by the Government in the Memorandum of Understanding signed on 26 March 2013 between the Government of Guatemala and the Workers' group of the ILO Governing Body, as well as the efforts made to implement it, will be translated into tangible results with respect to the allegations still pending in this case. The Committee urges the Government to inform it of the outcome of these actions as soon as possible.*

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

CASE NO. 2708

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

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

- **the Altiplano Agricultural Workers' Committee (CCDA)**
 - **the General Confederation of Workers of Guatemala (CGTG)**
 - **the Unified Trade Union Confederation of Guatemala (CUSG)**
 - **the National Trade Union and People's Coordinating Body (CNSP)**
 - **the National Front for the Defence of Public Services and Natural Resources (FNL) and**
 - **the Guatemalan Workers' Trade Union (UNSITRAGUA)**
- supported by
the International Trade Union Confederation (ITUC)**

***Allegations: Interference by the authorities in
the internal affairs of the Guatemalan Workers'
Trade Union (UNSITRAGUA)***

- 324.** The Committee last examined this case at its March 2013 meeting when it presented an interim report to the Governing Body [see 367th Report, approved by the Governing Body at its 317th Session (March 2013), paras 766–773].
- 325.** The Government sent partial replies to the requested information in a communication of 12 May 2014.
- 326.** 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

- 327.** In its March 2013 meeting, the Committee made the following recommendations [see 367th Report, para. 773]:
- (a) The Committee urges the Government to communicate its detailed observations with regard to the alleged interference of the Government in the internal affairs of UNSITRAGUA (the original organization). Furthermore, the Committee requests the Government to send the court rulings relating to the legal proceedings launched by Daniel Eduardo Vásquez Cisnero without delay.
 - (b) With regard to the split within UNSITRAGUA, the Committee requests the Government to keep it informed of developments in the situation relating to the registration of UNSITRAGUA (the original organization) and to ensure that this organization is promptly registered without let or hindrance.

B. The Government's reply

328. In a communication of 12 May 2014, the Government reports that: (i) the Minister of Labour held two meetings, on 27 February 2012 and 23 January 2013, with UNSITRAGUA (file No. 10-2009) in which the trade union members indicated their concern at the rejection of their registration due to the existence of another federation already registered under the name UNSITRAGUA; (ii) as a result of these meetings, the Minister of Labour suggested that the union leaders could change the name under which their federation would be registered to UNSITRAGUA (the original organization), as it is known in practice; (iii) despite the union leaders' agreement to this proposal, since then, the Ministry of Labour has received no further documentation from UNSITRAGUA (the original organization), which prevents the labour administration from taking any steps as it cannot intervene at its own initiative.

C. The Committee's conclusions

329. *The Committee recalls that the complainant organization in this case had alleged the interference of the authorities in the internal affairs of the Guatemalan Workers' Trade Union, showing favouritism towards one of the blocs produced by a split within the organization in 2008. The complainant organization's allegations concerned in particular: (i) the Ministry of Labour's encouragement of the registration of a parallel trade union organization; (ii) the subsequent denial to register UNSITRAGUA-histórica; and (iii) the measures to deliberately freeze the organization's accounts.*

330. *In its first examination of the case [see 362nd Report, November 2011, paras 1098–1122], the Committee took note of the Government indications that it had given priority to the first application for registration and that the request from UNSITRAGUA-histórica contained legal defects which needed to be addressed, including with respect to the name of the organization. The Committee also noted that the Government did not respond to the allegations regarding interference and additionally noted that the follow-up mission to the conclusions of the International Labour Conference Committee on the Application of Standards observed in May 2011 that the complainant organization had been excluded from all the social dialogue forums despite its representative nature and noted the presence of other organizations that had not been registered in such decision-making bodies. In its second examination of the case [see 367th Report, March 2013, paras 766–773], the Committee was informed of the inclusion of UNSITRAGUA-histórica in the National Tripartite Commission but still had not received information regarding its registration requested in 2009 and regarding the allegations of interference in its internal affairs.*

331. *The Committee takes note of the Government's latest observations which indicate that the refusal to register UNSITRAGUA (the original organization) is due to the fact that another federation has already been registered under the same name (UNSITRAGUA), that the solution proposed by the labour administration, in two meetings in February 2012 and January 2013, was to change the name under which the federation would be registered (UNSITRAGUA (the original organization) instead of UNSITRAGUA) but that, despite the union leaders' agreement at that time, the labour administration has not received any new request to enable it to proceed with the registration process. In the light of the above, the Committee requests UNSITRAGUA (the original organization) to keep it informed of any developments in the processing of its registration request and, in particular, of any new initiatives taken by the organization to finalize its registration under its new name.*

332. *Furthermore, recalling 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*

represent their members adequately [see *Digest of decisions and principles of the Freedom of Association Committee*, fifth (revised) edition, 2006, para. 295], the Committee expects the Government to ensure that the registration of UNSITRAGUA (the original organization) is processed rapidly and without let or hindrance, as soon as the organization renews its request.

333. The Committee regrets that, despite its repeated requests, the Government has not sent detailed observations in relation to the allegations of interference by the Government in the internal affairs of UNSITRAGUA (the original organization) in 2008 and 2009. Recalling that respect for the principles of freedom of association requires that the public authorities exercise great restraint in relation to intervention in the internal affairs of trade unions [see *Digest*, op. cit., para. 859], the Committee expects the Government in future to fully respect the principle of non-interference in trade union affairs and to keep it informed of any court rulings relating to the legal proceedings launched by Mr Vásquez Cisneros.

The Committee's recommendations

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

- (a) *The Committee requests UNSITRAGUA (the original organization) to keep it informed of any developments in the processing of its registration request and, in particular, of any new initiatives taken by the organization to finalize its registration under its new name.*
- (b) *Recalling 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 represent their members adequately, the Committee expects the Government to ensure that the registration of UNSITRAGUA (the original organization) is processed rapidly and without let or hindrance, as soon as the organization renews its request.*
- (c) *Recalling that respect for the principles of freedom of association requires that the public authorities exercise great restraint in relation to intervention in the internal affairs of trade unions, the Committee expects the Government in future to fully respect the principle of non-interference in trade union affairs and to keep it informed of the court rulings relating to the legal proceedings launched by Mr Vásquez Cisneros.*

CASE NO. 2948

INTERIM REPORT

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

Allegations: The complainant organization denounces a large number of dismissals, transfers and acts of anti-union harassment against various workers' organizations in the public sector and one workers' organization in the private sector, and alleges that the labour inspectorate and labour tribunals are failing to comply with their duty to provide appropriate protection in these cases

335. The complaint is contained in communications dated 9, 10 and 11 May 2012 presented by the Guatemalan Union, Indigenous and Peasant Movement (MSICG).
336. The Government sent partial observations in communications dated 4 April and 22 July 2014.
337. Guatemala has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

***Union of Organized Workers of the
Attorney-General's Office***

338. In relation to the situation of the Union of Organized Workers of the Attorney-General's Office (STOPGN) and its members, the complainant alleges that: (i) the Attorney-General's Office, having failed to allocate the necessary budget to implement an act on the protection of minors under which public institutions must give constant and immediate attention to at-risk minors, began to impose mandatory shifts in addition to the normal working day, most of which in consecutive 24-hour periods, threatening to dismiss and make a criminal complaint against anyone who declined to comply; (ii) since the matter was not submitted to the joint board established under the collective agreement on working conditions, the trade union turned to the labour inspectorate, which requested an end to the mandatory shifts; (iii) in order to circumvent the requests of the labour inspectorate, the Attorney-General's Office lodged an appeal on the grounds of unconstitutionality (*amparo*) against the trade union, arguing that its action had impeded the implementation of the act on the protection of minors; (iv) the court of first instance anomalously authorized the *amparo* motion, prohibiting the union from taking any action to defend its members' rights; (v) an appeal was lodged against the decision of the court of first instance before the Constitutional Court; (vi) on 23 April 2012, the labour inspectorate again noted the same failures to comply with labour legislation and the collective agreement; (vii) on 27 April, the union conducted a peaceful protest against the imposition of conditions akin to forced labour, which gave rise to wide-scale police intervention at the

behest of the then Attorney-General; and (viii) on 27 May 2012, the Attorney-General made stigmatizing public statements designed to discredit the trade union organization, claiming that it might have links with organized crime and that he would ask the Public Prosecution Service to conduct an investigation, which is allegedly currently under way (No. 001-2012-66383).

Union of Workers of the Guatemalan Social Security Institute

339. Concerning the situation of the Union of Workers of the Guatemalan Social Security Institute (STIGSS) and its members, the complainant alleges that: (i) the Guatemalan Social Security Institute (IGSS) has refused to negotiate with the STIGSS since 2002, in violation of the labour law and despite the fact that the STIGSS is the majority trade union within the IGSS, which led the STIGSS to bring the case before the courts; (ii) in order to sideline the STIGSS, the IGSS signed a collective agreement on working conditions with minority trade unions which do not even have 40 per cent of the members of the STIGSS; (iii) in order to impede the court from issuing a final decision, the IGSS resorted to a whole series of delaying tactics; (iv) in order to weaken the union, the IGSS has made hiring temporary workers for permanent posts widespread, so as to create precarious work which is not conducive to union membership and to facilitate the dismissal of workers who are union members; (v) against this backdrop, the STIGSS and the MSICG launched a campaign to defend IGSS workers and to combat the privatization of the social security system; (vi) in response to these actions, the IGSS has embarked upon a wide-scale campaign of terminating employment contracts, which affects members and officials of the STIGSS in 90 per cent of cases; (vii) the Third Chamber of the Labour and Social Welfare Appeals Court is cooperating with this initiative and is in breach of the country's laws in that it considers that the employer's assertion that the dismissals do not constitute anti-union retaliation is in itself sufficient to demonstrate the absence of anti-union discrimination. As a result, more than 600 STIGSS members have been dismissed with judicial authorization; and (viii) furthermore, STIGSS members and officials are subject to constant harassment through disciplinary proceedings and legal action, such as in the case of Miguel Ángel Delgado López, the STIGSS Secretary for Labour and Disputes, who was subject to a judicial order for dismissal as a result of false allegations of alcoholism, and María Teresa Chiroy Pumay, the STIGSS Secretary for Minutes and Agreements, who was assigned the duties of various positions concurrently and who is subject to various disciplinary proceedings.

Union of Workers of the Public Criminal Defence Institute

340. Regarding the situation of the Union of Workers of the Public Criminal Defence Institute (STIDPP) and its members, the complainant alleges that: (i) since its establishment on 29 June 2006, the STIDPP's functioning has been impeded with transfers and dismissals of its officials; (ii) in July 2006, the Secretary-General ad interim, Manuel de Jesús de Ramírez, was transferred to a new position ten hours away from the capital where he previously worked; (iii) after lengthy legal proceedings which culminated in Mr de Jesús de Ramírez's return after three years, a campaign of harassments and threats, including death threats, was waged against him; (iv) Mr de Jesús de Ramírez is currently subject to criminal proceedings initiated by his employer; (v) on 16 March 2012, only hours after giving a national press conference for the MSICG against union harassment in which various STIDPP officials participated, Amparo Amanda Ruiz Morales, a member of the STIDPP and the MSICG, was notified of her transfer to a new site ten hours away from her previous workplace; (vi) the labour inspectorate requested the Public Criminal Defence Institute to annul the unlawful transfer. The Institute lodged an administrative appeal

against that decision, thereby suspending the effects of the decision to date, and seized the occasion to initiate proceedings to dismiss the worker; (vii) as a result of a labour complaint submitted against the widespread and anti-union use of temporary employment contracts by the Institute, Fermín Iván Ortiz Maquin, the STIDPP Minutes and Agreements Secretary, and Isidro Sosa de León, the STIDPP External Relations Secretary, were unilaterally dismissed on 2 May 2012, in breach of the national legislation, under which judicial authorization is required in order to dismiss a union official; (viii) the labour inspectorate, noting the anti-union nature of the contract terminations, requested that the dismissals be overturned. However, the Institute brought an application for the annulment of that decision before the General Labour Inspectorate on the grounds that it was unlawful, which resulted in the suspension of the inspectorate's action, despite the fact that the type of appeal which was lodged is not contemplated under the law; (ix) as a result of their defencelessness ensuing from the labour inspectorate's lack of action, the union officials submitted an application for their reinstatement before the Labour Court on 4 May 2012. Despite the fact that, pursuant to sections 379 and 380 of the Labour Code, the reinstatement should have taken place within a maximum of 24 hours, the judicial authorities have thus far failed to issue a decision; and (x) some days after the MSICG (to which the STIDPP is affiliated) submitted a challenge to the constitutionality of the rules of procedure and disciplinary rules of the Public Criminal Defence Institute in March 2012 on the grounds that they were anti-union in nature, the Institute initiated proceedings to dismiss Marvin René Donis Orellana, the STIDPP Secretary-General, attempting to assign him duties which fall under the responsibilities of other, non-unionized workers.

341. In the light of the aforementioned facts, the complainant alleges that the STIDPP has suffered anti-union harassment by the State via the Public Criminal Defence Institute, assisted by both the labour courts and the General Labour Inspectorate.

Union of Workers of the Agricultural Company Soledad SA

342. Regarding the situation of the Union of Workers of the Agricultural Company Soledad SA (SITRASOLEIDAD) and its members, the MSICG alleges that: (i) in September 2010, as a result of the union's submission of a list of demands and with a view to breaking the union, the employer dismissed all of SITRASOLEIDAD's members; (ii) the Labour and Social Welfare Court of First Instance of the department of Suchitupéquez ordered the reinstatement of all of the workers, which the employer subsequently appealed; (iii) the Fourth Chamber of the Labour and Social Welfare Court of Appeal anomalously amended the proceedings on at least two occasions in the cases of the following workers: Gilder Amoldo Polo García, Humberto Francisco Álvarez Pérez, Rocael de Jesús Álvarez Pérez, Argelio Aurelio Álvarez, William Ismael Santos Morales, Simón Eliseo Rompich Xitamul, Rafael Xalin Cumatzil, Angelina Yolanda García Panjoj, Flory Aracely García Santos, Rose Meri Bran Méndez, Ana Isabel Chalachij Ajqui, Jorge Arsenio Rompich Pérez, Rolando Antonio Pérez de la Cruz, Exequiel Xalin Cumatzil, Noe Fernando Valdez Alonzo, Marco Antonio Pérez de la Cruz and Oscar Ricardo Rompich López; (iv) in the said cases, the initial reinstatement orders were overturned, with objections and evidence submitted out of time being admitted; (v) ultimately, only the reinstatements of the following workers were therefore upheld: Josué Misael Bizarro Comatzin, Wiltor Adolfo Rompiche Alvarado, Edgar Emigdio Sales Fabián, Manuel Domingo Díaz Much, José Manuel Tzoc Suar, Eber Artemio Bran Méndez, Isaías Bautista López, Hugo Leonel Arreaga Méndez, Gustavo Benjamín Álvarez Ajbál, Carlos Aníbal Ramírez Paíz, Rodrigo García Cunen, Domingo Martín García Panjoj, Danilo Isidro Arreaga Méndez, Carlos Enrique Serech De León, Felipe Arreaga Catalán, Esmelin Valeriano Castillo Leiva, Jairo Elías Canas García, Edy Marvin Canas Chonay, Pedro De León Nicolás, Gabriel Enrique Canas García and Lester Onelio Ramírez Arreaga; (vi) however, despite the fact that within the various proceedings, repeated requests were made to the Labour and Social

Welfare Court of First Instance of the department of Suchitepéquez to ensure the implementation of those reinstatements which were upheld, the court failed to appoint an executor to do so; (vii) consequently, the workers who were dismissed on 1 September 2010 have still not been reinstated, despite a series of reinstatement orders which have been final since 15 June 2011; and (viii) the workers affected have been left without any financial resources and without any health care from the Guatemalan Social Security Institute.

B. The Government's reply

343. In a communication of 4 April 2014, the Government sent its observations on the allegations contained in the complaint concerning the STIGSS. In this regard, the Government states that: (i) the rulings at both first and second instance on the dismissal of STIGSS members are consistent with the principles of legality and due process; (ii) the allegations concerning the IGSS's refusal to negotiate with the STIGSS no longer apply in view of the fact that, according to information provided by the President of the Amparo and Preliminary Proceedings Chamber of the Supreme Court of Justice, the dispute over the negotiation of the collective agreement on working conditions between the STIGSS and the IGSS was resolved on 26 August 2013, when mutual agreement was reached on a collective agreement comprising 59 articles; (iii) regarding the request for judicial authorization for the dismissal of Miguel Ángel Delgado López, the Tenth Labour and Social Welfare Court ruled that the IGSS Executive Board's Directive No. 1090 (Rules and regulations for human resources administration within the IGSS) was unconstitutional; an appeal was lodged against that ruling before the Constitutional Court, hence a final decision on the case is still pending; and (iv) María Teresa Chiroy Pumay holds the post of management assistant in the IGSS Executive Board. By two official notifications of 3 April 2012 and one of 10 April 2012, she was subject to three disciplinary measures: two suspensions without pay (one of two days and one of one day) and one written warning.

344. In a communication of 22 July 2014, based on the information provided by the Attorney-General's Office, the Government sent its observations on the allegations in the complaint concerning the STOPGN. In this regard, the Government states that: (i) on 13 March 2014, the Constitutional Court permanently stayed the *amparo* motion filed by the Attorney-General's Office against the STOPGN Executive Board; (ii) the act on the protection of minors (the Alba-Keneth Alert System Act) made it necessary to establish a shift system within the Operational Unit for the Alba-Keneth Alert System in the Attorney-General's Office, but that did not mean that the rights of the persons working in that unit were violated; (iii) any worker who has to work a 24-hour emergency shift is entitled to a rest period of 48 continuous hours after each such shift; and (iv) besides the fact that the allegations pertain to matters concerning working time and not to the safeguarding of freedom of association and collective bargaining, they are wholly without foundation and do not reflect reality.

C. The Committee's conclusions

345. *The Committee notes that this case concerns allegations of a large number of dismissals, transfers and acts of anti-union harassment against various workers' organizations in the public sector and one workers' organization in the private sector, in relation to which the labour inspectorate and the labour courts have purportedly failed in their duty to provide adequate protection.*

346. *While noting the Government's observations on the alleged violation of the trade union rights of the members of the STIGSS and of the STOPGN, the Committee deeply regrets the fact that, despite the time that has elapsed since the presentation of the complaint, the Government has not sent its observations on a substantial part of the allegations in this case, even though it has been requested several times, including through several urgent appeals, to present its comments and observations.*

Union of Organized Workers of the Attorney-General's Office

347. *Regarding the situation of the STOPGN and its members, the Committee observes that the complainant's allegations concern acts of harassment, including legal action under constitutional and criminal law against the STOPGN and stigmatizing public statements with a view to impeding the free exercise of freedom of association. The acts allegedly followed the union's submission of a complaint to the labour inspectorate about the working conditions in the Attorney-General's Office owing to the entry into force of an act on the protection of minors, which resulted in the labour inspectorate's issuance of various decisions finding that the legislation on working time had been breached.*
348. *The Committee takes note of the Government's observations stating that: (i) the Constitutional Court permanently stayed the amparo motion filed by the Attorney-General's Office against the STOPGN; (ii) besides the fact that the allegations pertain to working time and not to the safeguarding of freedom of association and collective bargaining, they are wholly without foundation and do not reflect reality; and (iii) any worker who has to work a 24-hour emergency shift to give effect to the new act on the protection of minors is entitled to a rest period of 48 continuous hours after each such shift.*
349. *While noting the permanent stay of the amparo motion filed by the Attorney-General's Office against the STOPGN, the Committee observes that the Government has not provided any information about the criminal complaint against the STOPGN which the Attorney-General's Office had filed with the Public Prosecutor's Office. Recalling that defending the rights of its members before the institutions responsible for enforcing compliance with labour legislation is a fundamental aspect of the activities of trade union organizations, the Committee requests the Government to take the measures necessary to guarantee that the STOPGN may freely exercise such activities and to provide the Committee, as a matter of urgency, with information on the criminal complaint that was filed against the STOPGN.*

Union of Workers of the Guatemalan Social Security Institute

350. *Regarding the situation of the STIGSS and its members, the Committee notes that the allegations concern: (i) the IGSS's obstruction of the negotiation of the collective agreement on working conditions; (ii) the existence of a widespread campaign of terminating the contracts of workers who were members of the STIGSS, and the failure of the judicial organs to provide adequate protection against the anti-union discrimination; and (iii) the harassment of two union officials, Miguel Ángel Delgado López and María Teresa Chiroy Pumay.*
351. *As to the negotiation of the collective agreement on working conditions, the Committee notes with interest the Government's observation that the IGSS and the STIGSS signed a collective agreement on working conditions on 26 August 2013, thereby ending a collective dispute which had lasted more than 11 years. As to the alleged widespread anti-union*

dismissals and the lack of effective judicial protection in this regard, the Committee notes the complainant's statements that more than 600 STIGSS members have been unfairly dismissed in recent years; that 90 per cent of the employment contracts which were terminated by the IGSS were of STIGSS members; and that the courts did not take this aspect into account when ruling on whether the dismissals were anti-union in nature. The Committee further notes that the Government relays the observations of the judicial authority that all court rulings both at first and at second instance on the dismissal of IGSS workers who were members of the STIGSS were consistent with the principles of legality and due process. In this particular case, the Committee observes that it does not have any precise information on the persons affected by the alleged discriminatory termination of employment contracts, the dates of those terminations or copies of the impugned court rulings. In order to be able to conduct a fully informed examination of the allegations and to allow the Government an opportunity to supplement its observations, where appropriate, the Committee therefore requests the complainant organization to provide further details on the alleged anti-union termination of employment contracts and copies of the corresponding court rulings.

