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TENTH ITEM ON THE AGENDA

## Reports of the Committee on Freedom of Association

### 370th 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 16–18 and 25 October, under the chairmanship of Professor Paul van der Heijden.
2. The members of Argentinian, Colombian and Mexican nationality were not present during the examination of the cases relating to Argentina (Case No. 2997), Colombia (Cases Nos 2950, 2974 and 2993) and Mexico (Cases Nos 2694 and 2973).

\* \* \*

3. Currently, there are 157 cases before the Committee, in which complaints have been submitted to the governments concerned for their observations. At its present meeting, the Committee examined 33 cases on the merits, reaching definitive conclusions in 25 cases and interim conclusions in eight cases; the remaining cases were adjourned for the reasons set out in the following paragraphs. The Committee also held further discussion on its working methods.

### **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 2318 (Cambodia), 2723 (Fiji) and 2745 (Philippines) because of the extreme seriousness and urgency of the matters dealt with therein.

### **Cases examined by the Committee in the absence of a government reply**

5. The Committee deeply regrets that it was obliged to examine the following cases without a response from the government: Cambodia (2318); El Salvador (2957 and 2985); Fiji (2723); Kiribati (2794); Pakistan (2902); and Tunisia (2994). The Committee urges governments to respond in a timely fashion as this is not only in their own interest, but also enables the Committee to carry out its work in full knowledge of the facts.

### **Urgent appeals**

6. As regards Cases Nos 2620 (Republic of Korea), 2648 (Paraguay), 2655 (Cambodia), 2684 (Ecuador), 2708 (Guatemala), 2753 (Djibouti), 2871 (El Salvador), 2896 (El Salvador), 2913 (Guinea), 2923 (El Salvador), 2924 (Colombia), 2929 (Costa Rica), 2937 (Paraguay), 2948 (Guatemala), 2963 (Chile), 2967 (Guatemala), 2989 (Guatemala), 2995 (Colombia), 3000 (Chile), 3005 (Chile) and 3010 (Paraguay), 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: 3029 (Plurinational State of Bolivia), 3030 (Mali), 3034 (Colombia), 3035 (Guatemala), 3038 (Norway), 3040 (Guatemala), 3041 (Cameroon), 3042 (Guatemala), 3043 (Peru), 3044 (Croatia) and 3045 (Nicaragua), 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: 2445 (Guatemala), 2726 (Argentina), 2765 (Bangladesh), 2786 (Dominican Republic), 2917 (Bolivarian Republic of Venezuela), 2955 (Bolivarian Republic of Venezuela), 2960 (Colombia), 2968 (Bolivarian Republic of Venezuela), 2978 (Guatemala), 3007 (El Salvador), 3008 (El Salvador), 3012 (El Salvador), 3013 (El Salvador), 3015 (Canada), 3017 (Chile), 3018 (Pakistan), 3019 (Paraguay), 3021 (Turkey), 3022 (Thailand), 3023 (Switzerland), 3026 (Peru), 3027 (Colombia) and 3036 (Bolivarian Republic of Venezuela).

## **Partial information received from governments**

9. In Cases Nos 2177 and 2183 (Japan), 2254 (Bolivarian Republic of Venezuela), 2203 (Guatemala), 2516 (Ethiopia), 2609 (Guatemala), 2673 (Guatemala), 2743 (Argentina), 2761 (Colombia), 2807 (Islamic Republic of Iran), 2811 (Guatemala), 2817 (Argentina), 2824 (Colombia), 2830 (Colombia), 2889 (Pakistan), 2893 (El Salvador), 2897 (El Salvador), 2900 (Peru), 2927 (Guatemala), 2962 (India), 2970 (Ecuador), 2987 (Argentina), 2992 (Costa Rica), 3003 (Canada), 3014 (Montenegro) and 3039 (Denmark), 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 2265 (Switzerland), 2508 (Islamic Republic of Iran), 2749 (France), 2869 (Guatemala), 2882 (Bahrain), 2892 (Turkey), 2908 (El Salvador), 2928 (Ecuador), 2941 (Peru), 2946 (Colombia), 2947 (Spain), 2953 (Italy), 2954 (Colombia), 2958 (Colombia), 2979 (Argentina), 2982 (Peru), 2986 (El Salvador), 2988 (Qatar), 2990 (Honduras), 2996 (Peru), 2998 (Peru), 2999 (Peru), 3001 (Plurinational State of Bolivia), 3002 (Plurinational State of Bolivia), 3004 (Chad), 3009 (Peru), 3011 (Turkey), 3016 (Bolivarian Republic of Venezuela), 3020 (Colombia), 3024 (Morocco), 3025 (Egypt), 3028 (Egypt), 3031 (Panama), 3032 (Honduras), 3033 (Peru) and 3037 (Philippines), the Committee has received the governments' observations and intends to examine the substance of these cases at its next meeting.