- 352.** *As to Miguel Ángel Delgado López, the STIGSS official who was allegedly the subject of a request for judicial authorization for dismissal as a result of false accusations, the Committee notes the information from the judiciary, transmitted by the Government, stating that the court of first instance had found the IGSS rules and regulations of human resources administration under which the proceedings to dismiss the union official were initiated to be unconstitutional, and that that ruling was under appeal before the Constitutional Court, hence a final decision was still pending. The Committee therefore requests the Government to keep it informed of any new court decision in this case and of Miguel Ángel Delgado López's current employment situation.*
- 353.** *As to María Teresa Chiroy Pumay, a STIGSS union official who was subject to various disciplinary proceedings, the Committee notes the information from the Government that Ms Chiroy Pumay currently holds the post of management assistant in the IGSS Executive Board and in April 2012 was subject to three disciplinary measures consisting of two suspensions from duty without pay (two days and one day) and one written warning. The Committee requests the Government to inform it of the reasons for these disciplinary sanctions.*

Union of Workers of the Public Criminal Defence Institute

- 354.** *Regarding the situation of the STIDPP and its members, the Committee observes that the complainant's observations concern various cases of unlawful dismissal and transfer of union officials – including Manuel de Jesús de Ramírez – in retaliation for complaints filed by the STIDPP, the lack of effect given to the decisions of the labour inspectorate on the aforementioned facts, and the lack of a ruling by the labour courts on the applications for reinstatement.*
- 355.** *In addition, on the basis of Case No. 2609 of which it is currently seized, the Committee expresses its deep concern that Manuel de Jesús de Ramírez, Secretary-General of the STIDPP, was murdered on 1 June 2012 and that, according to the information provided by the Government in the context of Case No. 2609, the Guatemalan Public Prosecutor's Office considers his murder to be an act of anti-union repression. The Committee deeply deplores the murder of the STIDPP Secretary-General, Mr Jesús de Ramírez. As a result, the Committee urged the Government to take all necessary measures to identify and bring to justice those responsible at the earliest opportunity and to keep it informed of any developments [see 368th Report, approved by the Governing Body at its 318th Session (June 2013), paras 438, 443, 482 and 496]. The Committee will examine the progress*

made in identifying and punishing Manuel de Jesús de Ramírez's killers in its next examination of Case No. 2609.

- 356.** *In view of the lack of observations from the Government on the aspects of the complaint concerning the STIDPP, the Committee recalls, firstly, that where cases of alleged anti-union discrimination are involved, the competent authorities dealing with labour issues should begin an inquiry immediately and take suitable measures to remedy any effects of anti-union discrimination brought to their attention [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 835]. In the light of the foregoing, the Committee urges the Government to send as a matter of urgency its observations on the allegations concerning the STIDPP in this case; to ensure, in any event, that the proceedings brought before the labour inspectorate and courts in relation to the aforementioned facts result in swift decisions which are implemented; and, in general, to immediately take the necessary steps to safeguard the exercise of freedom of association within the Public Criminal Defence Institute.*

Union of Workers of the Agricultural Company Soledad SA

- 357.** *Regarding the situation of SITRASOLEDAD and its members, the Committee observes that the complainant's allegations concern the anti-union dismissal in September 2010 of all of the union's members, the anomalous reversal on appeal of 17 reinstatement orders issued at first instance, and the failure to execute the 21 reinstatement orders upheld on appeal on 15 June 2011 in the absence of the appointment of an executor.*
- 358.** *In view of the fact that the Government has not sent observations on this aspect of the complaint, the Committee would like to recall, firstly, that cases concerning anti-union discrimination contrary to Convention No. 98 should be examined rapidly, so that the necessary remedies can be really effective. An excessive delay in processing cases of anti-union discrimination, and in particular a lengthy delay in concluding the proceedings concerning the reinstatement of the trade union leaders dismissed, constitute a denial of justice and therefore a denial of the trade union rights of the persons concerned [see **Digest**, op. cit., para. 826]. The Committee further 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), made under article 26 of the ILO Constitution, the Government made a commitment to adopt "policies and practices to ensure the application of labour legislation, including ... effective and timely judicial procedures". On this basis, the Committee urges the Government to send, as a matter of urgency, its observations on the aforementioned allegations, and to ensure that the final judicial orders for reinstatement are executed immediately.*

The Committee's recommendations

- 359.** *In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) The Committee deeply regrets that, despite several requests and urgent appeals, the Government has failed to provide its observations on a substantial part of the allegations in this case.*

- (b) The Committee requests the Government to take the measures necessary to guarantee that the STOPGN may freely exercise its activities in defence of its members' rights before the institutions responsible for enforcing compliance with labour legislation, and to provide the Committee, as a matter of urgency, with information on the criminal complaint that was allegedly filed against the STOPGN.*
- (c) The Committee requests the complainant to provide further details on the alleged anti-union termination of employment contracts of employees of the Guatemalan Social Security Institute and to send copies of the corresponding judicial rulings.*
- (d) The Committee requests the Government to keep it informed of any new judicial ruling in the proceedings concerning the dismissal of the STIGSS official Miguel Ángel Delgado López and of his current employment situation.*
- (e) The Committee requests the Government to provide it with information on the reasons for the disciplinary sanctions imposed on Ms Chiroy Pumay.*
- (f) Gravely concerned by the murder of the STIDPP Secretary-General, de Jesús de Ramírez – which was examined by the Committee under Case No. 2609, and was considered by the Public Prosecutor's Office of Guatemala to be an act of anti-union repression – the Committee urges the Government to send, as a matter of urgency, its observations on the allegations in this case concerning the STIDPP; to ensure in any event that the proceedings brought before the labour inspectorate and the courts in relation to the aforementioned facts result in swift decisions which are implemented; and, in general, to immediately take the necessary steps to safeguard the exercise of freedom of association within the Public Criminal Defence Institute.*
- (g) The Committee urges the Government to send, as a matter of urgency, its observations on the allegations concerning the situation of SITRASOLEIDAD and its members, and to ensure that all final judicial orders for reinstatement are executed immediately.*

CASE NO. 2978

INTERIM REPORT

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

Allegations: The complainant organization alleges the mass dismissal of workers, in violation of the provisions of a collective agreement in the municipality of Jalapa, as well as anti-union persecution, dismissals, death threats and attempted murder against members of the Trade Union of Workers of the Municipality of Pajapita

- 360.** In its previous examination of the case, in June 2013, the Committee submitted an interim report to the Governing Body [see 368th Report, paras 507–520, approved by the Governing Body at its 318th Session (June 2013)].
- 361.** At its meetings in March 2014 [see 371st Report, para. 6] and June 2014 [see 372nd Report, para. 6], in view of the lack of observations, despite the time which had elapsed since the last examination of the case, the Committee made two urgent appeals to the Government and drew to its attention the fact that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body at its 184th Session, it may present a report on the substance of this case, even if the observations or information from the Government have not been received in due time. In a document handed to the ILO mission headed by the Director of the International Labour Standards Department, which visited the country from 8 to 11 September 2014, the Government indicates that it has not been able to communicate with the municipalities mentioned in the case nor with the representatives of the trade unions. To date, no substantial information has been received from the Government.
- 362.** Guatemala has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

- 363.** In its previous examination of the case, in June 2013, the Committee made the following recommendations on the issues which remained pending [see 368th Report, para. 520]:
- (a) The Committee requests the Government to keep it informed promptly about the payment of back wages to the workers of the Municipality of Jalapa following their reinstatement.
 - (b) The Committee urges the Government to hold an independent judicial inquiry without delay into the alleged anti-union acts, death threats and attempted murder against members of the Trade Union of Workers of the Municipality of Pajapita, and to take the necessary measures to guarantee the safety of the persons threatened and to re-establish the climate of trust so as to enable the members of the abovementioned union to engage in union activities.

- (c) The Committee requests the Government to inform it without delay of the measures taken in this regard and of the outcome of the inquiry.
- (d) 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 Committee's conclusions

- 364.** *The Committee regrets that, despite the time that has elapsed since the presentation of the complaints, the Government has not provided the requested information, even though the Committee invited it to do so by making urgent appeals at its meetings in March and June 2014. The Committee requests the Government to be more cooperative in the future.*
- 365.** *Hence, in accordance with the applicable procedural rules [see 127th Report, para. 17, approved by the Governing Body], the Committee is obliged to present a report on the substance of the case without being able to take account of the information which it had hoped to receive from the Government.*
- 366.** *The Committee recalls that the purpose of the whole procedure established by the International Labour Organization for the examination of allegations of violations of freedom of association is to ensure respect for this freedom in law and practice. The Committee is confident that, while this procedure protects governments against unreasonable accusations, they must recognize the importance of presenting for objective examination, detailed and precise replies concerning allegations brought against them.*
- 367.** *The Committee notes with concern the very serious nature of certain allegations in this case (anti-union acts, death threats and attempted murder of members of the Trade Union of Workers of the Municipality of Pajapita). The Committee deeply regrets that, despite the seriousness of these allegations and the time which has elapsed since the submission of this case, the Government has not submitted the requested observations and information, and consequently reiterates the recommendations made at its meeting in June 2013. The Committee also recalls that, through the signing of the Memorandum of Understanding of 26 March 2013, with the Workers' group of the ILO Governing Body, the Government of Guatemala undertook, inter alia, to guarantee the security of men and women workers, with effective measures to protect union members and leaders against violence and threats so that they can carry out their trade union activities. The Committee firmly expects that this commitment will be translated into concrete results in relation to the allegations in this case.*

The Committee's recommendations

- 368.** *In view of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) *The Committee regrets that, despite the time which has elapsed since the previous examination of the case in March 2013, the Government has not submitted the requested information and observations, despite the Committee having made two urgent appeals to it.*
 - (b) *The Committee once again requests the Government to keep it informed promptly of the payment of back wages to the workers of the municipality of Jalapa following their reinstatement.*

- (c) *The Committee once again urges the Government to hold an independent judicial inquiry without delay into the alleged anti-union acts, death threats and attempted murder of members of the Trade Union of Workers of the Municipality of Pajapita, and to take the necessary measures to guarantee the safety of the persons threatened and to re-establish the climate of trust so as to enable members of the abovementioned union to engage in union activities. The Committee once again requests the Government to inform it without delay of the measures taken in this regard and of the outcome of the inquiry.*
- (d) *The Committee firmly expects that the commitments made by the Government of Guatemala, through the signature of the Memorandum of Understanding of 26 March 2013, will be translated into concrete results in relation to the allegations in this case.*
- (e) *The Committee draws the special attention of the Governing Body to the extreme seriousness and urgent nature of this case.*

CASE NO. 3035

INTERIM REPORT

**Complaint against the Government of Guatemala
presented by
the Trade Union of Workers of Guatemala (UNSITRAGUA)**

Allegations: The complainant organization alleges the refusal by the authorities of the Ministry of Labour and Social Welfare to register a trade union of firefighting personnel, dismissals, transfers and pressure on members to leave the trade union

369. The complaint is contained in a communication dated 14 May 2013, presented by the Trade Union of Workers of Guatemala (UNSITRAGUA).

370. At its June 2014 meeting [see 372nd Report, para. 6], since there has been no reply from the Government, despite the time that has elapsed since the presentation of the complaint, the Committee made an urgent appeal to the Government indicating that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body at its 184th Session, it could present a report on the substance of the case at its next meeting, even if the requested information or observations had not been received in time. In a document handed to the ILO mission headed by the Director of the International Labour Standards Department, which visited the country from 8 to 11 September 2014, the Government indicates that it is analysing the information submitted by various public institutions and is awaiting information to be provided by the Public Prosecution Service. To date, the Government has not sent any substantial information.

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

A. The complainant's allegations

372. In its communication of 14 May 2014, the complainant organization reports that the Ministry of Labour and Social Welfare refused to register the Union of Workers of the Voluntary Fire Brigade of Guatemala (SGTBCVBG) and that the establishment of that organization triggered a series of dismissals and anti-union acts. In this regard, the complainant indicates that: (i) on 5 September 2012, the statutes and the founding charter of the SGTBCVBG were submitted and duly notified to the General Directorate for Labour and to the General Inspectorate of Labour and Social Welfare; (ii) that same day, the trade union immunity of the founders of the organization came into force, as notified on 6 September 2012; (iii) on 17 September 2012, the authorities of the Voluntary Fire Brigade of Guatemala (CVBG) dismissed six founders and members of the SGTBCVBG, three of whom were members of the interim executive committee (Ms Lesbia Corina Queme Roma, secretary for women; Mr Adolfo Martín Enríque Suchite, secretary for records and agreements, and Mr Jonathan Raúl Girón Kunse, secretary for labour and disputes) and three of whom were founding members (Mr Luis Alberto Pérez Soberanis, Mr Raúl Heriberto Gonzalez Archila and Mr Marlon Gabriel López Chupina); (iv) as a result of a complaint submitted by Mr Marlon Gabriel López Chupina before the Ministry of Labour and Social Welfare, the Office of the Labour Ombudsman and the Office of the Human Rights Prosecutor, the following day the CVBG set aside the dismissal of the aforementioned worker, bringing the number of dismissed SGTBCVBG officials and members down to five; (v) those dismissals, supposedly due to “restructuring”, violated the Act on the Voluntary Fire Brigade and the Act on Civil Service, also neglecting the proceedings before the Ministry of Labour and Social Welfare, and the required authorization from the competent judge; (vi) as a result of the complaint submitted before the Ministry of Labour and Social Welfare in relation to the dismissals, on 28 September 2012, the labour inspectorate declared the dismissals illegal, on the grounds that they violated trade union immunity; (vii) during the visit of the inspectorate, the authorities of the CVBG falsely claimed that they had not been aware of the process to establish a union on the day of the dismissals; (viii) four of the five persons dismissed had to file a complaint before the Public Prosecution Service in order to recover their personal belongings, which had remained inside the CVBG building; (ix) however, the computer and the digital camera containing the information on the process to establish the trade union disappeared; (x) three other founding members (Mr René Galicia, interim secretary general; Mr Felix Montenegro, founder, and Mr Fernando Esquivel, interim organization secretary) were suddenly and illegally transferred to another workplace; (xi) on 19 September 2012, the First Commander in Chief, Mr César González, called together the 12 founding members of the trade union to pressure them into giving up the process to establish the SGTBCVBG and a lawyer on the employer’s side fraudulently presented the withdrawals of 11 members to the Ministry of Labour and Social Welfare; (xii) these acts were denounced before the Ministry of Labour and Social Welfare on 16 October 2012, but the complaint was not processed; (xiii) in the following days, Ms Teresa Rivas, who was not one of the founding members but joined the union shortly afterwards and publicly supported it, was threatened by a group of five armed people; (xiv) most of the fire brigades in the capital and in the departments received visits from confederates of the Commander González to dissuade the personnel from becoming members of the union; (xv) on 21 March 2013, the department for the protection of workers of the Ministry of Labour and Social Welfare transferred the file of the SGTBCVBG to the General Directorate for Labour and recommended “the legal registration and approval of the trade union on the grounds that it fulfils all the legal requirements”; (xvi) however, in a ruling of 2 May 2013, the General Directorate for Labour dismissed the application for registration

of the SGTBCVBG, against which the SGTBCVBG lodged an appeal for annulment; and (xvii) the founders of the trade union submitted a complaint against the Director-General of Labour for breach of confidentiality in handling the case, the contents of which had been shared with the management of the CVBG from the start.

B. The Committee's conclusions

373. *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 was requested to do so through an urgent appeal at its June 2014 meeting. The Committee requests the Government to be more cooperative in the future.*
374. *Under these circumstances and in accordance with the applicable rules of procedure [see 127th Report, para. 17, approved by the Governing Body], the Committee finds itself obliged to present a report on the substance of the case without the benefit of the information which it had hoped to receive from the Government.*
375. *The Committee recalls that the purpose of the whole procedure established by the International Labour Organization for the examination of allegations of violations of freedom of association is to promote respect for this freedom in law and in fact. The Committee remains confident that, if the procedure protects governments from unreasonable accusations, governments on their side will recognize the importance of formulating, for objective examination, detailed replies concerning allegations made against them.*
376. *The Committee observes that this complaint refers to the alleged refusal by the authorities of the Ministry of Labour and Social Welfare to register a union of firefighting personnel and, as a result of the creation of that trade union, dismissals and transfers, and pressure on members to leave the trade union.*
377. *Regarding the refusal by the authorities of the Ministry of Labour and Social Welfare to register the SGTBCVBG, the Committee observes that the complainant organization alleges that the SGTBCVBG presented its request for registration in September 2012, in compliance with the legal requirements; that in May 2013, despite the favourable opinion of the department for the protection of workers of the Ministry of Labour and Social Welfare, a ruling of the General Directorate for Labour rejected the application for registration, against which the candidate union lodged an immediate appeal for annulment. In this regard, the Committee firstly recalls that it has pointed out on a number of occasions that the functions exercised by firefighters do not justify their exclusion from the right to organize. They should therefore enjoy the right to organize [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 231]. In addition, the Committee recalls 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 represent their members adequately [see **Digest**, op. cit., para. 295]. The Committee therefore urges the Government to examine without delay the appeal for annulment lodged by the candidate union and to ensure that its decision fully complies with the aforementioned principles. The Committee requests the Government to keep it informed without delay in this regard.*
378. *As regards the allegations of interference by the employer (the CVBG) in the establishment of the SGTBCVBG, through pressure on members to leave the trade union, the Committee observes that the complainant in particular denounces the direct pressure exerted on 19 September 2012 by the First Commander in Chief of the CVBG to obtain the withdrawal of 12 founding union members which, on that same day, led to the presentation*

by the employer's lawyer of the alleged withdrawal of 11 of these 12 persons to the Ministry of Labour and Social Welfare. The Committee also takes note of the allegations by the complainant that the corresponding complaint by the candidate trade union had not been received by the Ministry of Labour and Social Welfare.

- 379.** *Recalling that acts of harassment and intimidation carried out against workers by reason of trade union membership or legitimate trade union activities, while not necessarily prejudicing workers in their employment, may discourage them from joining organizations of their own choosing, thereby violating their right to organize [see **Digest**, op. cit., para. 786], and that the freedom to join a trade union is incompatible with any kind of pressure to make workers give up their union membership, the Committee urges the Government to conduct immediately an inquiry into the alleged pressure on SGTBCVGB members to resign their membership and, where appropriate, that the outcome of the inquiry be taken into account in the decision by the labour authorities regarding the registration of that organization. The Committee requests the Government to keep it informed without delay in this regard.*
- 380.** *As regards the allegations of the dismissal of five founding members of the SGTBCVGB and the transfer of three other founding members, the Committee recalls that where cases of alleged anti-union discrimination are involved, the competent authorities dealing with labour issues should begin an inquiry immediately and take suitable measures to remedy any effects of anti-union discrimination brought to their attention [see **Digest**, op. cit., para. 835]. The Committee therefore urges the Government to initiate immediately an inquiry into the aforementioned dismissals and transfers and, if they are found to be of an anti-union nature, to proceed without delay to the reinstatement of the corresponding workers in their positions. The Committee requests the Government to keep it informed without delay in this regard.*

The Committee's recommendations

- 381.** *In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) The Committee regrets to note that, despite several requests and an urgent appeal, the Government has failed to provide any information on the allegations and requests it to be more cooperative in the future.*
 - (b) The Committee urges the Government to examine without delay the appeal for annulment lodged by the candidate trade union with regard to the refusal of its registration and to ensure that its decision fully complies with the principles of freedom of association with regard to the establishment and registration of trade unions mentioned in the conclusions. The Committee requests the Government to keep it informed without delay in this regard.*
 - (c) The Committee urges the Government to conduct immediately an inquiry into the alleged pressure on SGTBCVGB members to resign their membership and, where appropriate, that the outcome of the inquiry be taken into account in the decision by the labour authorities regarding the registration of that organization. The Committee requests the Government to keep it informed without delay in this regard.*

- (d) *The Committee urges the Government to institute immediately an inquiry into the dismissals and transfers of founding union members and, if they are found to be of an anti-union nature, to proceed without delay to the reinstatement of the corresponding workers in their positions. The Committee requests the Government to keep it informed without delay in this regard.*

CASE No. 3014

DEFINITIVE REPORT

Complaint against the Government of Montenegro

presented by

- **the Confederation of Trade Unions of Montenegro (CTUM) and**
- **the Trade Union of Financial Organizations**

Allegations: The complainant organizations denounce the dismissal by the Central Bank of Montenegro (CBM) of the trade union leader Mr Mileta Cmiljanic during his mandate as the President of the Single Trade Union of Workers of the Payment Unit of the Bank

- 382.** The complaint is contained in a communication from the Confederation of Trade Unions of Montenegro (CTUM) and the Trade Union of Financial Organizations, dated 22 February 2013.
- 383.** The Government forwarded its response to the allegations in communications dated 28 May 2013 and 28 March 2014.
- 384.** Montenegro has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainants' allegations

- 385.** In a communication dated 22 February 2013, the complainant organizations, the CTUM and the Trade Union of Financial Organizations of Montenegro, one of its constituent members, state that they submit this complaint to ensure protection against dismissal from work due to trade union activity. Mr Mileta Cmiljanic was discharged as redundant through Decision No. 09-2632/1 of the Central Bank of Montenegro (CBM), dated 3 September 2004, although, as the President/shop steward of the trade union organization in the CBM, he was protected according to the imperative provision of section 140 of the Labour Act of the Republic of Montenegro.
- 386.** The complainants indicate that the fact that Mileta Cmiljanic received the aforementioned decision on 13 September 2004 is undisputable. Mileta Cmiljanic used all legal remedies before the national courts in Montenegro, even the extraordinary legal remedy (request for review), as well as the constitutional appeal submitted to the Constitutional Court of Montenegro.

- 387.** The complainant organizations specify that the request for review filed by Mileta Cmiljanic with the Supreme Court of Montenegro challenged the Decision of the Higher Court of Podgorica No. 2065/08, dated 4 June 2008, by which this appeal had been rejected as ungrounded thus confirming the Decision of the Basic Court of Podgorica No. 622/07 of 2 June 2008. The Supreme Court of Montenegro rejected the request for review as inadmissible by Decision No. 1276/09, dated 21 October 2009. The complainants add that the decision of the Higher Court of Podgorica had rejected Mr Cmiljanic's appeal as ungrounded stating that in the proceedings before the Court of First Instance it had, allegedly, been established beyond any doubt that the complainant had received the Decision on redundancy No. 09-2632/1, of 3 September 2004, on 13 September 2004, and that the first lawsuit had been lodged belatedly on 1 October 2004, that is after the 15-day deadline granted by the law to the complainant to seek protection of violated rights.
- 388.** The complainants stress that Mileta Cmiljanic submitted the request for review to the Supreme Court of Montenegro in a timely manner, in order to challenge the decision of the Higher Court, underscoring that, in this case, the provision of the substantive law had not been applied, thus neglecting the fact that legal norms should apply to situations in real life. Furthermore, in the request for review, Mileta Cmiljanic stated that the Higher Court had failed to take into consideration that section 120 of the Labour Act applied to this request for protection of the rights of the workers, as the trade union shop steward sought protection directly from the employer. According to the complainant organizations, the Higher Court, as well as the Basic Court, violated fundamental human rights principles by failing to apply the provisions of section 120 of the Labour Act to this specific case. The national courts have failed to take into consideration the fact that the decision on redundancy becomes final only once the decision has been adopted based on the appeal submitted by Mileta Cmiljanic, and this is clearly stated in Decision No. 09-2632/47 of 20 September 2004 issued by the employer, which was received by Mileta Cmiljanic on 21 September 2004. The complainants believe that it is from that moment that the legal right to seek protection before the relevant court starts to run. Besides, with their rulings, these courts have applied in an inappropriate manner the provisions of substantive law, neglecting the fact that section 121 of the Labour Act states that if the employee is not satisfied with the decision based on section 120, she/he has the right to file a case with the responsible court, to seek protection of her/his rights, within 15 days from the date when the decision of the employer becomes effective.
- 389.** The complainant organizations indicate that, in both the request for review and the constitutional appeal, it was emphasized that Mileta Cmiljanic, trade union shop steward, could not be proclaimed redundant during his trade union mandate, based on section 140 of the Labour Act. The Supreme Court rejected the request for review as impermissible, thus neglecting the fact that this case involves violation of human rights. In view of the above, the complainants consider that the national courts have violated the provisions of articles 19, 20 and 62 of the Constitution of Montenegro, as they have failed to provide protection of rights guaranteed to trade union representatives. The national courts have violated the constitutionally granted rights: right to protection; right to legal remedy; right to work and right to trade union organizing; and freedom of trade union association. The national courts, including the Supreme Court, failed to recognize that the universal right to court protection cannot be limited or denied and that this protection is granted by article 19 of the Constitution of Montenegro.
- 390.** The complainants add that national courts have neglected Article 1 of the ILO's Workers' Representatives Convention, 1971 (No. 135), which states that all workers' representatives enjoy effective protection against any act prejudicial to them, including dismissal, as well as article 7 of the Universal Declaration of Human Rights, according to which all are equal before the law and are entitled, without any discrimination, to equal protection of the law.

The complainant organizations therefore believe that the authorities in Montenegro have violated the aforementioned international documents, and that Mileta Cmiljanic should be able to achieve full protection of his right to trade union association and trade union activism. With reference to other documents enclosed in support of the complaint, the complainants further indicate that, pursuant to Article 35 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Mileta Cmiljanic has exhausted all national legal remedies and has lodged a complaint with the European Court of Human Rights.

B. The Government's reply

- 391.** In its communication dated 28 May 2013 and 28 March 2014, the Government states that freedom of association is a constitutional and legal right. Article 53 of the Constitution of Montenegro guarantees freedom of political, trade union and other association and action, without the approval of the registration with the competent authority. According to section 154 of the Labour Act, employees and employers have the right to freely form their own organizations and to join them, without previous authorization and under the conditions specified in the statute and rules of the relevant organization.
- 392.** The Government further indicates that section 160 of the Labour Act provides that trade union representatives, while exercising trade union functions and six months upon their cessation, may not be held responsible in relation to trade union activities, declared redundant, reassigned to another position with the same or another employer or otherwise placed in a less favourable position, as long as he acts in accordance with the law and the collective agreement. In addition, it is stipulated that an employer may not place a trade union representative or employees' representative in a more or less favourable position due to membership in a trade union or trade union activities. As mentioned above, the employer cannot put trade union representatives in a less favourable position only because of their union membership or trade union activities. The Government stresses that, consequently, trade union representatives, or representatives of employees, are protected from dismissal only in relation to trade union membership or activities. In its view, if it happens that there is no longer a need for the work of the employees who act as trade union representatives, they face the same situation and share the same fate as other employees who have become redundant.
- 393.** In its communication dated 28 March 2014, the Government forwarded the response of the CBM, former employer of Mileta Cmiljanic. Accordingly, the following instruments were adopted under the Central Bank of Montenegro Act (*Official Gazette* of the Republic of Montenegro Nos 52/00, 53/00 and 41/01) in order to realize the functions of the CBM as stipulated in the Act: the Rulebook on the internal organization of the Central Bank (No. 0101-52/1-2003 of 14 August 2003); the decision on dissolution of organizational units for performing payment transactions in the CBM (*Official Gazette* of the Republic of Montenegro No. 67/03 of 15 December 2003); the Rulebook on systematization of workplaces in the CBM (No. 0101-213/3-8 of 4 March 2004 and No. 0101-213/5-5-2004 of 23 April 2004); and the Programme on restructuring changes in the CBM (No. 0101-213/10-10 of 13 August 2004).
- 394.** The Central Bank indicates that, after assigning employees according to the Rulebook on systematization of workplaces in the CBM, it was found, by Decision No. 09-2632/1 of 3 September 2004, that there was no longer need for the work of 59 employees who were thus made redundant; among them, under Decision No. 49, was also Mileta Cmiljanic, senior adviser. The rights of employees, conditions and deadlines for the termination of work and data on qualification and age structure were further regulated by the Programme on realization of the rights of employees made redundant in the CBM (No. 09-2632/2 of

3 September 2004), in accordance with sections 115 and 116 of the Labour Act (*Official Gazette* of the Republic of Montenegro No. 43/03).

- 395.** The Central Bank adds that, for the purposes of timely information about changes within the Central Bank, the Programme on realization of the rights of employees made redundant in the CBM was delivered, in line with section 115(3) of the Labour Act, to Mr Mileta Cmiljanic who was, at that time, President of the Single Trade Union of Workers of the Payment Unit of the Bank.
- 396.** Furthermore, the Central Bank states that, since it was unable to offer alternative employment to the redundant workers, neither within the Bank nor with another employer, the Central Bank provided funds for the payment of severance pay, according to the Programme on realization of the rights of employees whose work is no longer needed in the CBM and available financial resources. Consequently, Mr Cmiljanic received the amount of 12 average salaries (calculated on the basis of the national average salary in the month preceding the termination of his employment).
- 397.** In view of the above, and in accordance with the Programme on realization of the rights of the employees made redundant in the CBM, Mr Mileta Cmiljanic was made redundant and his employment was terminated on the day of the payment of his severance pay.

C. The Committee's conclusions

- 398.** *The Committee notes that, in the present case, the complainants denounce the dismissal by the CBM of the trade union leader Mr Mileta Cmiljanic during his mandate as the President of the Single Trade Union of Workers of the Payment Unit of the Bank.*
- 399.** *The Committee notes the complainants' allegations that: (i) Mileta Cmiljanic, then President of the trade union in the CBM, was discharged through the Bank's Decision on redundancy No. 09-2632/1, dated 3 September 2004, and received on 13 September 2004, contrary to the Labour Act provision concerning the protection of trade union representatives; (ii) Mr Cmiljanic exhausted all legal remedies before the national courts in Montenegro, even the request for review before the Supreme Court of Montenegro, as well as the constitutional appeal submitted to the Constitutional Court of Montenegro; (iii) the Supreme Court rejected the request for review challenging the Decision of the Higher Court of Podgorica No. 2065/08, dated 4 June 2009, as inadmissible by Decision No. 1276/09, dated 21 October 2009; (iv) the decision of the Higher Court of Podgorica had rejected Mr Cmiljanic's appeal as ungrounded stating that in the first instance proceedings the Basic Court had, allegedly, established on 2 June 2008 beyond any doubt that, since the complainants had received the decision on redundancy on 13 September 2004, the first lawsuit had been lodged belatedly on 1 October 2004 (that is after the 15-day deadline granted by law); (v) the courts have failed to apply the substantive law, thus neglecting the fact that this case involves violation of human rights including trade union rights; (vi) the courts have failed to apply the provisions of the Labour Act concerning protection of rights of the employees with the employer, according to which the decision on redundancy becomes final once the employer decides on the employee's challenge of that decision; (vii) this is clearly stated in Decision No. 09-2632/47 of 20 September 2004 issued by the Bank and received by Mileta Cmiljanic on 21 September 2004, and it is from that moment that the legal right to seek protection before the relevant court starts to run; and (viii) according to the Labour Act, if the employee is not satisfied with the employer's decision, she/he has the right to file a case with the responsible court, to seek protection of her/his rights, within 15 days from the date when the employer's decision becomes effective.*

- 400.** *The Committee notes the Government's view that, in accordance with section 160 of the Labour Act, trade union representatives are protected from dismissal only in relation to trade union membership or activities, and if it happens that there is no longer need for the work of the employees who act as trade union representatives, they face the same situation and share the same fate as other employees who become redundant. The Committee also notes the indications of the CBM, former employer of Mileta Cmiljanic, that: (i) for the purpose of fulfilling the functions stipulated in the Central Bank of Montenegro Act, the Bank adopted the Rulebook on the internal organization of the Central Bank of 14 August 2003, the decision on dissolution of organizational units for performing payment transactions in the CBM of 15 December 2003, the Rulebook on systematization of workplaces in the CBM of 4 March and 23 April 2004 and the Programme on restructuring changes in the Central Bank of 13 August 2004; (ii) after assigning employees according to the above Rulebook, it was found, by Decision No. 09-2632/1 of 3 September 2004, that there was no longer need for the work of 59 employees who were thus made redundant, including, under Decision No. 49, Mileta Cmiljanic, senior adviser; (iii) the rights of employees, conditions, deadlines for the termination of work and data on qualification and age structure were regulated by the Programme on realization of the rights of employees made redundant in the CBM (No. 09-2632/2 of 3 September 2004) in accordance with sections 115 and 116 of the Labour Act, which was delivered to union President Mr Cmiljanic for the purposes of timely information about changes within the Bank; (iv) unable to offer alternative employment to the redundant workers, the Central Bank provided funds for the payment of severance pay, according to the above programme and available financial resources; (v) Mr Cmiljanic received the amount of 12 national average salaries; and (vi) his employment was terminated on the day of the payment of his severance pay.*
- 401.** *The Committee understands that there were two sets of judicial proceedings initiated by Mr Cmiljanic, one requesting the revocation of the Central Bank Decision on redundancy (No. 09-2632/1), dated 3 September 2004, and subsequently one requesting the revocation of the Central Bank Decision on termination of employment (No. 09-2632/133), dated 6 December 2004 (enclosed with the complaint). Both complaints were based on section 160 of the Labour Code which provides that a trade union representative, during the performance of trade union activities and six months upon termination of trade union activities, shall not be held accountable with respect to performance of trade union activities, declared as redundant, assigned to another job position with the same or other employer with respect to performance of trade union activities, or placed in another manner, in a less favourable position, if he acts in accordance with the law and the collective agreement.*
- 402.** *As regards the first set of judicial proceedings, the Committee notes that the lawsuit filed on 1 October 2004 was dismissed on 2 June 2008 without examination of the merits as inadmissible for failure to observe the statutory period of 15 days for the lodging of the lawsuit against the decision of 13 September 2004, and that the appeal and request for review were subsequently rejected as inadmissible by the Higher Court of Podgorica and the Supreme Court. In this respect, the Committee observes that, according to the complainant, sections 119 and 120 of the Labour Act were applicable, which means that the 15-day statutory period did not start to run on 13 September 2004 but rather on 21 September 2004 (following Mr Cmiljanic's challenge of the decision and the confirmation of the decision by the Bank on 20 September 2004), and that the lawsuit filed on 1 October 2004 was thus lodged on time.*
- 403.** *As regards the second set of judicial proceedings, the Committee notes that the lawsuit was dismissed as unfounded by the Basic Court on 21 December 2009. The Committee observes in particular that, when examining the merits, the court found that the Central Bank had decided to dissolve all organizational units for performing payment transactions*

in the Central Bank, which implied the cessation of work of all the payment units, the termination of employment of all the employees of those units and the takeover of their activities by commercial banks.

- 404.** *While observing that the complaint itself was submitted over two years after the final court decision, the Committee nevertheless regrets the excessive period of time that has elapsed in both judicial proceedings until the issuance of the first instance decision (almost four years in the first proceeding, and five years in the second). The Committee generally recalls that cases concerning anti-union discrimination contrary to Convention No. 98 should be examined rapidly, so that the necessary remedies can be really effective; an excessive delay in processing cases of anti-union discrimination, and in particular a lengthy delay in concluding the proceedings concerning the reinstatement of the trade union leaders dismissed by the enterprise, constitute a denial of justice and therefore a denial of the trade union rights of the persons concerned [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 826]. The Committee expects that the Government will take all necessary measures to ensure respect of this principle in the future.*
- 405.** *Leaving aside the procedural question as to whether or not Mr Cmiljanic has ultimately failed to observe the statutory period, the Committee, turning to the allegation in the present case of dismissal due to trade union activity, observes that the restructuring programme of the CBM, which had been planned and announced well in advance, affected, owing to the suppression of an important function of the Bank (performance of payment transactions), the totality of the employees (59 in number) of the abolished payment units, irrespective of their trade union membership or activities. The information at its disposal does therefore not allow the Committee to conclude that the Central Bank's motive for the decision to dismiss Mr Cmiljanic was linked with his trade union office and thus contrary to freedom of association principles. In these circumstances, the Committee will not pursue its examination of these allegations.*

The Committee's recommendation

- 406.** *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. 3048

INTERIM REPORT

Complaint against the Government of Panama presented by the Confederation of Workers of the Republic of Panama (CTRP)

Allegations: refusal to register a transport workers' trade union, dismissal of hundreds of workers following that refusal, and the existence of a trade union controlled by the enterprise

- 407.** The complaint is contained in a communication from the Confederation of Workers of the Republic of Panama (CTRP) of September 2013.
- 408.** The Government sent its observations in a communication dated 10 March 2014.

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

A. The complainant's allegations

410. In a communication of September 2013, the CTRP alleges that the Minister of Labour and Employment Development rejected the registration of the Trade Union of Public and Private Transport Workers of Panama (SITTRACOSEP) and, on the day after that rejection, more than 400 workers of the enterprise Transporte Masivo de Panamá SA "Mi Bus", who supported the creation of the union, were dismissed.
411. The complainant also alleges that an enterprise trade union already exists, controlled by the enterprise. The complainant attaches the text of the Minister's ruling, dated 9 January 2013, in which she rejected the application for the registration of SITTRACOSEP. The complainant alleges that these acts violate ILO Conventions Nos 87 and 98.

B. The Government's reply

412. In a communication dated 10 March 2014, the Government declares that the refusal to grant SITTRACOSEP legal personality was not the result of a pre-established labour policy, but due to inconsistencies in the documentation provided in the application for legal personality, which are inadmissible in such an important act.
413. The Government explains that on 4 January 2014, the Department of Social Organizations of the General Directorate of Labour received an application for legal personality from the organization.
414. Having examined the documentation, the Department observed that the membership of the trade union that was being established included workers of the enterprise Transporte Masivo de Panamá SA, and certain self-employed workers, which made it impossible to continue processing the application, since the law prohibits the existence of two enterprise unions in the same enterprise, as set out in section 346 of the Labour Code. Nor could it be considered an industry union as the workers wishing to create the occupational organization do not work in two or more enterprises. Once the Department of Social Organizations realized that most of the founding members of the organization worked for that enterprise, and that the rest were independent transport operators, it observed that, although the stated purpose of the application was to register an industry union, section 342(3) of the Labour Code provides that "Trade unions are: ... 3. Industry unions, when they are established by persons with different occupations, functions or specialities, providing services in two or more enterprises of the same type".
415. The union merely indicated that its members work for the same enterprise and that the rest are self-employed.
416. However, if it is understood that the application for legal personality is for an enterprise trade union, the provisional executive committee of the applicant union is exclusively made up of workers of the enterprise Transporte Masivo de Panamá SA, which already has a trade union. It is also impossible to determine which workers are engaged in private transport and/or are self-employed. Accordingly, after the examination of the documentation, it was concluded that the aim of this new industry trade union was to carry out the functions of an enterprise union.

417. If it is considered to be an enterprise union, the Government reiterates that the Ministry cannot allow two trade unions of the same nature to coexist in the same enterprise, in accordance with section 346 of the Labour Code:

Note No. DM.217.2014

Section 346. An enterprise shall not have more than one enterprise trade union. Trade unions that find themselves in such a situation upon the entry into force of this Code will have one year in which to merge. If such a merger has not occurred by the end of that period, the Government shall proceed to the dissolution for that reason of the trade union with the lowest number of members.