## **Cases concerning the Democratic Republic of the Congo**

11. With regard to Cases Nos 2713, 2715, 2797 and 2925 (Democratic Republic of the Congo), following the Committee's proposal for the technical assistance of the Office, a mission visited the country in July 2013 in order to meet with all the parties involved in the



cases and gather relevant and up-to-date information. The Committee intends to examine these cases in light of the information gathered at its next meeting.

### **Withdrawal of a complaint**

12. As regards Case No. 2945, the Committee has received communications from both the General Confederation of Lebanese Workers (CGTL) and the Association of Lebanese Industrials, dated 24 August and 3 October 2013, respectively, indicating their desire to withdraw the complaint which they brought against the Government of Lebanon, due to the improvement of the situation following the replacement of the Minister of Labour. The Committee takes due note of this information and, in light of the position expressed by the complainants, considers this case to be closed.

### **Article 26 complaint**

13. The Committee is awaiting the observation of the Government of Belarus in respect of its recommendations relating to the measures taken to implement the recommendations of the Commission of Inquiry.

### **Closed case**

14. With respect to Case No. 2965 (Peru), the Committee, after examining the circumstances of this case, including the outcome of the judicial appeal proceedings, decided that this case did not call for further examination.

### **Transmission of cases to the Committee of Experts**

15. The Committee draws the legislative aspect of the following Cases to the attention of the Committee of Experts on the Application of Conventions and Recommendations: Ecuador (2926), El Salvador (2957) and Fiji (2723).

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

#### ***Cases Nos 2858 and 2939 (Brazil)***

16. With reference to Case No. 2858, the Committee recalls that the National Federation of Federal Police Officers (FENAPEF) alleged that in carrying out trade union activities several of its officials suffered acts of anti-union discrimination by the police authorities. At its November 2012 meeting, when examining the substance of the case, the Committee took due note that the Government, on a tripartite basis, proposed developing a draft bill to prevent, investigate and combat anti-union practices. With regard to the specific alleged acts of anti-union discrimination against the six union officials, the Committee regretted that the Government had merely stated that the administrative disciplinary proceedings could be appealed in the courts and that the principles of due process were respected. On this basis, the Committee formulated the following recommendations [see 365th Report, para. 281]:

- (a) The Committee expects that the draft bill on anti-union discrimination will shortly be submitted to the Executive and recalls that, if it so wishes, it can make use of ILO

technical assistance in this process. The Committee requests the Government to keep it informed thereof.

- (b) The Committee requests the Government to inform it about the outcome of the administrative disciplinary proceedings concerning five union officials and whether appeals have been lodged in this regard. The Committee also regrets the delay in the reinstatement proceedings initiated seven years ago by Mr José Pereira Orihuela, President of the Union of Federal Police Officers of Roraima and requests the Government to keep it informed of the outcome of this case.

17. With reference to Case No. 2939, the Committee notes that, in a communication dated 16 May 2011, the Union of Federal Police Officers of the State of Paraíba (SINPEF/PB), supported by FENAPEF, submitted a complaint relating to matters that had already been examined in the framework of Case No. 2858 and that consequently the Committee decided to examine them together. In particular, the complainant organization provides further details about the disciplinary proceedings against the trade union official Mr Francisco Leodécio Neves, Deputy Director of Communications, for having published an article criticizing the police's investigation methods (according to the complainant organization, although the Police Disciplinary Committee concluded that the trade union official in question had not committed any offence and requested that the case be closed, the federal police authorities asked that the disciplinary proceedings be reopened). The Committee notes that, in its reply of 4 March 2013, the Government states that it has not yet been possible to establish a definition in national legislation of anti-union conduct, but that a draft bill is currently under discussion in the Industrial Relations Council – a tripartite body – whose principal objective is to prohibit anti-union practices. The Government further indicates that the federal police has been asked to inform it of the final outcome of the reopening of the administrative disciplinary proceedings against the abovementioned trade union official.

18. *In these circumstances, the Committee refers to its previous recommendations and requests the Government to keep it informed of developments on all the pending issues.*

### **Case No. 2808 (Cameroon)**

19. At its last examination of the case, during its November 2012 meeting [see 365th Report, paras 291-301], the Committee requested the Government to indicate all investigations undertaken into the allegations of interference of the management of the National Social Insurance Fund (CNPS) in the business of the National Union of Employees, Supervisors and Managers of Banks and Financial Establishments of Cameroon (SNEGCBFCAM). The Committee also stated that it expected the rights of Mr Amogo Foe, a staff delegate who had had deductions made from his salary in violation of the law, to be restored in accordance with a February 2010 decision of the labour inspectorate which CNPS had refused to execute. Lastly, the Committee requested that the labour inspectorate examine the case concerning Mr Oumarou Woudang, a staff delegate who was suspended and then dismissed in July 2009 for copying and distributing a notice of trade union strike action during working hours.