418. Following its examination of the application, the intention could not be understood as the establishment of an industry trade union, as it was not possible to identify the two enterprises in which the workers were engaged, nor an enterprise union, while another enterprise union existed. On these grounds, the Ministry of Labour and Employment Development cannot proceed with registration as the application does not comply with the requirements of section 342 of the Labour Code for the determination of the type of union that is to be established.
419. The Government indicates that the provisions of the Labour Code respecting the establishment of trade unions, and in particular the prohibition in section 346 of more than one enterprise trade union in the same enterprise, has been the subject of “observations” from the ILO supervisory bodies which supervise the application of Convention No. 87, among others, including the Committee of Experts on the Application of Conventions and Recommendations (CEACR), the Conference Committee on the Application of Standards and the Committee on Freedom of Association (CFA).
420. Accordingly, the Committee on the Panama Tripartite Agreement, also known as the “Harmonization Committee” (created in the context of the social dialogue established under the Panama Tripartite Agreement, signed on 1 February 2012), has included this subject in the list of observations by the ILO supervisory bodies which will be examined, studied and consensus-based solutions agreed upon through social dialogue within the Committee, to align national labour legislation with the provisions of Convention No. 87. It should be emphasized that the Committee on the Panama Tripartite Agreement is the social dialogue committee which is responsible for developing draft legislation and finding compromises based on consensus to align national law with the provisions of Conventions Nos 87 and 98, in accordance with the comments of the supervisory bodies on the application of ILO Conventions. If consensus is achieved between the parties, its mandate may be extended to the harmonization of other ILO Conventions ratified by Panama for which there are problems of implementation in national law.
421. The Government indicates that, being aware of the importance of social dialogue as an instrument to find ways of resolving problems in the implementation of ILO Conventions Nos 87 and 98, it considered it appropriate to refer this case to the Tripartite Committee for the Rapid Handling of Complaints relating to Freedom of Association and Collective Bargaining (also known as the “Complaints Committee”) on 10 February 2014 so that it could be examined through tripartite dialogue in order to identify solutions and reach agreements based on consensus.

C. The Committee’s conclusions

422. *The Committee observes that in this case the complainant organization alleges the rejection of the registration of the legal personality of SITTRACOSEP on 9 January 2013, and the dismissal of more than 400 workers of the enterprise Mi Bus on the day after this administrative decision. The complainant also alleges that an enterprise trade union*

already exists, controlled by the enterprise. The Committee notes the Government's indication that the substantive legal grounds for refusing the registration of the applicant union related to the fact that it did not represent workers from two or more enterprises (an industry union) and/or that an enterprise union already existed, for which reason another could not be registered under sections 342 and 346 of the Labour Code.

- 423.** *The Committee notes that the Government recalls that this case involves provisions of the Labour Code relating to the establishment of trade unions to which objections have been raised by the Committee of Experts on the Application of Conventions and Recommendations and the Committee on Freedom of Association, and that these issues will be discussed in the (Tripartite) Harmonization Committee in order to find solutions based on consensus. The Committee notes that the Government, which expresses the wish to align its legislation with ILO Conventions Nos 87 and 98, has also submitted this case to the Committee for the Rapid Handling of Complaints Relating to Freedom of Association and Collective Bargaining with a view to its examination through tripartite dialogue in order to identify solutions and reach agreements based on consensus.*
- 424.** *The Committee recalls that all workers, without distinction whatsoever, including without discrimination in regard to occupation, should have the right to establish and join organizations of their own choosing, and that the free exercise of the right to establish and join unions implies the free determination of the structure and composition of unions [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, paras 216 and 333]. The Committee firmly expects the Committee for the Rapid Handling of Complaints to reach solutions which will satisfy the applicant trade union, SITTRACOSEP, and which will resolve the legislative problems related to the establishment of trade union organizations mentioned by the Government in its reply, and which make it impossible to legally establish an enterprise trade union when another already exists, and to establish an industry union which represents both the workers of an enterprise and self-employed workers.*
- 425.** *The Committee regrets that the Government has not sent any observations regarding the allegations concerning the dismissal of more than 400 workers on the day following the refusal to register the applicant trade union, or the allegation that an enterprise union already exists, which is controlled by the enterprise. The Committee urges the Government to conduct an inquiry without delay and to obtain information about the enterprise through the relevant employers' organization, and that if the allegations are proven, to take measures to resolve the situation and to keep it informed in this regard.*

The Committee's recommendations

- 426.** *In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) *The Committee recalls that all workers, without distinction whatsoever, including without discrimination in regard to occupation, should have the right to establish and join organizations of their own choosing, and that the free exercise of the right to establish and join unions implies the free determination of the structure and composition of unions. The Committee firmly expects the Complaints Committee to reach solutions which will satisfy the applicant trade union, SITTRACOSEP, and which will resolve the legislative problems related to the creation of trade union organizations mentioned by the Government in its reply, which make it impossible to legally establish an enterprise union when another already exists, and to establish an industry union which represents both the workers of an enterprise and self-employed workers.*

- (b) *The Committee regrets that the Government has not sent any observations regarding the allegation concerning the dismissal of more than 400 workers on the day following the refusal of the registration of the applicant trade union, or in answer to the allegation that an enterprise union already exists that is controlled by the enterprise. The Committee urges the Government to conduct an inquiry without delay and to obtain information about the enterprise through the relevant employers' organization, and that if the allegations are proven, to take measures to resolve this situation and to keep it informed in this regard.*

CASE NO. 2949

INTERIM REPORT

Complaints 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 denial through police and military forces of its rights to protest against the deregistration and to celebrate May Day

- 427.** The Committee last examined this case at its October 2013 meeting where it presented an interim report to the Governing Body [see 370th Report, approved by the Governing Body at its 319th Session (October 2013), paras 704–720].
- 428.** The complainant sent additional observations in a communication dated 16 June 2014. The International Trade Union Confederation (ITUC) sent information in relation to the complaint in communications dated 28 October 2013 and 10 October 2014.
- 429.** In the absence of a reply from the Government, the Committee has been obliged to postpone the examination of this case on two occasions. At its meeting in June 2014 [see 372nd Report, para. 6], the Committee made an urgent appeal to the Government, stating 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 information or observations requested had not been received in due time. To date, the Government has not sent any information.
- 430.** 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

- 431.** In its previous examination of the case at its October 2013 meeting, the Committee made the following recommendations [see 370th Report, para. 720]:

- (a) The Committee again urges the Government to ensure that the views of the social partners are duly taken into account in the finalization of the amendments to the IRA and that they are adopted without delay so as to ensure that federations of workers and employers may be registered and function in the country. The Committee requests the Government to indicate the specific steps taken in this regard and to provide a copy of the amendment as soon as it has been adopted.
- (b) Meanwhile, the Committee firmly expects that the TUCOSWA will be able to effectively exercise all its trade union rights without interference or reprisal against its leaders, in accordance with the principles of freedom of association, including the right to engage in protest action and peaceful demonstrations in defence of their members' occupational interests.
- (c) The Committee notes that the Conference Committee on the Application of Standards called on the Government to accept a high-level ILO fact-finding mission to assess any progress made in relation to the implementation of Convention No. 87, including as regards the amendment of the IRA to allow the registration of federations and the registration of the TUCOSWA. The Committee strongly urges the Government to accept this mission without delay, so that it will be in a position to observe tangible progress on the matters raised in the complaint.

B. Additional information from the complainants

- 432.** In a communication dated 16 June 2014, the Trade Union Congress of Swaziland (TUCOSWA) indicates that to avoid a special paragraph in the conclusions of the Committee on the Application of Standards (CAS) during the International Labour Conference (ILC) in 2013, the Government committed in an agreement signed at the International Labour Office on 11 June to take several specific time-bound steps to address long-standing concerns. However, none of these commitments have been implemented. Furthermore, the complainant refers to the conclusions reached by the ILO high-level fact-finding mission which visited Swaziland in January 2014 where the latter found that “no concrete, tangible progress has been made on the various matters concerning the application of Convention No. 87, some of which have been pending for over a decade. The complainant alleges that the Government continues to repress union activities, to arrest and imprison trade unionists and to deny registration of trade unions by invoking laws which it had committed to reform years ago.
- 433.** The complainant recalls that just prior to the 2013 ILC, the Government issued a general notice in May stipulating that pending the amendment of the Industrial Relation Act (2000) (IRA) that would allow for the registration of TUCOSWA the social partners would “work together in order to promote harmonious labour relations and ensure a conducive environment for investment and socio-economic development of the country through decent work and recognition of fundamental principles and rights at work”. As a result, tripartite structures of the country were reinitiated. However, outside of the tripartite meetings TUCOSWA’s activities and programmes were continuously disrupted on the basis that the federation was not registered. Therefore, TUCOSWA requested the Government to take a clear position on its status and its rights on 23 January 2014 during a Labour Advisory Board meeting. When the Government failed to respond by March 2014, TUCOSWA withdrew its participation from tripartite structures pending its registration.
- 434.** The complainant also refers to the efforts by the unions in the textile and apparel, mining, quarrying and related industries, general manufacturing, metal workers and engineering and retail, hospitality and catering sectors to merge in September 2013 to form the Amalgamated Trade Union of Swaziland (ATUSWA). Before launching its congress on 6 September 2013, the union had filed a request for registration and its constitution with the Commissioner of Labour. The legal advisor of the Ministry met with the union leadership and asked for changes in the constitution. Even after complying with the requests, ATUSWA was not registered. On 2 January 2014, the union was told that it could

only be registered, if its constitution would be amended. The union duly responded and addressed those issues and clarified the basis upon which the application was founded. In a meeting on 4 April 2014 with the Commissioner of Labour new issues were raised, including the name of the organization. It was demanded that the word “amalgamated” should be taken out, even though another union, the Swaziland Amalgamated Trade Union, had previously been registered without any concerns in this regard. This is one of the delaying tactics that have prevented the registration of ATUSWA for over nine months without any legitimate reason.

435. In relation to the registration of the TUCOSWA, the complainant states that it has challenged the constitutionality of the Government’s refusal to register the federation at the High Court of Swaziland on 11 February 2014. A hearing on the matter was scheduled for 19 March 2014, but unfortunately the Government arrested the union’s lawyer, Mr Thulani Maseko, two days before the hearing, forcing the union to seek a postponement of the hearing date. He was charged with contempt of court after writing an article in *The Nation* magazine in which he criticised the lack of judicial independence in Swaziland, and remains in jail today. Initially, he was denied a public hearing. Justice Mumcy, who was then presiding over his case, ordered his release. He was rearrested two days later on the order of Chief Justice Ramodibedi, who then subsequently also threatened to arrest Justice Mumcy. According to the complainant, Mr Maseko’s arrest and rearrest over criticism of the lack of judicial independence ironically only serves to confirm his thesis.

436. The complainant adds that Mr Maseko’s arrest for protected union activity was preceded by other trade unionist. In December 2013, five leaders of the Swaziland Transport and Allied Workers Union (STAWU), including its General Secretary Mr Simanga Shongwe, were served with notice of intended prosecution under the Road Traffic Act of 2007 for holding a union gathering in the airport car park. These charges still hang over them today. What is quite remarkable about these charges is that the Road Traffic Act applies to offences on public highways and the airport car park definitely does not fall into that category. Additionally, Mr Basil Thwala, a paralegal officer at STAWU, was arrested following a major bus transport demonstration organized by the trade union in July 2012. He was charged and convicted for offences under both the Road Traffic Act and the Public Order Act for being in the front of the bus station protest. He was arrested and taken to a police station. He had to spend several nights sleeping on the cold floor. While Mr Thwala was initially granted bail, it was later revoked on the basis that he had breached his bail conditions by travelling to a place outside the restriction stipulated in the bail terms although no witnesses appeared in court to verify this allegation. The bail revocation was pronounced by the High Court of Swaziland when he was not even present in the court. He was eventually sentenced to two years imprisonment. While he lodged an appeal two months after his conviction, there was never any indication that it was under consideration. It took the courts less than a month to convict him but his appeal, filed on a certificate of urgency, was never dealt with. Finally, he was released after serving his full sentence.

437. The complainant denounces the fact that police and security forces continue to disrupt union activities. As an example, armed police officers stopped the TUCOSWA from participating in a memorial service for Nelson Mandela in November 2013. The month before, TUCOSWA organized a march to draw attention to insufficient measures against the high prevalence of HIV/AIDS in the country and armed police also stopped that march arguing TUCOSWA could not march as it was a deregistered organization. The police surrounded the venue where they were assembled and did not allow them to leave.

438. Police also interfered in a peaceful protest march organized by TUCOSWA in April 2014 and attended by broader civil society groups against the King’s Proclamation of 1973 and its impact on freedom of association and civil liberties. The TUCOSWA requested permission for the march but the Manzini Municipal Council denied the federation to

proceed stating that “April 12 is one most contentious date on which peace and stability in the country is threatened.” The march was intended to proceed from Jubilee Park to St Theresa Hall in Manzini on 12 April 2014. Mr Vincent V. Ncongwane, TUCOSWA General Secretary, and Mr Siphon Kunene, TUCOSWA Deputy President, were arrested at a security roadblock mounted at Mhlaleni in Manzini. They were detained at the Manzini police headquarters and were denied access to legal representation. Mr Ncongwane was transferred to the Mafutseni Police Station 20 kilometres from Manzini.

- 439.** The police further arrested other groups of workers in all the various security check points mounted on the roadblocks leading to Manzini, detained and later dropped them in remote places with some having to travel long distances on foot at night to get to the nearest public road. Among them were the President of the National Public Services and Allied Workers Union, Mr Quinton Dlamini and the General Secretary of the Private and Public, Transport Workers Union, Mr Thandukwazi Bheki Dlodlu.
- 440.** Finally, the complainant states that existing legislation severely limits the right to freedom of association and pending legislation threatens to further imperil those rights. The IRA, which has been interpreted to provide the legal basis to refuse union registration and impose civil and criminal liability on trade unionists (section 40(13) and section 97(1)), continues to be in force.
- 441.** In July 2013, the Government tabled before Parliament the Industrial Relations (Amendment) Bill No. 14 (2013) seeking to amend the IRA which has, however, excluded all the contributions made by the social partners in a properly constituted Labour Advisory Board. In any event, Parliament did not take the Bill under consideration before it was dissolved in September 2013. It was again tabled in Parliament in February 2014 without the contributions of the social partners and withdrawn on 14 April 2014 without any explanation. While it is true that the Bill establishes a procedure for the registration of federations previously pointed out as a lacuna in the IRA by the Industrial Relations Court, it introduces serious shortcomings when it comes to compliance with rights guaranteed under Convention No. 87. Section 32 provides that a federation seeking registration must complete a prescribed form and submit a copy of its constitution to the Commissioner of Labour who can also require the submission of any other information. The prescribed form that must be “properly completed” on submission of the registration application is not annexed in a schedule to the amendments and it is not clear whether its requirements are of formal or substantive nature. Furthermore, the Bill is extending the discretionary powers of the Commissioner of Labour who may require further information in support of the application and “consult whoever” she/he wishes in this decision.
- 442.** There is no time frame within which the Commissioner of Labour is required to have acted upon receipt of application. Paragraphs (a) to (v) of the same section stipulate that the constitution of a federation must include “a provision for a general meeting open to all members at least once a year and for the giving of at least twenty one days’ notice of that meeting to all members”. This would mean that TUCOSWA would have to conduct a meeting with its almost 50,000 members on an annual basis to decide on the policies of the federation which is not only not feasible but also violates their right to draw up their constitutions and rules in full freedom.
- 443.** In a communication dated 28 October 2013, the ITUC denounces the shutting down of a meeting organized by the TUCOSWA on September 2013. More specifically, the TUCOSWA, along with the ITUC and the Congress of South African Trade Unions (COSATU), had planned a Global Inquiry Panel to which they invited international speakers to listen to testimonies and present findings about fundamental rights at work and working conditions. This meeting was intended to an audience of 200 persons consisting of trade unionists, workers, pro-democracy civil society groups as well as journalists, and was

planned on 6 September 2013, on the occasion of Swaziland's 45th Independence Day. However, on 5 September 2013, a roadblock was put up by the police and the invited speakers were hindered from pursuing their route and instead taken to the police station for interrogation, and later released. The following day, the police surrounded the building where the meeting was scheduled to take place informing the gathering that it was cancelled.

- 444.** According to the ITUC, the TUCOSWA reported having notified both the Commissioner of Labour and the police of the Global Inquiry Panel on 28 August 2013, but that while the Labour Commissioner merely requested the postponement of the meeting to allow for government participation, the police undertook an investigation into the venue of where the Global Inquiry Panel was intended to take place and warned management that it would lead to a riot. However, no cease and desist order was issued from either side at any point.
- 445.** Upon the arrival of the three international panellists to Manzini on 5 September, they were stopped at a roadblock and taken to Manzini Regional Police Station where the police asked them about their intentions. They were all released on the same day. The following day, the Regional Police Commissioner of Manzini arrived, accompanied by a large group of senior police officers, at the hotel where the participants to the planned event were residing and surrounded the hotel. The police demanded to talk to the panellists and the ITUC representative but refused to address the TUCOSWA Secretary-General, verbally ordering the meeting to end. The police could not produce any written court order or other written justification to stop the planned meeting. The reason given by the police was that such events could not take place during Independence Day during which "Swazis are to celebrate", and rejected the proposal put forward by the TUCOSWA to postpone the event to the following day. Other proposals made by the TUCOSWA to address public order or security concerns were likewise rejected, such as the organization of a smaller meeting with only the panellists and the workers. According to the ITUC, the police simply responded "Let us not enter into a dialogue, this meeting will not take place under any circumstances."
- 446.** Finally, the TUCOSWA leadership and two panellists explained the situation to the workers waiting in front of the hotel who then proceeded to a peaceful dispersal. That same day, TUCOSWA Secretary-General and two other officials were prevented from attending a press conference about the event in Johannesburg as they were stopped by the police at two roadblocks and not allowed to leave the country.
- 447.** In a communication dated 10 October 2014, the ITUC denounces the fact that the Minister of Labour and Social Security held a press conference on 8 October 2014 during which she announced a Cabinet resolution deciding that pending legal reforms all federations should stop operating immediately. According to the ITUC; this decision will affect not only TUCOSWA and ATUSWA, but also the Federation of the Swaziland Employers and Chamber of Commerce and the Federation of Swazi Business Community. The ITUC recalls that the Committee on Freedom of Association has called upon the Government to allow TUCOSWA to effectively exercise all its trade union rights without interference or reprisal against its leaders, in accordance with the principles of freedom of association, including the right to engage in protest action and peaceful demonstrations in defence of their members' occupational interests. The ITUC regrets that the Government has completely ignored these recommendations as well as the decision of the Industrial Court which recognized that TUCOSWA could operate in terms of its own constitution. Instead, the Government has now suspended workers' right to freely associate and to carry out trade union activities completely.

C. The Committee's conclusions

448. *The Committee regrets that, despite the time that has elapsed since the presentation of the complaint, the Government has not replied to the complainant's allegations even though it has been requested several times to do so, including through an urgent appeal.*
449. *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.*
450. *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].*
451. *However, the Committee observes that the Government has provided some updated information in relation to the complaint in the framework of the ILO high-level fact-finding mission to Swaziland on the application of Convention No. 87 which was carried out in January 2014, as well as in a written communication submitted to the Committee on the Application of Standards of the International Labour Conference in June 2014.*
452. *The Committee recalls that this case concerns allegations of the revocation of the registration of a federation by the Government and the denial through police and military forces of its right to protest against the revocation and to fully exercise its trade union rights.*
453. *With regard to the amendment of the Industrial Relations Act to allow for registration of federations, the Committee takes note of the complainant's indication that, in July 2013, the Government tabled before Parliament the Industrial Relations (Amendment) Bill (2013) seeking to amend the IRA which has, however, allegedly excluded all the contributions made by the social partners in a properly constituted Labour Advisory Board. Parliament did not take the Bill under consideration before it was dissolved in September 2013 and the Bill was again tabled in Parliament in February 2014 (still without the contributions of the social partners) and withdrawn on 14 April 2014 without any explanation. While the complainant considers that the Bill establishes a procedure for the registration of federation previously pointed out as a lacuna in the IRA by the Industrial Relations Court, it also introduces serious shortcomings when it comes to compliance with rights guaranteed under Convention No. 87.*
454. *The complainant specifically addresses section 32 of the Bill which provides that a federation seeking registration must complete a prescribed form and submit a copy of its constitution to the Commissioner of Labour who can also require the submission of any other information. The prescribed form that must be "properly completed" on submission of the registration application is not annexed in a schedule to the amendments and it is not clear whether its requirements are of formal or substantive nature. Furthermore, the Bill extends the discretionary powers of the Commissioner of Labour who may require further information in support of the application and "consult whoever" she/he wishes in this decision. There is no time frame within which the Commissioner of Labour is required to have acted upon receipt of application. Paragraphs (a) to (v) of the same section stipulate that the constitution of a federation must include "a provision for a general meeting open to all members at least once a year and for the giving of at least twenty one days' notice of*

that meeting to all members”. According to the complainant, this would mean that the TUCOSWA would have to conduct a meeting with its almost 50,000 members on an annual basis to decide on the policies of the federation which is not only not feasible but also violates their right to draw up their constitutions and rules in full freedom.

455. The Committee takes note of the written communication provided by the Government to the Committee on the Application of Standards (CAS) during the 103rd Session of the ILC (May–June 2014) whereby it specified that Parliament was dissolved on 31 July 2013 and Cabinet was fully constituted on 4 November 2013. Parliament officially opened again on 7 February 2014. This situation reduced parliamentary activity by seven months and left the Government with five months to comply with its undertakings before the ILC. It rendered it difficult for the Government to take the necessary legislative steps as there was no legislative authority to ensure that the amendments to the IRA were passed into law. The Industrial Relations (Amendment) Bill No. 14 of 2013, for instance, was one of over 27 bills, which were before Parliament when it dissolved. However, the Government has shown its commitment and prioritized the Bill and it was the first Bill to be tabled after the opening of Parliament (Industrial Relations (Amendment) Bill No. 1 of 2014).
456. The Committee also notes from the Government’s statement to the CAS that the Bill had been withdrawn on 10 April 2014 at the request of a parliamentary committee due to concerns expressed by another country as well as by the Swazi social partners as to its insufficient content. At that time, the Labour Advisory Board was no longer operational since the workers unions had withdrawn from all statutory bodies, citing dissatisfaction with disruption from the security forces of the TUCOSWA activities. However, the Government representative added that due to the importance and urgency of the Bill, negotiations with the social partners were currently under way. As a result of the ongoing consultations, consensus had been reached on 19 May 2014 regarding part of the new Bill, but employers and workers still did not agree on one amendment; broader consultation was required to resolve the matter.
457. The Committee recalls that, following the deregistration of the TUCOSWA, the Government also deregistered two employer federations, namely the Federation of Swaziland Employers and Chambers of Commerce (FSE–CC) and the Federation of Swaziland Business Community (FESBC), and was since called upon by the ILO supervisory bodies to facilitate their registration along with TUCOSWA. The Committee notes that the ILO high-level fact-finding mission had underlined to the Government that, although the IRA (Amendment) Bill was yet to be passed, the urgent registration and recognition of the TUCOSWA, the FSE–CC and the FESBC were critical to ensuring that adequate progress had actually been achieved. The Committee also notes the views expressed by the social partners to the ILO mission that once federations are registered, the relations between the social partners would be enhanced and the remaining issues could be dealt with more effectively.
458. The Committee is bound to express again its deep concern that the matter concerning the TUCOSWA’s registration is yet to be resolved more than two years since its registration was nullified and despite the Committee’s and other ILO supervisory bodies firm recommendations to the Government to amend without delay the IRA so as to ensure that federations of workers and employers may be registered and function in the country. The Committee firmly recalls 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 represent their members adequately. If the conditions for the granting of registration are tantamount to obtaining previous authorization from the public authorities for the establishment or functioning of a trade union, this would undeniably constitute an infringement of Convention No. 87 [see **Digest of decisions and principles of the freedom**

of Association committee, fifth (revised) edition, paras 294–295]. While noting from Government statement No. 12/2014 issued in October 2014 that an amendment bill, drafted in consultation with the workers' representatives and employers, has been prepared for tabling in Parliament, the Committee expects the immediate adoption of amendments to the IRA by Parliament in a manner so as to ensure fully the freedom of association rights of the TUCOSWA and of all workers' and employers' federations that have historically represented their members' interests in the country. The Committee urges the Government to take steps immediately to preserve the workers' and employers' federations and allow them to operate while awaiting the amendment of the IRA by the Parliament so as to ensure the continuity of these organizations. The Committee urges the Government to keep it informed of the progress made in this regard.

- 459.** *Furthermore, the Committee notes the complainant's indication that it challenged the constitutionality of the Government's refusal to register the federation at the High Court of Swaziland on 11 February 2014 and that a hearing on the matter was scheduled for 19 March 2014. But the Government arrested the union's lawyer two days before the hearing, forcing the union to seek a postponement of the hearing date. Mr Thulani Maseko, the lawyer handling the constitutional challenge, is still in jail. Mr Maseko was sentenced to two years in prison by the High Court of Swaziland in relation to articles in the press whereby he questioned the impartiality and independence of the judiciary. Allegedly, the judge who first ordered his release was then threatened with arrest. The Committee wishes to recall, as a general principle, that the right to express opinions through the press or otherwise is an essential aspect of trade union rights. Moreover, the freedom of expression which should be enjoyed by trade unions and their leaders should also be guaranteed when they wish to criticize the Government's economic and social policy [see **Digest**, op. cit., paras 155 and 157]. The Committee also recalls that the systematic apprehension and detention of trade unionists, leaders of employers' organizations or other individuals linked to actions relating to their legitimate demands constitute an extremely serious restriction to freedom of association. The Committee is deeply concerned by the conviction of Mr Maseko who was handling the union's constitutional challenge before the High Court of Swaziland and the especially long prison sentence that he has been handed down merely for a statement in the press. The Committee urges the Government to take steps immediately for the unconditional release of Mr Maseko and to provide compensation for the damages suffered.*
- 460.** *Furthermore, the Committee is deeply concerned by the complainant's allegations that Justice Mumcy, who first ordered the release of Mr Maseko, was also threatened with arrest. In this regard, the Committee recalls that during the 102nd Session of the ILC (June 2013) the CAS had called the Government's attention to the principles concerning the intrinsic link between freedom of association and democracy and the importance of an independent judiciary in order to guarantee full respect for these fundamental rights. Therefore, the Committee urges the Government to take all steps to ensure full respect for these fundamental principles and to ensure that Justice Mumcy is not subjected to threats for discharging her duties in accordance with the mandate bestowed upon her.*
- 461.** *Finally, the Committee requests the Government and the complainant to keep it informed of the decision of the High Court of Swaziland on the constitutional challenge concerning the Government's refusal to register the TUCOSWA.*
- 462.** *With regard to its previous recommendation that the TUCOSWA should be able to effectively exercise all its trade union rights without interference or reprisal against its leaders, the Committee notes with concern that the complainants denounce the fact that police and security forces continue to disrupt the union activities. According to the complainant, it requested the Government to take a clear position on its status and its rights in January 2014 during a Labour Advisory Board meeting and, considering that the*

Government had failed to respond, TUCOSWA withdrew its participation from tripartite structures pending its registration since March 2014. The Committee also notes from the ILO high-level fact-finding mission report that, when asked whether the Government's General Notice of May 2013 did not provide the federation (albeit not officially registered) with all rights and benefits, as purported to be the case by the Government, the TUCOSWA representatives replied to the mission that the Government had told them that they were a "non-entity" and further referred to a letter by the Attorney-General of September 2013 which stated explicitly that the General Notice did not confer TUCOSWA any rights that would have been afforded by the IRA. According to the complainant, in reality, the General Notice served only the Government's purposes to have TUCOSWA representatives in the tripartite forums, feigning a semblance of normalcy in tripartite relations, while denying all other rights.

- 463.** *In this respect, the Committee takes note, with deep concern, of the allegations relating to the shutting down by security forces of a meeting planned on September 2013 by the TUCOSWA, along with the ITUC and the COSATU. More specifically, the TUCOSWA had planned a Global Inquiry Panel to which it invited international speakers to listen to testimonies and present findings about fundamental rights at work and working conditions. The meeting, planned on 6 September 2013 on the occasion of Swaziland's 45th Independence Day, was intended to an audience of 200 persons consisting of trade unionists, workers, pro-democracy civil society groups as well as journalists. According to the allegations, on 5 September 2013, a roadblock was allegedly put up by the police and the invited speakers were hindered from pursuing their route and instead taken to the police station for interrogation, and later released. The following day, the police surrounded the building where the meeting was scheduled to take place informing the gathering that it was cancelled.*
- 464.** *The Committee notes, from the statement of the Government to the ILO high-level fact-finding mission that the invitation from the workers union to, amongst others, a former minister from a neighbouring country, caused a significant challenge to the country as it felt responsible for the security of the former high-level official. The Government added that the workers had not informed the Government authorities in a timely manner – stated to be one day notice only – and that accordingly, the Government did not feel in a position to ensure his safety and security. Moreover, the Government declared that the TUCOSWA deliberately chose to organize such an event on the country's Independence Day. While the nature of the event would have conflicted with the objectives of Independence Day since, it was reported by the police that, TUCOSWA was organising the event together with the "Swaziland United Democratic Front" and was planning the distribution of a pamphlet.*
- 465.** *The Committee notes that the TUCOSWA representatives provided the ILO high-level fact-finding mission with a letter from the Attorney-General dated 4 September 2013 indicating that he would seek an injunction against the holding of the event as the General Notice which provides guiding principles for engaging with the TUCOSWA cannot include the possibility for them to take protest action. The letter states that, if that were to be the understanding, then there would be no need for the IRA which governs the rights and responsibilities of registered federations. TUCOSWA is not a registered organization and therefore cannot avail itself of all those rights. The Industrial Court allegedly confirmed this understanding.*
- 466.** *The Committee expresses its deep concern over the report by the complainants of systematic interference by security forces against the TUCOSWA activities, notably on the argument that it is a deregistered organization enjoying therefore limited trade union rights. The Committee also notes with deep regret reports of similar situations faced by other federations seeking registration.*

- 467.** *Moreover, the Committee takes note with deep concern from Government press statement No. 12/2014 issued in October 2014 that, pending the amendment of the IRA by Parliament, all federations should stop operating immediately. All memberships of the federations in statutory boards were also terminated. The Committee observes that such governmental decision affects not only the TUCOSWA and other workers' federation seeking registration but also the FSE-CC and the FESBC. The Committee deeply regrets this action which would appear to be contrary to its previous recommendation that the Government allow TUCOSWA to effectively exercise all its trade union rights without interference or reprisal against its leaders, in accordance with the principles of freedom of association, including the right to engage in protest action and peaceful demonstrations in defence of their members' occupational interests.*
- 468.** *The Committee expresses its deep concern that such a situation cannot foster a meaningful tripartite social dialogue or a rapid solution to the outstanding issues in this case and expects that all the workers' and employers' federations working within the country will be fully assured their freedom of association rights until such time as they may register under the amended law. The Committee once again strongly urges the Government to take all necessary measures to ensure that the TUCOSWA may fully exercise its trade union rights, including the right to engage in protest action and peaceful demonstrations in defence of its members' occupational interests, and to prevent any interference or reprisal against its leaders, in accordance with the principles of freedom of association.*
- 469.** *In conclusion, the Committee expresses its deep concern over the absence of significant progress in the present case more than two years after the registration of the TUCOSWA was nullified, despite clear recommendations from the Committee and the ILO technical assistance provided. The Committee strongly urges the Government to take all necessary steps as a matter of urgency to resolve the case and to keep it informed in this regard.*

The Committee's recommendations

- 470.** *In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) *The Committee expects the immediate adoption of amendments to the IRA by Parliament in a manner so as to ensure fully the freedom of association rights of the TUCOSWA and of all workers' and employers' federations that have historically represented their members' interests in the country. The Committee urges the Government to take steps immediately to preserve the workers' and employers' federations and allow them to operate while awaiting the amendment of the IRA by the Parliament so as to ensure the continuity of these organizations. The Committee urges the Government to keep it informed of the progress made in this regard.*
- (b) *In the meantime, the Committee once again strongly urges the Government to take all necessary measures to ensure that the TUCOSWA is able to fully exercise its trade union rights, including the right to engage in protest action and peaceful demonstrations in defence of its members' occupational interests, and to prevent any interference or reprisal against its leaders, in accordance with the principles of freedom of association. The Committee expects that all workers' and employers' federations working within the country will be fully assured their freedom of association rights until such time as they may register under the amended law.*

- (c) *The Committee requests the Government and the complainant to keep it informed of the decision of the High Court of Swaziland on the constitutional challenge to the Government's refusal to register the federation.*
- (d) *The Committee urges the Government to take steps immediately for the unconditional release of Mr Maseko and to provide compensation for the damages suffered.*
- (e) *The Committee is deeply concerned by the complainant's allegations that Justice Mumcy, who ordered the release of Mr Maseko, was also threatened with arrest. 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 Justice Mumcy is not subjected to threats for discharging her duties in accordance with the mandate bestowed upon her.*
- (f) *The Committee expresses its deep concern over the absence of significant progress in the present case more than two years after the registration of the TUCOSWA was nullified, despite clear recommendations from the Committee and the ILO technical assistance provided. The Committee strongly urges the Government to take all necessary steps as a matter of urgency to resolve the case and to keep it informed in this regard.*
- (g) *The Committee draws the Governing Body's special attention to the extreme seriousness and urgent nature of this case.*

CASE No. 3021

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

**Complaint against the Government of Turkey
presented by
the Union of Social Insurance, Education, Office, Commerce,
Cooperative and Fine Arts Workers of Turkey (SOSYAL-IS)**

Allegations: The complainant organization alleges that the Act on Trade Unions and Collective Bargaining Agreements (Act No. 6356) is not in compliance with Convention No. 98, in particular as regards the required thresholds for collective bargaining

471. The complaint is contained in a communication from the Union of Social Insurance, Education, Office, Commerce, Cooperative and Fine Arts Workers of Turkey (SOSYAL-IS) dated 9 April 2013.

472. The Government forwarded its response to the allegations in a communication dated 9 July 2014.
473. Turkey has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

474. In a communication dated 9 April 2013, the complainant organization denounces the violation of the right to organize and the right to bargain collectively through the de-authorization of SOSYAL-IS by the Act on Trade Unions and Collective Bargaining Agreements (Act No. 6356). The Act was enacted in Parliament on 18 October 2012 and came into force on 7 November 2012, by publication of the law in the *Official Gazette*.
475. The complainant indicates that section 41(1) of Act No. 6356 stipulates a branch of activity threshold of 3 per cent for unions to be competent to engage in collective bargaining. Provisional article 6 of the Act envisages that, for the unions affiliated to a Confederation represented in the Economic and Social Council (TÜRK-IS, HAK-IS and Confederation of Progressive Trade Unions of Turkey (DISK)), the applied branch of activity threshold will be 1 per cent from January 2012 to July 2016, 2 per cent from July 2016 to July 2018 and 3 per cent afterwards. The statistics published by the Ministry of Labour and Social Security on 26 January 2013 came into force on the date of publication. Due to its affiliation to DISK which is represented at the Economic and Social Council, SOSYAL-IS is applied the 1 per cent branch of activity threshold. However, SOSYAL-IS was not able to meet this requirement and hence lost its authority (competence) to engage in collective bargaining.
476. The complainant considers that the “branch of activity threshold” does not comply with Conventions Nos 87 and 98 and severely restricts the right to organize and bargain collectively, as shown by the following detailed analysis of the branch of activity threshold stipulated by Act No. 6356.

1. Relevant provisions of Act No. 6356

- (a) The first two requirements to be entitled to bargain collectively

477. As in the previous law, Act No. 6356 allows establishment of unions on the basis of branch of activity and does not allow workers to organize in occupational unions or workplace unions. According to section 2(1)(ğ), the term “trade union” refers to the organizations having legal personality to carry out activities in a branch of activity established by the association of at least seven workers or employers in order to protect and promote their common economic and social rights and interests in labour relations.
478. In conjunction with the definition of “collective agreement” of Act No. 6356, this means that only trade unions established on the basis of branch of activity (which also meet the requirements envisaged by law) are entitled to bargain collectively. In other words, other workers’ organizations, federations, confederations and also trade unions established on the basis of occupation or workplace are not allowed to engage in collective bargaining. Section 2(1)(h) defines the term “collective labour agreement” as the agreement concluded between a workers’ trade union and an employers’ trade union, or an employer who is not a member of any union, in order to regulate the matters with regard to the conclusion, content and termination of the employment contracts.

479. To sum up the first two legal necessities that shall be met to be competent to engage in collective bargaining are: (i) to be a trade union; and (ii) to be established on the basis of branch of activity.

(b) The branch of activity threshold combined with the workplace/enterprise threshold

480. Although existence of a workers' union established on the basis of branch of activity is a prerequisite for the right to bargain collectively, Act No. 6356 stipulates double numerical criteria to be met to allow a union to engage in collective bargaining: the branch of activity threshold and the workplace/enterprise threshold. Section 41(1) of the Act provides that the workers' trade union representing at least 3 per cent of the workers engaged in a given branch of activity and more than half of the workers employed in the workplace and 40 per cent of the workers in the enterprise to be covered by the collective labour agreement shall be authorized to conclude a collective labour agreement covering the workplace or enterprise in question. Provisional article 6 of the Act sets out the transitional period mentioned above.

481. In other words, only the unions established on the basis of branch of activity meeting the branch of activity threshold are entitled to bargain collectively. All of these requirements shall be met together.

(c) Statistics

482. Section 41(5) of the Act sets the instrument by the means of which the branch of activity threshold will be applied. It provides that the statistics published by the Ministry of Labour and Social Security in January and July of each year shall be the instrument used in calculating the percentage of the workers engaged in a given branch of activity. These statistics shall cover the total number of workers in each branch of activity and the number of members in the trade unions in that branch. The statistics published shall be valid until the publication of new statistics for the purposes of collective agreements and other formalities. The competence of a workers' trade union that applied for or obtained a certificate of competence shall not be affected by the statistics subsequently published.

2. *Incomparability of the previous law and Act No. 6356 concerning the branch of activity threshold*

483. Reserving its basic argument that not the percentage/level of the branch of the activity threshold but its existence contradicts with Conventions Nos 87 and 98, the complainant stresses that by reducing the branch of activity threshold from 10 to 3, Act No. 6356 neither complies with ILO Conventions nor meets the recommendations of the ILO. It elaborates on the reasons why the previous law and the current Act are not comparable concerning the branch of activity threshold.

(a) The change in the system of statistics

484. The previous law, the Act on Collective Agreement, Strike and Lock-Out (No. 2822) was enacted in 1983 after the military coup. Although the earlier law which had been in force between 1963 and 1980 did not stipulate any branch of activity threshold, Act No. 2822 stipulated a 10 per cent branch of activity threshold to decrease the number of unions and to de facto liquidate the opposition unions, especially unions affiliated to DISK.

- 485.** Act No. 2822 only partially succeeded in its aim since a healthy system to supervise the number of union members was not established and millions of workers whose membership to a union was ended were still considered as union members in the statistics published by the Ministry of Labour and Social Security. Moreover, the database of the Ministry of Labour and Social Security which did not reflect reality was taken into consideration and therefore the statistical number of workers engaged in different branches of activity was considerably lower than the real number of workers. Hence, despite the fact that almost all unions were under the branch of activity threshold, as a result of the unrealistic statistics, many unions were considered to exceed the branch of activity threshold and able to engage in collective bargaining.
- 486.** According to the statistics published by the Ministry of Labour and Social Security in July 2009, 51 unions had met the 10 per cent branch of activity threshold in their respective branches of activity and the total number of union members was 3,232,679 out of 5,398,296 registered workers.
- 487.** However, Act No. 6356 has changed the system of compilation of statistics by section 41(7) as follows: “In determining the authorized trade union and arranging the statistics, the Ministry considers the information sent to it as regards the membership and withdrawal from membership and the notifications made to the Social Security Institution on the workers”.
- 488.** Since the notifications made to the Social Security Institution have been considered, the number of the union members has considerably declined in the January 2013 statistics. The Ministry of Labour and Social Security, using the database of the Social Security Institution, eliminated membership of millions of workers who were not currently employed in a workplace/enterprise in which the union that they were affiliated to was established. In other words, the Ministry of Labour and Social Security compared its database and the database of the Social Security Institution and if the union/member worker corresponded with an actual employment relationship in a workplace/enterprise in the relevant branch of activity, the Ministry of Labour and Social Security considered the membership valid and reflected the membership in the statistics; hence if there was no match, the membership was regarded as invalid and not reflected in the statistics.
- 489.** In addition, since the number of registered workers was higher according to the database of the Social Security Institution, the number of workers in total and in each branch of activity has also considerably increased.
- 490.** The change in general is illustrated in the following table:

	2009 July statistics (Act No. 2822)	2013 January statistics (Act No. 6356)
Number of union member workers	3 232 679	1 001 671
Number of registered workers	5 398 296	10 881 618
Percentage of unionization	59.88	9.21

- 491.** The complainant concludes that the numerical/percentile decline in the branch of activity threshold from ten to three is not a real but a nominal change which does not lessen the requirement of branch of activity threshold and even increases it in some cases. Therefore it is not possible to compare the previous law and new law concerning branch of activity and the Government’s thesis that the decline of branch of activity complies with ILO Conventions is not true.

(b) The combination of several branches of activities

492. The previous law set 28 branches of activities. Act No. 6356 combined some of them decreasing the number of branches of activities to 20 as follows:

- “Food industry” (No. 2) is composed of two different branches of activity which were “food industry” and “sugar”.
- “Textile, ready-made clothing and leather” (No. 5) is composed of two different branches of activity which were “textile” and “leather”.
- “Wood and paper” (No. 6) is composed of two different branches of activity which were “wood” and “paper”.
- “Printed and published materials and journalism” (No. 8) is composed of two different branches of activity which were “printing and publishing” and “journalism”.
- “Transport” (No. 15) is composed of three different branches of activity which were “land transportation”, “railway transportation” and “airway transportation”.
- “Shipbuilding and maritime transportation, warehouse and storage” (No. 16) is composed of three different branches of activities which were “shipbuilding”, “maritime transportation” and “warehouse and storage”.

493. As a result of the combination of several branches of activity, the number of workers employed in them considerably increased for the relevant unions and the decline of the branch of activity threshold from 10 to 3, rather than decreasing the minimum number of workers they have to organize, increased that minimum number of membership for many of them as illustrated in the following table:

	Number of workers 2009 July statistics	10 per cent threshold	Number of workers 2013 July statistics	3 per cent threshold
Food industry	371 098	37 109	520 913	15 628
Sugar industry	26 513	2 651	520 913	15 628
Textile	583 244	58 324	995 640	29 869
Leather	92 692	9 269	995 640	29 869
Wood	93 908	9 390	222 981	6 689
Paper	36 133	3 613	222 981	6 689
Printing and publishing	48 861	4 886	104 141	3 124
Journalism	15 391	1 539	104 141	3 124
Land transport	139 616	13 961	671 179	20 135
Railway transport	25 838	2 583	671 179	20 135
Airway transport	33 005	3 300	671 179	20 135
Shipbuilding	16 501	1 650	143 764	4 313
Maritime transport	49 509	4 950	143 764	4 313
Warehouse, storage	32 871	3 287	143 764	4 313

- (c) Decrease in the number of unions competent to sign collective agreements

494. According to the statistics published by the Ministry of Labour and Social Security in July 2009 (valid until January 2012), there were 94 unions of which 51 were competent to sign collective agreements. Regarding the 51 competent unions; 45 unions were over the 10 per cent threshold and six unions operating in the “Hunting, fishery, agriculture and forestry” were automatically competent since that branch of business was exempt of branch of activity threshold.

Branch of business	Unions	Conf.	Number of members		Number of workers		2009	2013-16	2016-18	2018
			2009	2013	2009	2013		1%	2%	3%
(1) Hunting, Fishery, Agric., F.	Orman-İş Sendikası	TÜRK-IS	55 102	724	96 682	123 171	Over	Under (-507)	Under (-1 738)	Under (-2 969)
(1) Hunting, Fishery, Agric., F.	Öz Tarım-İş Sendikası	HAK-IS	669	-	96 682	123 171	Over	n.a.	n.a.	n.a.
(1) Hunting, Fishery, Agric., F.	Tarım-İş Sendikası	TÜRK-IS	43 337	9 953	96 682	123 171	Over	-	Over	Over
(1) Hunting, Fishery, Agric., F.	Emek Tarım-İş S.	Indepen.	3 141	-	96 682	123 171	Over	n.a.	n.a.	n.a.
(1) Hunting, Fishery, Agric., F.	Birlik Orman-İş S.	HAK-IS	10 367	0	96 682	123 171	Over	Under (-1 231)	Under (-2 462)	Under (-3 693)
(1) Hunting, Fishery, Agric., F.	Öz Orman-İş Sendikası	HAK-IS	25 125	23 780	96 682	123 171	Over	Over	Over	Over
(2) Food industry	Öz Gıda-İş Sendikası	HAK-IS	74 677	20 971	371 098	520 913	Over	Over	Over	Over
(2) Food industry	Tek Gıda-İş Sendikası	TÜRK-IS	191 641	31 179	371 098	520 913	Over	Over	Over	Over
(2) Food industry	Şeker-İş Sendikası	TÜRK-IS	26 175	15 667	26 513	520 913	Over	Over	Over	Over
(3) Mining and quarry	GMİS	TÜRK-IS	35 053	11 418	137 861	186 698	Over	Over	Over	Over
(3) Mining and quarry	Türkiy e Maden-İş S.	TÜRK-IS	58 591	24 201	137 861	186 698	Over	Over	Over	Over
(4) Petroleum, Chemistry, Tyre, P.M.	Petrol-İş Sendikası	TÜRK-IS	89 442	27 392	245 877	466 031	Over	Over	Over	Over
(4) Petroleum, Chemistry, Tyre, P.M.	Lastik-İş Sendikası	DISK	42 926	7 168	245 877	466 031	Over	Over	Under (-2 152)	Under (-6 812)
(5) Textile, garment and leather	TEKSİF	TÜRK-IS	338 835	54 845	583 244	995 640	Over	Over	Over	Over
(5) Textile, garment and leather	Tekstil	DISK	76 237	10 203	583 244	995 640	Over	Over	Under (-9 709)	Under (-19 912)
(5) Textile, garment and leather	Öz İplik-İş Sendikası	HAK-IS	90 067	17 006	583 244	995 640	Over	Over	Under (-2 906)	Under (-12 862)
(5) Textile, garment and leather	Deri-İş Sendikası	TÜRK-IS	17 594	1 804	92 692	995 640	Over	Under (-8 152)	Under (-18 108)	Under (-28 064)
(6) Wood and paper	Ağaç-İş Sendikası	TÜRK-IS	13 697	2 446	93 908	222 981	Over	Over	Under (-2 012)	Under (-4 241)
(6) Wood and paper	Tümka-İş Sendikası	DISK	3 757	593	36 133	222 981	Over	Under (-1 636)	Under (-3 865)	Under (-6 094)
(6) Wood and paper	Selüloz İş Sendikası	TÜRK-IS	17 524	3 268	36 133	222 981	Over	Over	Under (-1 190)	Under (-3 488)
(6) Wood and paper	Öz Ağaç-İş Sendikası	HAK-IS	14 728	7 380	93 908	222 981	Over	Over	Over	Over
(7) Communication	Türkiy e Haber-İş S.	TÜRK-IS	28 826	16 203	46 253	68 394	Over	Over	Over	Over
(8) Press and journalism	Türkiy e Gazeteciler S.	TÜRK-IS	4 632	817	15 391	104 141	Over	Under (-224)	Under (-1 265)	Under (-2 306)

Branch of business	Unions	Conf.	Number of members		Number of workers		2009	2013-16	2016-18	2018
			2009	2013	2009	2013		1%	2%	3%
(8) Press and journalism	Basin-İş Sendikası	TÜRK-IS	5 525	1 791	48 861	104 141	Over	Over	Under (-291)	Under (-1 332)
(9) Banking and insurance	BASS	TÜRK-IS	18 368	10 446	157 515	265 736	Over	Over	Over	Over
(9) Banking and insurance	BANKSİS	Indepen.	30 153	11 584	157 515	265 736	Over	Over	Over	Over
(9) Banking and insurance	BASİSEN	TÜRK-IS	72 991	38 131	157 515	265 736	Over	Over	Over	Over
(10) Commerce, Office, Edu. F. Arts	Sosyal-İş Sendikası	DISK	43 914	7 246	436 794	2 151 600	Over	Under (-14 270)	Under (-35 786)	Under (-57 302)
(10) Commerce, Office, Edu. F. Arts	Koop-İş Sendikası	TÜRK-IS	46 157	28 089	436 794	2 151 600	Over	Over	Under (-14 943)	Under (-36 459)
(10) Commerce, Office, Edu. F. Arts	Tez Koop-İş Sendikası	TÜRK-IS	62 337	50 319	436 794	2 151 600	Over	Over	Over	Under (-14 229)
(11) Cement, soil and glass	Çimse-İş Sendikası	TÜRK-IS	71 510	20 142	173 602	161 908	Over	Over	Over	Over
(11) Cement, soil and glass	Kristal-İş Sendikası	TÜRK-IS	21 342	6 747	173 602	161 908	Over	Over	Over	Over
(12) Metal	Birleşik Metal-İş Sen.	DISK	74 359	26 061	671 015	1 367 258	Over	Over	Under (-2 104)	Under (-14 452)
(12) Metal	Çelik-İş Sendikası	HAK-IS	95 342	27 493	671 015	1 367 258	Over	Over	Over	Under (-13 523)
(12) Metal	Türk Metal Sendikası	TÜRK-IS	343 263	151 734	671 015	1 367 258	Over	Over	Over	Over
(13) Construction	Yol-İş Sendikası	TÜRK-IS	165 505	32 385	761 326	1 438 464	Over	Over	Over	Under (-10 767)
(14) Energy	Tes İş Sendikası	TÜRK-IS	122 350	45 882	153 029	234 575	Over	Over	Over	Over
(15) Transportation	TÜMTİS	TÜRK-IS	14 889	6 775	139 616	671 179	Over	Over	Under (-6 647)	Under (-13 358)
(15) Transportation	Nakliy at-İş Sendikası	DISK	16 909	2 789	139 616	671 179	Over	Under (-3 922)	Under (-10 633)	Under (-17 344)
(15) Transportation	Hava-İş Sendikası	TÜRK-IS	18 093	13 497	33 005	671 179	Over	Over	Over	Under (-6 636)
(15) Transportation	Demiryol-İş Sendikası	TÜRK-IS	23 209	14 563	25 838	671 179	Over	Over	Over	Under (-5 570)
(16) Docks, Sea trans., Ship cons.	Dok Gemi-İş Sendikası	TÜRK-IS	7 405	2 245	16 501	143 764	Over	Over	Under (-629)	Under (-2 066)
(16) Docks, Sea trans., Ship cons.	Liman-İş Sendikası	TÜRK-IS	8 206	3 140	32 781	143 764	Over	Over	Over	Under (-1 171)
(16) Docks, Sea trans., Ship cons.	Türkiye Denizciler Sen.	TÜRK-IS	14 371	4 536	49 509	143 764	Over	Over	Over	Over
(17) Health and social services	Türkiye Sağlık-İş Sen.	TÜRK-IS	18 081	5 264	102 611	281 196	Over	Over	Under (-358)	Under (-3 169)
(18) Hosting and entertainment	OLEYİS	HAK-IS	33 262	6 357	327 929	630 768	Over	Over	Under (-6 257)	Under (-12 564)

Branch of business	Unions	Conf.	Number of members		Number of workers		2009	2013-16	2016-18	2018
			2009	2013	2009	2013		1%	2%	3%
(18) Hosting and entertainment	TOLEYİS	TÜRK-IS	48 635	14 012	327 929	630 768	Over	Over	Over	Under (-4 909)
(19) Defence and security	Öz-İş Sendikası	HAK-IS	n.a.	1 936	31 090	191 784	n.a.	Over	Under (-1 898)	Under (-3 815)
(19) Defence and security	Harb-İş Sendikası	TÜRK-IS	30 989	21 134	31 090	191 784	Over	Over	Over	Over
(20) General works	Genel-İş Sendikası	DISK	83 976	41 466	491 622	655 417	Over	Over	Over	Over
(20) General works	Hizmet-İş Sendikası	HAK-IS	130 942	51 079	491 622	655 417	Over	Over	Over	Over
(20) General Works	Belediy e-İş Sendikası	TÜRK-IS	205 666	41 314	491 622	655 417	Over	Over	Over	Over

Note: This table covers the unions which were competent according to 2009 July statistics and it figures their current situation out. None of the 43 unions which were not competent according to the July 2009 statistics, achieved to pass the 1 per cent threshold according to the January 2013 statistics. Hence they are not included in the table. The single union (Öz-İş Sendikası) established after the 2009 July statistics and became competent according to the 2013 January statistics is included in the table. Besides, Turkon-İs Sendikası, established after the 2009 July statistics, also passed the 1 per cent threshold. However it is not affiliated to a confederation represented in the Economic and Social Council, it was applied 3 per cent threshold and it could not pass it, hence it did not become competent.

495. As a result of the implementation of the new law and the transitional 1 per cent branch of activity threshold, seven unions, which had been competent according to the previous statistics, lost their competence in January 2013, since they were under the 1 per cent branch of activity threshold. In addition to that, two unions (Öz Tarim-Is Sendikasi and Emek Tarim-Is Sendikasi) were not included in the new statistics. Only one union (Oz-is Sendikasi, affiliated to HAK-IS , operating in defence and security), which was not included in the previous statistics since it was established afterwards, was able to gain competence by exceeding the 1 per cent threshold. In conclusion, the number of unions competent to engage in collective bargaining decreased to 43 from 51.

496. Taking into consideration the January 2013 statistics, the complainant estimates that: (i) as a result of the application of the 2 per cent branch of activity threshold in 2016, at least another 13 unions may remain under the threshold and lose their competence to engage in collective bargaining; (ii) as a result of the application of the 3 per cent branch of activity threshold in 2018, at least another seven unions may lose their competence to engage in collective bargaining; and (iii) in conclusion, after application of the 3 per cent of branch of activity threshold after July 2018, the number of unions competent to engage in collective bargaining may decrease to 23 as compared to 51 according to the previous law (with a 10 per cent threshold). The complainant concludes that the reduction of the percentage of branch of activity threshold, rather than increasing the number of trade unions that can engage in collective bargaining, has decreased it and will continue in this trend. There is no doubt that fewer competent unions mean fewer workers covered by collective agreements.

497. The complainant states that, according to a report issued by DISK, the new law and thresholds may result in the following: (i) in six branches of activity (press and journalism; commerce, office, education and fine arts; construction; transportation; health and social services; hosting and entertainment), there may be no unions competent to engage in collective bargaining. Given that 5,107,348 workers or 46.1 per cent of all workers are employed in these branches of activity, almost half of the workers may be deprived of the right to bargain collectively since there may be no competent union in their branch of activity; (ii) in eight branches of activity (petroleum, chemistry, tyre, plastic and medicine; textile, garment and leather; wood and paper; metal; energy; ship building, maritime transportation, warehouse and storage; defence and security) there may be only one competent union. Given that 3,690,427 workers or 33.9 per cent of all workers are employed in these branches of activity, one third of all workers may be deprived of the right to freely choose the union as a result of union monopoly in their branch of activity; (iii) in conclusion, only 20 per cent of workers may be able to choose one of the unions in their branch of activity which will represent them in collective negotiations.

3. *Reasons why the branch of activity threshold in Act No. 6356 violates Conventions Nos 87 and 98*

(a) Convention No. 98 and the branch of activity threshold

498. With reference to Article 4 of the Convention, as well as the Committee's set of decisions, the complainant believes that there are two basic criteria to be met to be competent to engage in collective bargaining: (i) representativeness: the union should be able to represent the workers in a given unit of collective bargaining. If the union is representing the majority of the workers, there is no doubt that the union shall engage in collective bargaining; if there is not any union representing a majority of the workers; collective bargaining rights should be granted to all the unions in this unit, at least on behalf of their own members. In the complainant's view, setting numerical criteria (minimum membership) or the affiliation to higher organizations as conditions for representativeness

does not comply with Convention No. 98; and (ii) independence: unions should be independent from the employer, employers' organizations and the authorities. Besides, the determination which organizations meet these criteria should be made by an independent and objective body.

499. According to the complainant, when the criteria mentioned above are taken into consideration, the branch of activity threshold stipulated by Act No. 6356 infringes Convention No. 98 for the following reasons:

- The law stipulates a numerical requirement (3 per cent representativeness in a given branch of activity) to be met to be able to engage in collective bargaining. Even if a union represents the majority of the workers in an enterprise, if it does not also represent 3 per cent of the workers in the relevant branch of activity, collective bargaining rights are not granted to the union. In other words, unions which do not have 3 per cent of representativeness in their relevant branches of activity are deprived of the right to bargain collectively.
- The numerical criteria of representativeness is stipulated by law, which means that, instead of an independent and objective body, the lawmaker and the Ministry of Labour and Social Security determine which unions will be able to engage in collective bargaining.
- As it is proved by data and statistics mentioned above, rather than encouraging and promoting collective bargaining, the Act decreases the number of unions engaged in collective bargaining and the number of workers covered by collective agreements, limits the potential development of machinery of collective bargaining and also restricts the workers' rights to freely choose the union that will represent them in terms of collective bargaining.

500. The complainant states that the Government has been criticized by the ILO for years because of the restrictions on the right to bargain collectively caused by the two numerical requirements. Thus, the Committee of Experts on the Application of Conventions and Recommendations (CEACR) criticized the double threshold, pointed out that the branch of activity threshold severely infringes Article 4 of Convention No. 98 and called on the Government to totally remove the double threshold in its reports of 1989, 1991, 1992, 1993, 1994, 1995, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2009 and 2011. The application of Convention No. 98 by Turkey has been discussed by the Conference Committee on the Application of Standards (CAS) in 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1991, 1993, 1994, 1995, 1996, 1998 and 2000. As of 1993, referring to the calls of the CEACR, the CAS requested the Government to eliminate restrictions on collective bargaining resulting from the double criteria for representativeness. Government representatives promised to eliminate the double threshold and noted that they were working on draft laws to remove it. However, Act No. 6356 did not eliminate it, which means that the Government did not keep its promises.

501. The complainant concludes that there is no doubt that the branch of activity threshold and workplace/enterprise threshold (double criteria) stipulated by Act No. 6356 infringe Convention No. 98 and should be totally eliminated to encourage and promote collective bargaining. It is not possible to argue that the reduction in the percentage of the branch of activity threshold is a satisfactory change in the legislation to comply with Convention No. 98. This fact has been voiced several times by ILO organs and academicians and it has been well known by Government, which promised to eliminate double criteria many times.

(b) Convention No. 87 and the branch of activity threshold

502. With reference to Article 2 of Convention No. 87, the complainant believes that it is impossible to argue that the branch of activity threshold stipulated by Act No. 6356 does not infringe the workers' rights to establish and join the unions of their own choosing. Union rights constitute a whole; absence of one of them inevitably affects others and results in difficulty in their enjoyment. Keeping in mind the fact that the Turkish union system has been founded on the basis of collective agreements concluded in workplaces or enterprises, the main and most important function of the unions has been engaging in collective bargaining, and unions have been financed by union fees of members for whom unions sign collective agreements; it is obvious that, if a union is not allowed to engage in collective bargaining, that union will not be able to grow, to strengthen and even to survive. In other words, even if workers prefer a specific union, if that union is not able to conclude collective agreements, workers are pushed to join a union which is able to engage in collective bargaining although that union is not their real choice. In the complainant's view, since the branch of activity threshold does not and will not allow many unions to engage in collective bargaining, it severely restricts the workers' right to freely choose a union to organize and forces workers to choose one of the unions which are competent to conclude collective agreements even if workers do not prefer those unions; hence it contradicts with ILO Convention No. 87.

503. While the Government has been arguing that it adopts the branch of activity threshold to inhibit yellow unions and union "inflation", to create a strong unionism and to promote a united union movement, the Committee on Freedom of Association has pointed out several times that such a unity within the trade union movement should not be imposed by law.

504. The complainant concludes that Act No. 6356, by stipulating a branch of activity threshold, and decreasing and limiting the number of unions competent to engage in collective bargaining, infringes the workers' rights to organize and join a union of their own choosing.

(c) ILO Conventions and unconstitutionality of the branch of activity threshold

505. Article 90(5) of the Constitution of the Republic of Turkey reads as follows: "International agreements duly put into effect bear the force of law. No appeal to the Constitutional Court shall be made with regard to these agreements, on the grounds that they are unconstitutional. In the case of a conflict between international agreements in the area of fundamental rights and freedoms duly put into effect and the domestic laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail." This article of the Constitution considers international agreements in the area of fundamental rights and freedoms, and thus ILO Conventions Nos 87 and 98, superior to domestic laws. According to the complainant, since the branch of activity threshold in Act No. 6356 runs counter to Conventions Nos 87 and 98, the Government violated article 90 of the Constitution. An appeal with the Constitutional Court was filed by the opposition for annulment of several provisions of the Act due to incompatibility with various articles of the Constitution.

4. The case of SOSYAL-IS

506. SOSYAL-IS was founded by workers of the Social Insurance Institution on 10 December 1966. In the following years, SOSYAL-IS engaged in a comprehensive organizing campaign and organized in many markets, supermarkets and retail stores. Besides, many workplace unions joined SOSYAL-IS in those years. In 1974, SOSYAL-IS was the voice of 11,720 workers and affiliated to DISK. Before the military coup of 1980, SOSYAL-IS

was the strongest union in the relevant branch of activity. However after the 12 September 1980 military coup, a systematic project was put in practice to liquidate DISK and its affiliates. In that context activities of SOSYAL-IS were stopped in 1980, a suit was filed against SOSYAL-IS and members of the General Administrative Board of SOSYAL-IS were judged. At the end of the judicial procedure, SOSYAL-IS re-started its activities in 1991 and started to work to recover the damages of the military coup. After a while, SOSYAL-IS achieved to overcome the 10 per cent branch of activity threshold and started to engage in collective bargaining. Until the adoption of Act No. 6356, SOSYAL-IS organized tens of thousands of workers and concluded many collective agreements. Three years ago, SOSYAL-IS initiated a new organizing campaign and doubled the number of its members. However, since SOSYAL-IS remained under the branch of activity threshold in January 2013, it lost its competence to engage in collective bargaining. In the process of rehabilitating the tremendous damage of the military coup, SOSYAL-IS is deprived of the most important tool of organizing that is right to engage in collective bargaining.

507. The complainant stresses that the new law and new thresholds are not just the problem of SOSYAL-IS. SOSYAL-IS has been attributed to the branch of activity “commerce, education, office and fine arts”. Until 2013, there were three unions competent to engage in collective bargaining: SOSYAL-IS (affiliated to DISK) and Koop-İş and Tez Koop-İş (affiliated to TÜRK-İS). As shown in the table below, the number of unions in that branch of activity raised from five to nine between 2009 and 2013; however, the number of unions competent to engage in collective bargaining (over the threshold) decreased from three to two as a result of the 1 per cent branch of activity threshold. In 2016, Koop-İş may not be able to attain the 2 per cent threshold, and in 2018, Tez Koop-İş may not reach the 3 per cent threshold. Considering the fact that more than 2 million workers are employed in this branch of activity, the complainant points to the possible danger of a total absence of unions competent to engage in collective bargaining in a period of five years and hence the end of the right to bargain collectively for more than 2 million workers. Even if Tez Koop-İş reaches the 3 per cent threshold, most probably a union monopoly will emerge in this branch of activity.

Union	Conf.	No. of members		No. of workers		2009	2013–16	2016–18	2018
		2009	2013	2009	2013				
SOSYAL-İS Sendikası	DISK	43 914	7 246	436 794	2 151 600	Over	Under (-14 270)	Under (-35 786)	Under (-57 302)
Koop- İş Sendikası	TÜRK-İS	46 157	28 089	436 794	2 151 600	Over	Over	Under (-14 943)	Under (-36 459)
Tez Koop- İş Sendikası	TÜRK-İS	62 337	50 319	436 794	2 151 600	Over	Over	Over	Under (-14 229)
Öz Büro- İş Sendikası	HAK-İS	n.a.	5 988	436 794	2 151 600	n.a.	Under (-15 528)	Under (-37 044)	Under (-58 560)
Bil-İş Sendikası	Indep.	484	n.a.	436 794	2 151 600	Under	n.a.	n.a.	n.a.
Sine-Sen Sendikası	DISK	31	15	436 794	2 151 600	Under	Under	Under	Under
Türkiye Yazarlar Sendikası	Indep.	n.a.	0	436 794	2 151 600	n.a.	Under	Under	Under
Müzik-Sen	Indep.	n.a.	0	436 794	2 151 600	n.a.	Under	Under	Under
Oyuncular Sendikası	Indep.	n.a.	40	436 794	2 151 600	n.a.	Under	Under	Under

- 508.** Although this branch of activity is the biggest one in terms of workers employed, the unionization in this branch of activity is limited. According to 2013 January statistics, 91,752 workers out of 2,151,600 workers are affiliated to a union in this branch of activity; hence, the ratio of union membership is 4.3 per cent, which is considerably lower than the general ratio of union membership that is 9.21. The number of workers covered by a collective agreement is inevitably lower. It is around 50,000, which means that only 2 per cent of the workers can enjoy right to bargain collectively. It is obvious that, since SOSYAL-IS will not be able to engage in collective bargaining and the number of competent unions will be just two, the level of collective bargaining will be decreasing.
- 509.** In addition, according to the complainant, the very nature of this branch of activity requires union plurality. The total number of workplaces in this branch of activity is 426,237; the average number of members employed in a workplace is around five. Since there are hundreds of thousands of workplaces to be organized by unions, more competent unions mean more union members, more organized workplaces and more collective agreements. Besides, the occupational diversity in this branch of activity also requires union plurality. Since many different occupational groups are employed in this sector (for example, university professors, janitors in public universities, cashiers, actors and actresses, office workers, call centre workers, specialists in companies, secretaries, etc.), it is important to have many unions specialized in subsectors and focused on different occupational groups. However, rather than promoting collective bargaining, the Act restricts it by stipulating the branch of activity threshold and thus reducing the number of competent unions.
- 510.** The complainant further stresses that, since SOSYAL-IS, a union affiliated to DISK, remained under the threshold, more than 2 million workers who want to enjoy the right to bargain collectively have been forced to choose one of the other unions (either Koop-Is or Tez Koop-Is) which are affiliated to the same confederation. Workers will thus not be able to be represented by a union that adopts a different policy than that of TÜRK-IS. In these conditions, neither union plurality nor the right to choose a union exists.
- 511.** Furthermore, the complainant states that SOSYAL-IS has been focused on organizing subcontracting workers in public universities and institutions, who constitute a large underpaid group which work in really hard conditions without job security. SOSYAL-IS has struggled to cover these workers by collective agreements and was the single union in this branch of activity that dealt with this issue. SOSYAL-IS also organizes workers in small workplaces who are underestimated by other unions, since it is really difficult and takes too much time and energy to get organized and deal with small workplaces. It is also the single union dedicated to organize hundreds of thousands of workers employed in foundation universities and private education institutions. Therefore, if SOSYAL-IS is not able to conclude collective agreements, many workers employed in several subsectors may not be able to find a union to organize.
- 512.** The complainant concludes that Act No. 6356 may result in the vanishing of SOSYAL-IS, a union with a half-century history in the Turkish trade union movement and a special position in it. Hence, it is important that the Government be reminded of the fact that the branch of activity threshold is a violation of the trade union rights protected by Conventions Nos 87 and 98.

B. The Government's reply

- 513.** In its communication dated 9 July 2014, the Government turns first to the complainant's allegation that trade unions are established on sectoral basis and workers are not allowed to organize under company or craft unions. The Government recognizes that, given the circumstances in Turkey and its trade unionism experience, trade unions are established on sectoral basis. However, there are no restrictions in Act No. 6356 regarding the

establishment of trade unions on craft and company basis. In Turkey, trade unions such as the Actors Union, the Journalists Union, Sine-Sen and Müzik-Sen still pursue their activities, organized on the basis of occupation. No written or verbal requests on the issue of founding company or craft unions were submitted by social parties; to the contrary, it was asserted by the social partners that craft unionism is globally outdated and such organization methods might adversely affect the structure of the Turkish industrial relations system.

- 514.** The operation on a sectoral basis raises the issue as to which sector the workplace in which a trade union wishes to organize, belongs to. Trade unions organize in workplaces in Turkey for a long time. Determining in which sector the trade union organized in a workplace will be active is linked to the classification of economic activities. The Act removes the requirement of “operating nationwide across Turkey” to be able to establish a trade union, which eliminates for trade unions the obstacle of organizing under a single workplace.
- 515.** Secondly, with respect to the complainant’s allegation that Act No. 6356 requires double quantitative criteria for collective bargaining, the Government indicates that, during the preparation of the Act and as a result of negotiations held with the social partners, the reduction of the upper limit of the sectoral threshold instead of its removal was largely agreed upon, including by workers’ confederations. Therefore, under section 41 of the Act, the sectoral threshold which had caused problems during the terms of its implementation, was lowered to 3 per cent taking into consideration the realities of the country. However, provisional article 6 of the Act provides that this rate is reduced to 1 per cent until July 2016. Moreover, the sectoral threshold requirement was not imposed upon trade unions with authority prior to the entry into force of the Act that concludes collective agreements. Hence, all existing authorized trade unions were allowed to undergo transition.
- 516.** Section 41 also stipulates that a trade union will be authorized to engage in collective bargaining on the condition that it has affiliated 50 per cent plus one employees in a workplace or 40 per cent of employees in an enterprise under the coverage of the collective agreement. Hence, the majority required for collective agreements was reduced from 50 to 40 per cent of employees. Considering that such agreements make up a large majority of collective agreements in Turkey, the Government states that this provision facilitates the authorization of trade unions with members from workplaces in the same sector owned by the same employer, thus significantly appeasing criticisms raised by the EU and the ILO supervisory bodies.
- 517.** Thirdly, as regards the complainant’s allegation that the reduction of the sectoral threshold is not a real but a nominal change, as a result of the change in the statistics system, the Government indicates that, during the validity term of Act No. 2822, there was no reliable system to check the number of members in trade unions. According to the Government, millions of workers who had resigned their trade union membership remained registered as members, and many unions were noted to be above the threshold due to unrealistic statistical research and were authorized to engage in collective bargaining, while being below it.
- 518.** The Government states that the valid criticisms by trade unions were eliminated by creating a system based on real data instead of nominal data. Section 41 of Act No. 6356 provides that statistics issued by the Ministry in January and July of every year will be taken as a basis for determining the percentage of workers serving in a given sector. The provision also stipulates that, when compiling statistics and identifying the authorized trade unions, notifications of joining and resigning membership and statements of workers submitted to the Social Security Institution are taken as a basis, thus enabling realistic statistics through the identification of workers who died, resigned or had double

membership. The January 2013 statistics on the number of workers in each sector and the number of union members were issued in the *Official Gazette* dated 26 January 2013. The assertions of SOSYAL-IS that, based on the statements submitted to the Social Security Institution, the number of union members has notably decreased in the January 2013 statistics because millions of unemployed workers were stripped of trade union membership, are unrealistic. In the Government's view, a system aimed at securing the structure of an organized trade union network has been created.

- 519.** Fourthly, concerning the complainant's allegation that the merger of certain sectors raised the number of workers in those sectors and that lowering the sectoral threshold increased the number of workers that the trade unions must organize, the Government indicates that, in line with Act No. 6356, the number of sectors was reduced and designated as 20 in consideration of worldwide application and international standards. With the number of sectors being reduced, food and sugar, textile and leather, wood and paper, press and journalism, land, railroad and air transportation, storehouse and warehousing sectors were merged with one another, and private security services were incorporated into the defence and security sector. The legislation has envisaged the attribution of businesses to sectors after consultation of employee and employer confederations. Hence, the elimination of problems arising in the designation of sectors under the previous law was proposed, and the new designation of sectors entered into force upon its issuance in the *Official Gazette* dated 19 December 2012. Moreover, with an amendment of a provisional article of the Act, the sectoral threshold for existing authorized trade unions concluding collective agreements was removed, thus averting their loss of authority and ensuring the trade unions' adaptation to the transition period.
- 520.** Fifthly, with respect to the complainant's allegation that the number of trade unions authorized to sign collective labour agreements decreased, the Government explains that the reason for the low number of trade unions authorized to sign collective agreements could be attributed to the low unionization rate. Therefore, obstacles before trade unions were removed by envisaging a transition period allowing existing authorized trade unions to continue concluding collective agreements. In the Government's view, the SOSYAL-IS estimates for the aftermaths of 2016 and 2018 are based on assumptions, and it is inaccurate to make projections for five years drawing upon current figures. If trade unions concentrate on organization efforts, there will be a surge in the unionization rate in the future, which will also entail a rise in the number of authorized trade unions.
- 521.** Moreover, the Government states that, according to provisional article 1 of Act No. 6356, trade unions must designate the sector they will operate in, one month following the issuance of the designation of sectors on 19 December 2012. The January 2013 statistics did not include 15 trade unions that had not yet specified the sector in which they would operate. This caused the number of trade unions authorized to sign collective labour agreements to appear lower than it actually was. Analysing the January 2013 statistics, it is noticed that seven trade unions have low numbers of members, are not engaged in organizational activity and were not entitled to sign collective agreements under the previous law. This is another factor causing a low number of trade unions authorized to sign collective agreements.
- 522.** Lastly, the Government turns to the allegation that SOSYAL-IS lost the authorization to engage in collective bargaining because it was lagging behind the sectoral threshold as of January 2013. With reference to the complainant's statement that SOSYAL-IS had organized many workers by the time the Act came into force and signed numerous collective agreements and that the number of its members rose twofold in the last three years, the Government indicates that SOSYAL-IS filed a legal case against the statistical data issued in July 2003, and that, in accordance with the interlocutory injunction of the court and in light of the July 2009 statistics, SOSYAL-IS became authorized to conclude

collective agreements (with 43,914 members, i.e. 10.05 per cent of the overall workers in the sector). The January 2013 statistics reveal that SOSYAL-IS, which is organized in the “commerce, office, education and fine arts” sector (No. 10), currently has 7,246 members (i.e. unionization rate of 0.34 per cent).

523. The Government stresses however that, according to provisional article 6(3) of Act No. 6356, existing labour unions authorized to engage in collective bargaining were granted the permission to sign new collective agreements in workplaces with which a collective agreement was signed prior to 7 November 2012, regardless as to whether or not they meet the requirement of reaching the sectoral threshold. According to section 35 of the Act (duration of collective labour agreements between one and three years), it was ensured that said trade unions would be kept exempt from the requirement of reaching the sectoral threshold until 2016. SOSYAL-IS is thus not required to meet the sectoral threshold for now according to the related provision of the law and will once more be able to conclude collective agreements in workplaces and enterprises where it has no longer the authority to engage in collective bargaining. In the framework of Act No. 6356, which removed obstacles to organization among trade unions, SOSYAL-IS could regain the authority to engage in collective bargaining if it concentrates on organizational efforts in the future and increases its membership in the sector where it is organized.

C. The Committee’s conclusions

524. *The Committee notes that, in the present case, the complainant organization alleges that the Act on Trade Unions and Collective Bargaining Agreements (Act No. 6356) is not in compliance with Convention No. 98, in particular as regards the required thresholds for collective bargaining.*

525. *In particular, the Committee notes the complainant’s allegations that: (i) section 41(1) of Act No. 6356 stipulates double numerical criteria to be met to allow a union to engage in collective bargaining in a specific workplace or enterprise: the branch of activity threshold and the workplace/enterprise threshold; (ii) the percentage decline in the branch of activity threshold from 10 (previous law) to 3 is not a real but a nominal change, which does not lessen the requirement but rather hardens it and thus does not meet ILO recommendations; (iii) since the change in the system of compilation of statistics by taking into account the notifications made to the Social Security Institution, the number of workers in the January 2013 statistics doubled (from 5 to 10 million) because the former statistics based on the database of the Ministry of Labour and Social Security had not accurately reflected the reality; but the number of union members considerably declined (from 3 to 1 million) because the Ministry of Labour and Social Security, using the database of the Social Security Institution, eliminated the union membership of millions of workers who were not currently employed in a workplace or enterprise in which the union to which they were affiliated was established; (iv) as a result of the merger of some of the existing branches of activities and their decrease from 28 to 20 in Act No. 6356, the number of workers employed per branch considerably increased, and the reduced branch of activity threshold, rather than decreasing the minimum number of workers that unions have to organize, increased the minimum number of membership for many of them; (v) according to the July 2009 statistics, there were 51 unions competent to sign collective agreements, whereas in January 2013, as a result of the implementation of the new law and of the transitional 1 per cent branch of activity threshold, the number of unions competent to engage in collective bargaining decreased to 43 (seven unions lost their competence); (vi) although SOSYAL-IS initiated a new organizing campaign and doubled the number of its members three years ago, it remained under the branch of activity threshold in January 2013 and lost its competence to engage in collective bargaining; (vii) if SOSYAL-IS is not able to conclude collective agreements, many workers employed in several subsectors may not be able to find a union to organize, as SOSYAL-IS was the*

only union in its branch focusing on organizing sub-contracting workers, workers in small workplaces etc.; (viii) given that the main function of unions has always been engaging in collective bargaining and that unions have been financed by fees of union members for whom unions conclude collective agreements in workplaces or enterprises, a union will not be able to grow, to strengthen or even to survive if not allowed to engage in collective bargaining because workers are pushed to join a union which is able to engage in collective bargaining even if they prefer another union; (ix) Act No. 6356 may thus result in the disappearance of SOSYAL-IS; (x) according to estimates, 13 unions may remain under the 2 per cent branch of activity threshold in 2016 and seven unions under the 3 per cent threshold in 2018; reducing the number of unions competent to engage in collective bargaining to 23 as compared to 51 under the previous law (even with the then 10 per cent threshold); which means that, in five years, in six branches of activity there may be no unions competent to engage in collective bargaining (including in SOSYAL-IS's branch of activity "commerce, education, office and fine arts" which is the biggest branch with 2 million workers employed and requires union plurality due to its huge number of workplaces and occupational diversity) thus depriving almost half of all workers of the right to bargain collectively; in eight branches of activity there may be only one competent union, thus depriving one third of all workers of the right to freely choose a union in their branch of activity; and only 20 per cent of workers may be able to freely choose one of the unions in their branch of activity which will represent them in collective negotiations; and (xi) the branch of activity threshold should be totally eliminated as it severely restricts the rights to organize and bargain collectively and does not comply with Conventions Nos 87 and 98.

- 526.** *The Committee also notes the Government's indications that: (i) under section 41 of Act No. 6356, the sectoral threshold, which had caused problems during the terms of its implementation, was lowered to 3 per cent; (ii) the reduction of the sectoral threshold instead of its removal was largely agreed upon by the social partners; (iii) section 41 also lowered the enterprise threshold to engage in collective bargaining by reducing the majority required for collective agreements from 50 to 40 per cent of affiliated employees in an enterprise (while having the threshold at 50 per cent for the workplace level); (iv) during the validity term of Act No. 2822, there was no reliable system to check the number of members in trade unions, millions of workers who had resigned from their trade unions remained registered as members, and many trade unions were noted to be above the required threshold due to unrealistic statistics; (v) at present, when compiling statistics, notifications of joining and resigning membership and statements of workers submitted to the Social Security Institution are taken as a basis, thus enabling realistic statistics through the identification of workers who died, resigned or had double membership; (vi) the assertion of SOSYAL-IS that, based on the statements submitted to the Social Security Institution, the number of union members has notably decreased in the January 2013 statistics because millions of unemployed workers were stripped of trade union membership, is unrealistic; (vii) the number of sectors was reduced to 20 in consideration of worldwide application and international standards and after consultation of employee and employer confederations, to eliminate problems arising in the designation of sectors under the previous law; (viii) while according to provisional article 1 of Act No. 6356, trade unions must designate the sector they will operate in, one month following the issuance of the designation of sectors on 19 December 2012, 15 trade unions had not yet specified their sector in time for the January 2013 statistics, which caused the number of trade unions authorized to sign collective labour agreements to appear lower than it actually was; (ix) the Government states that the reason for the low number of trade unions authorized to sign collective agreements could be attributed to the low unionization rate, and that it was hence decided to remove obstacles before trade unions by envisaging a transition period: firstly, provisional article 6(1) of Act No. 6356 provides that the branch of activity threshold is reduced to 1 per cent until July 2016, and to 2 per cent until July 2018; and secondly, according to provisional article 6(3), existing labour unions*

authorized to engage in collective bargaining were granted the permission to sign new collective agreements in workplaces with which a collective agreement was signed prior to 7 November 2012, regardless as to whether or not they meet the requirement of the sectoral threshold; (x) the latter provision de facto keeps trade unions exempt from the sectoral thresholds of Act No. 6356 until 2016, which means that SOSYAL-IS is not required to meet the sectoral threshold for now and will once more be able to conclude collective agreements in workplaces and enterprises where it has no longer the authority to engage in collective bargaining; (xi) in the framework of Act No. 6356, which removed obstacles to organization among trade unions, SOSYAL-IS could regain the authority to engage in collective bargaining if it concentrates on organizational efforts in the future and increases its membership in the sector where it is organized; (xii) the SOSYAL-IS estimates for the aftermaths of 2016 and 2018 are based on assumptions, and it is inaccurate to make projections for five years drawing upon current figures; if trade unions concentrate on organization efforts, there will be a surge in the unionization rate in the future, which will also entail a rise in the number of trade unions authorized to engage in collective bargaining.

527. *The Committee notes that section 41(1) of Act No. 6356 provides that the workers' trade union representing at least 3 per cent of the workers engaged in a given branch of activity and more than half of the workers employed in the workplace and 40 per cent of the workers in the enterprise to be covered by the collective labour agreement shall be authorized to conclude a collective labour agreement covering the workplace or enterprise in question. The Committee observes that the provision sets out two cumulative requirements for becoming a collective bargaining agent: the union should represent both at least 3 per cent of the workers engaged in a given branch of activities and more than 50 per cent of workers employed in the workplace or 40 per cent of workers of the enterprise to be covered by the collective agreement. The Committee notes that the CEACR has reiterated in this connection its long-standing comment that such a double threshold could create obstacles to collective bargaining at the enterprise level, where a representative union should be able to negotiate a collective agreement regardless of its overall sectoral-level representativity. In this regard, the Committee wishes to recall that it has always held that for a trade union at the branch level to be able to negotiate a collective agreement at the enterprise level, it should be sufficient for the trade union to establish that it is sufficiently representative at the enterprise level [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 957]. In particular, the Committee recalls that it has previously been dealing with the same issue (dual criteria for bargaining collectively) within the framework of Case No. 1830, where it considered that the relevant legislation (then Act No. 2822 on collective agreements, strikes and lockouts) did not have the effect of promoting and stimulating unhindered collective bargaining at the level of the undertaking, and strongly urged the Government to amend its legislation so as to bring it in line with Article 4 of Convention No. 98 (see 303rd Report, para. 57). The Committee considers that the combination of the sectoral and workplace/enterprise thresholds raises problems with regard to the principles of freedom of association in terms of requirements for representativeness.*

528. *While noting the Government's statement that the branch of activity threshold in Act No. 6356 is lower than in the previous law (reduced from 10 to 3 per cent), the Committee cannot ignore that the 2013 implementation of the even lower transitional threshold of 1 per cent has entailed the loss of competence of the complainant organization SOSYAL-IS, which was previously authorized to engage in collective bargaining. The Committee is also obliged to note the concerns expressed by the complainant at the decrease in the number of trade unions authorized to sign collective agreements as a result of changes in the compilation of statistics and the reduced number of branches of activity. The Committee observes that: (i) there are divergent views as regards the allegation that the Ministry of Labour and Social Security, using the database of the Social Security*

Institution, eliminated membership of millions of workers who were not currently employed in a workplace/enterprise in which the union that they were affiliated to was established; (ii) the Government highlights the need for the statistical changes for the purposes of enhanced accuracy but does not contest the allegations that they entailed a considerable increase in the number of registered workers, an increase in the number of workers engaged in certain branches and a considerable decrease in the number of union members, which, in the Committee's view are all factors impeding on unions attaining the branch of activity threshold; and (iii) with reference to factors making the number of trade unions authorized to sign collective agreements appear lower than it actually is, the Government nonetheless acknowledges that the number is low, attributes it to the unionization rate that it also qualifies as low and predicts a rise in the number of trade unions authorized to engage in collective bargaining if unions make organizational efforts to increase their membership in the future.

529. *In these circumstances, the Committee can only consider that the branch of activity threshold, which is required by Act No. 6356, in addition to the workplace or enterprise threshold to be able to conclude a collective labour agreement covering the workplace or enterprise in question, is not conducive to harmonious industrial relations and does not promote collective bargaining in line with Article 4 of Convention No. 98, ratified by Turkey, as it may ultimately result in the decrease in the number of workers covered by collective agreements in the country. With respect to the enterprise threshold (40 per cent) or workplace threshold (50 per cent), the Committee also recalls that, where, under a system for nominating an exclusive bargaining agent, there is no union representing the required percentage to be so designated, collective bargaining rights should be granted to all the unions in this unit, at least on behalf of their own members [see **Digest**, *op. cit.*, para. 976]. In view of the above, the Committee requests the Government to carry out without delay a full review of the impact of Act No. 6356 on the trade union movement and the national collective bargaining machinery as a whole, in full consultation with the social partners, and that, in light of the outcome of that review, the Act will be revised in line with the principles set out above. The Committee requests to be kept informed of any developments in this respect and invites the Government to avail itself of ILO technical assistance. It also requests the Government to provide information on the outcome of the appeal filed with the Constitutional Court for annulment of several provisions of Act No. 6356. Duly noting the transitional provisions in provisional article 6(1) and (3) referred to by the Government, the Committee trusts that no authorization to conclude collective agreements will be withdrawn from any trade union, including the complainant, owing to failure to comply with the double threshold in section 41(1) of the Act.*

The Committee's recommendations

530. *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 carry out without delay a full review of the impact of Act No. 6356 on the trade union movement and the national collective bargaining machinery as a whole, in full consultation with the social partners and that, in light of the outcome of that review, the Act will be revised in line with the principles set out in its conclusions. The Committee requests to be kept informed of any developments in this respect and invites the Government to avail itself of ILO technical assistance.*

- (b) *Duly noting the transitional provisions in provisional article 6(1) and (3) referred to by the Government, the Committee trusts that no authorization to conclude collective agreements will be withdrawn from any trade union, including the complainant, owing to failure to comply with the double threshold in section 41(1) of Act No. 6356.*
- (c) *The Committee also requests the Government to provide information on the outcome of the appeal filed with the Constitutional Court for annulment of several provisions of Act No. 6356.*

CASE NO. 2968

INTERIM REPORT

**Complaint against the Government of the
Bolivarian Republic of Venezuela
presented by
the Association of Teachers of the Central University
of Venezuela (APUCV)**

*Allegations: Detention of and bringing of
charges against trade unionists in the
construction sector*

- 531.** The Committee examined this case at its June 2013 meeting and presented an interim report to the Governing Body [see 368th Report of the Committee on Freedom of Association, paras 986–1023], approved by the Governing Body at its 318th Session (June 2013).
- 532.** The Government sent additional observations in a communication dated 15 May 2014.
- 533.** 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

- 534.** In its previous examination of the case, the Committee made the following recommendation on the issues that remained pending [see 368th Report, para. 1023]:

...

- (b) The Committee emphasizes the gravity of the allegations relating to the criminalization of trade union activities through military tribunals, and in particular the detention and referral to military tribunals, and the imposition of the requirement to report periodically every week to the military judicial authorities, of five trade unionists in the construction sector (for having demanded the payment of social benefits by a private enterprise Xocobeo CA, working under contract for the Ministry of Housing and Environment), in addition, according to the allegations, to the hundred or so workers who have faced criminal charges for exercising their trade union rights. The Committee requests the Government to reply to these allegations without delay.

535. The complainant organization had stated that the alleged acts, involving the detention of, and bringing of charges against, trade unionists in the State of Táchira, occurred as from 13 August 2012, noting that the trade unionists in question were Hictler Torres, Luis Arturo González, José Martín Mora, Wilander Operaza and Ramiro Parada. According to the allegations, they were detained for having protested to demand the payment of their social benefits by the private enterprise Xocobeo CA, under contract with the Ministry of Housing and Environment for the construction of housing units in a military zone, Murachí Fort. According to the allegations, the crimes with which they were charged were: failure to respect a sentry and failure to respect the armed forces, sections 502 and 505 of the Basic Code of Military Justice; and violation of the security zone, established by section 56 of the Basic Act on the Security of the Nation [see 368th Report, para. 1000].

B. The Government's reply

536. With regard to the allegations concerning the so-called criminalization through military tribunals of the trade union activities of five trade unionists in the construction sector, the Government reports that there are three federations of trade unions for construction sector workers in the country: the National Federation of Professional Workers, Technical Workers and Labourers in the Construction, Timber, Heavy Machinery and Roads Industry and Allied Workers of the Bolivarian Republic of Venezuela (FENACTS), which is affiliated to the Bolivarian Socialist Workers' Confederation of Venezuela (CBST); the Single National Federation of Bolivarian Construction Workers and Allied and Similar Workers (FUNTBCAC), previously affiliated to the National Union of Workers of Venezuela (UNETE) and currently to the CBST; and the Federation of Workers in the Construction and Timber Industries and Allied and Similar Workers of Venezuela (FETRACONSTRUCCION), affiliated to the Confederation of Workers of Venezuela (CTV).

537. The Government notes that it is extremely odd that none of the three trade union federations mentioned above have approached any of the country's labour inspectorates or the Office of the Ombudsperson to report the detention by civilian or military authorities of union officials from the construction sector, as referred to in the communication.

538. The Government adds that it is clear from the trade union registries that none of the 187 trade union organizations of construction workers that exist in the country have trade union officials or representatives registered by the names of Hictler Torres, Luis Arturo González, José Martín Mora, Wilander Operaza and Ramiro Parada. The Government indicates that it finds it odd that a civil association of university teachers, whose activity is far removed from the world of housing construction, and not an organization of construction workers, should be presenting this complaint, which in principle means that it does not meet the receivability requirements. Nevertheless, the Government indicates that it has asked the Office of the Attorney-General to report on the alleged referral to military tribunals of any workers, whether trade union officials or not, from the enterprise Xocobeo CA, in 2012. The Government states that it will inform the Committee on Freedom of Association as soon as it receives a reply.

539. With regard to the reference by the Committee to the complainant's allegations that more than one hundred workers have reportedly faced criminal charges for having exercised their trade union rights, the Government, with due respect, asks the members of the Committee to request the complainant to provide a list of the one hundred workers who have allegedly faced criminal charges with an indication of the trade union organization to which they belong and the trade union activity for which they are facing charges. Until this information is provided, the Government requests the Committee to refrain from announcing, as if there were some truth in the statement, that in the Bolivarian Republic of

Venezuela “more than a hundred workers are facing criminal charges for having exercised their trade union rights”.

C. The Committee’s conclusions

- 540.** *The Committee observes that the pending issue in this case relates to the detention of, and bringing of charges, in August 2012, against five trade unionists in the construction sector for having protested to demand the payment of their social benefits by the private enterprise Xocobeo CA, under contract with the Ministry of Housing and Environment for the construction of housing units in a military zone (Murachí Fort). According to the allegations, these trade unionists, charged with the crimes of failure to respect a sentry and failure to respect the armed forces (sections 502 and 505 of the Basic Code of Military Justice), and violation of the security zone (section 56 of the Basic Act on the Security of the Nation), were referred to military tribunals and required to report to the military judicial authorities every week, which, in the opinion of the complainant, amounts to the criminalization of trade union activities.*
- 541.** *According to the complainant organization, one hundred or so people have allegedly faced criminal charges for having exercised their trade union rights. The Committee notes that the Government contests the receivability of the complaint, pointing out that the complainant organization is a civil association of teachers, and not for the cement sector, and is not a registered trade union organization. The Committee wishes to note that, in its initial reply in the context of the previous examination of the case, in June 2013, the Government did not present this objection with regard to receivability, and highlights that the allegations presented concern serious issues relating to the freedom of trade unionists.*
- 542.** *The Committee takes note of the Government’s statements that: (i) it is odd that none of the three construction federations that exist have reported the alleged detentions to the labour inspectorate or to the Office of the Ombudsperson; (ii) the five trade unionists mentioned by the complainant organization are not registered as being union officials or representatives of any of the 187 trade union organizations that exist in the construction sector; and (iii) the complainant organization should be invited to provide the names and union positions of the one hundred or so workers who are allegedly facing criminal charges for having exercised their trade union rights.*
- 543.** *The Committee notes that, notwithstanding the above, the Government has requested information from the Office of the Attorney-General concerning the alleged detention of five trade unionists and will send this information to the Committee when it is received. The Committee emphasizes once again the seriousness of the allegations, which relate to the detention of five trade unionists who, according to the allegations, were brought before the military judicial authorities for having demanded the payment of their social benefits and were required, as an interim measure, to report every week to the judicial authorities. The Committee also highlights that these interim measures imposed by the military judicial authorities can only have an intimidating effect with regard to the exercise of trade union rights and that, depending on the location of the tribunal, may be extremely burdensome.*
- 544.** *The Committee is awaiting receipt of the information that the Government has requested from the Office of the Attorney-General and regrets that it is not yet able to benefit from this information, given that the allegations date back to August 2012. The Committee, in order to be able to examine the allegations in full knowledge of the facts, firmly expects that the Government will send, without delay, the information that it has received from the Office of the Attorney-General on the situation concerning these five trade unionists.*

545. Furthermore, taking into account the other statements made by the Government, the Committee invites the complainant organization to supply the names and union positions of the one hundred or so trade unionists who, according to the allegations, have faced criminal charges for having carried out union activities and, in the case that this is not possible, to indicate any eventual impediments to providing such information.

The Committee's recommendations

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

- (a) *Underlining that the allegations refer to serious issues related to the freedom of trade unionists, the Committee firmly expects that the Government will send without delay the information that it has received from the Office of the Attorney-General on the situation concerning the five trade unionists in the construction sector mentioned in the allegations who were first detained and then brought before the military judicial authorities and required as an interim measure to report every week to the tribunal.*
- (b) *The Committee also invites the complainant organization to supply the names and union positions of the one hundred or so trade unionists who have reportedly faced criminal charges for having carried out union activities and, in the case that this is not possible, to indicate any eventual impediments to providing such information.*

CASE No. 3036

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

**Complaint against the Government of the
Bolivarian Republic of Venezuela
presented by
the Union of Workers of Hydrocarbon Derivatives
and Related Petrochemicals and Allied Workers
in the State of Carabobo (S.T.H.P.C.S.E.C.)
supported by
the Federation of Bolivarian Trade Unions of the
State of Carabobo (FUSBEC)**

Allegations: Obstacles to collective bargaining between the complainant trade union and the company PETROCASA, suspension of union members and pressure on workers to give up their trade union membership

547. The complaint is contained in a communication dated 24 April 2013 presented by the Union of Workers of Hydrocarbon Derivatives and Related Petrochemicals and Allied Workers in the State of Carabobo (S.T.H.P.C.S.E.C.). The complaint was supported by the

Federation of Bolivarian Trade Unions of the State of Carabobo (FUSBEC) in a communication of 11 June 2013.

- 548.** The Government sent its observations in a communication dated 15 May 2014.
- 549.** The Bolivarian Republic of Venezuela has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

- 550.** In a communication dated 24 April 2013, the S.T.H.P.C.S.E.C. alleges that, having obtained registration as a trade union organization on 5 August 2008, it submitted a draft collective agreement to the labour inspectorate on 27 January 2009 to be negotiated with the public enterprise, PETROCASA, so that the economic and budgetary study provided for in legislation could be carried out. Since then, the collective bargaining process has not been launched. Since 31 May 2010, the pretext given by the Ministry of Popular Power for Labour (the complainant trade union attaches a communication with that date) is that “the Commander and President of the Bolivarian Republic of Venezuela has intervened so that no ministry, institute, enterprise or foundation of the National Executive is authorized to sign collective agreements”; this “must be dealt with directly with the Commander and President or through the Executive Vice-President of the Republic for approval”.
- 551.** The complainant organization also alleges that, as a result of intimidation by the administration, workers have given up their membership, and it attaches a list of workers that appears in a ministry communication dated 5 August 2008, relating to eight resignations of membership in January 2008. The complainant adds that there were further resignations of members for the same reason in the second half of 2012.
- 552.** The complainant also alleges that on 5 July 2012 it organized a peaceful protest on the company's premises concerning various labour-related irregularities, including the need for wage improvements in the context of a collective agreement, and the suspension of two trade union delegates who cannot perform their duties although they continue to receive their wages.
- 553.** The complainant adds that the National Guard attacked the workers during this protest, inflicting blows and broken bones, for which reason criminal proceedings have been brought before the Office of the Public Prosecutor. Since then, entry into the enterprise has been prohibited for numerous workers (a list of 75 names was sent; the total number of workers in the company is 1,200 according to the allegations).

B. The Government's reply

- 554.** In a communication dated 15 May 2014, the Government states, in relation to the commencement of negotiations on the collective labour agreement presented by the complainants, that the draft was accepted and is pending receipt of the mandatory report from the competent authority, so as to meet the economic requirement, in accordance with the Basic Labour Act, so that the commitments made during the negotiation can be honoured. The Government adds that the labour inspectorate of Guacara, State of Carabobo, nevertheless reported that at the many meetings it has held with the workers from the enterprise, they have made no reference to the collective agreement in question.

555. With regard to the protection of the suspended workers, the Government reports the decision that they should be reinstated in their posts, without payment of the wages due, as it was clear that the workers had continued to receive their wages.

C. The Committee's conclusions

556. *The Committee notes that in the present case the complainant organization alleges difficulties and delays over a number of years in the collective bargaining process with the enterprise PETROCASA; workers giving up their union membership as a result of intimidation by the enterprise management; the suspension from duty of two workers who were trade union delegates, although they continue to receive their wages; and attacks by the National Guard against workers during a peaceful trade union protest on the premises of the enterprise.*

557. *With regard to the alleged difficulties and excessive delays over a number of years in the collective bargaining process with the enterprise, the Committee notes that the Government states that the draft collective agreement was approved and is pending receipt of the mandatory economic report by the competent authority provided for in the legislation, and also that the local labour inspectorate has reported that the workers have not referred to the collective agreement in the numerous meetings it has held with them.*

558. *The Committee regrets to observe that, according to the allegations, the draft collective agreement was submitted to the labour authorities on 27 January 2009 precisely so that the corresponding economic report could be prepared and that the process has stalled since then due to instructions making it compulsory for the President or Vice-President of the Republic to give their approval. The Committee observes from the allegations and the information provided by the Government that more than five years later the economic study in question has still not been completed and that collective bargaining has not taken place. The Committee reminds the Government that under Article 4 of Convention No. 98, it is under the obligation to promote collective bargaining and firmly requests it to take the necessary measures without delay so that the parties can begin negotiating a collective agreement and to keep it informed in this regard.*

559. *With regard to the allegation relating to workers giving up their trade union membership as a result of intimidation by the management, the Committee notes that the complainant union has presented a list of eight workers that appears in a communication by the Ministry of Popular Power for Labour, dated 5 August 2008, relating to eight resignations of membership in January 2008, and also that, according to the trade union, there were further resignations of membership for the same reason in the second half of 2012. The Committee regrets that the Government has not sent its observations on these allegations. It emphasizes the seriousness of the allegations and requests the Government to conduct an investigation and to keep it informed of the outcome.*

560. *With reference to the allegations relating to the suspension of two trade union delegates who are unable to perform their professional duties, although they continue to receive their wages, the Committee notes the Government's indication that their reinstatement was ordered, and its confirmation, as indicated in the allegations, that they have continued to receive their wages.*

561. *Finally, with regard to the alleged acts of violence by the National Guard (inflicting blows and broken bones) against workers who, according to the complainant union, participated on 5 July 2012 in a peaceful trade union protest on the premises of the enterprise, the Committee regrets that the Government has not sent any information on these allegations. The Committee regrets any acts of violence that may have been committed and observes the indication by the complainant organization that it submitted a criminal complaint to*

the Office of the Public Prosecutor. The Committee requests the Government to keep it informed of the outcome of the complaint.

The Committee's recommendations

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

- (a) The Committee regrets the excessive delay of more than five years in the collective bargaining process between the complainant trade union and the enterprise due to the failure of the authorities to carry out the economic budgetary study. The Committee reminds the Government that it is under the obligation to promote collective bargaining and firmly requests it to take the necessary measures without delay so that the parties can begin negotiating a collective agreement, and to keep it informed in that regard.*

- (b) The Committee requests the Government to keep it informed of the outcome of the criminal complaint presented to the Office of the Public Prosecutor relating to the alleged acts of violence by the National Guard against workers who, according to the complainant trade union, participated on 5 July 2012 in a peaceful trade union protest on the premises of the enterprise against a number of labour-related irregularities.*

Geneva, 7 November 2014

(Signed) Professor Paul van der Heijden
Chairperson

<i>Points for decision:</i>	Paragraph 78	Paragraph 334
	Paragraph 108	Paragraph 359
	Paragraph 142	Paragraph 368
	Paragraph 194	Paragraph 381
	Paragraph 209	Paragraph 406
	Paragraph 229	Paragraph 426
	Paragraph 265	Paragraph 470
	Paragraph 282	Paragraph 530
	Paragraph 293	Paragraph 546
	Paragraph 309	Paragraph 562
	Paragraph 323	