20. In a communication dated 23 January 2013, the Government transmits the observations of the Director-General of CNPS on the follow-up to the Committee's recommendations. The Director-General states that it appears that the allegations of interference and anti-union discrimination made against CNPS are unfounded. Concerning Mr Amogo Foe's situation, the Director-General states that the staff delegate is challenging salary deductions totalling 912,000 CFA francs to recover payment for overtime which he had received unduly during the period from 1 April 1984 to 30 July 2009, whereas he had no longer held the position of personal chauffeur to the Director of Collections since 31 March 1984, which entitled him to this benefit. As for Mr Oumarou Woudang, the Director-General of CNPS states

that the staff delegate is challenging a decision of 6 July 2009, imposing a six-day suspension for copying and distributing a notice of strike action during working hours; the Director of CNPS states that the disciplinary measure is justified since work materials must not be used for non-work activities. In a communication of 26 February 2013, the Government adds that the dispute concerning Mr Oumarou Woudang is still under way before the Regional Labour and Social Security Office for the Centre Province.

21. *At the outset, the Committee notes with regret that, despite the Government's statement that the outlook for trade union issues was very promising at CNPS, its previous recommendations have generally not been implemented in the present case. The Committee notes, first, that the Government confines itself to transmitting the observations of the CNPS management regarding the situation of the two SNEGCBEFCAM staff delegates, without having investigated the allegations of interference as requested. Second, while noting the explanations provided by CNPS on the deductions from Mr Amogo Foe's salary, the Committee must refer to the order of the Regional Labour and Social Security Office for the Centre Province dated 1 February 2010, reminding the CNPS management of the only grounds for salary deductions which are admissible under the Labour Code and consequently requesting it to restore Mr Amogo Foe's rights. In the absence of any evidence of a change in position by the administration, the Committee must reiterate its recommendation that Mr Amogo Foe's rights be restored without delay in accordance with the administration's decision and that, furthermore, he receive full compensation for any prejudice he suffered in this case. The Committee urges the Government to take all necessary steps in this regard. Moreover, the Committee notes with concern the information that the dispute concerning Mr Oumarou Woudang is still under way before the Regional Labour and Social Security Office for the Centre Province. Noting that his suspension dates back to July 2009, the Committee reminds the Government of the need for cases concerning anti-union discrimination to be examined in prompt and impartial proceedings. Consequently, it expects the Government to inform it without delay of Mr Oumarou Woudang's current employment situation and of the outcome of the proceedings pertaining to the dispute.*

### **Case No. 2812 (Cameroon)**

22. At its last examination of this case, during its November 2012 meeting [see 365th Report, paras 302–314], the Committee requested the Government to provide information about the recommendations of the ad hoc committee that was set up once the dialogue between the Ministry of Labour and Social Security and the Confederation of Public Sector Unions (CSP) had been resumed. The Committee also requested information about the situation of the seven union members who were arrested during the sit-in on 11 November 2010, whose case had been referred to the Court of First Instance of Mfoundi (Yaoundé administrative section), in particular, all judicial decisions issued in the case, and about any inquiry into allegations concerning the violent intervention of law enforcement officers against striking trade unionists and concerning the conditions under which the union officials were detained and the ill-treatment they suffered. Lastly, the Committee requested the Government to keep it informed of any developments concerning the adoption of the single Act on trade unions.
23. In a communication dated 23 January 2013, the Government states that the ad hoc committee has been set up and that any recommendations it makes on CSP's demands will be transmitted to the Committee in due course. In a communication dated 26 February 2013, the Government transmits a document tracking the follow-up to CSP's demands, and states the Government's position on matters pertaining to the case. As for recognition of CSP's existence, the Government states that this still falls within the authority of the Ministry of Territorial Administration and Decentralization, pending the adoption of the Act on trade unions. As for the situation of the seven striking workers who

were arrested, the Ministry of Labour and Social Security transmitted a letter to the Ministry of Justice for which a response is still pending. As for the allegations of violent police intervention against the striking trade unionists, the Government states that the courts work transparently and independently. Lastly, the Government states that the Ministry of Labour and Social Security is examining the observations on the draft bill on trade unions which it has received from the unions, but that it has not yet received the observations of the Ministry of Public Service and Administrative Reforms.

24. *The Committee notes the information provided by the Government. While it is the Committee's understanding that CSP is recognized in practice and appears to exercise its freedom of association rights, its legal existence is still contingent on a decision of the Ministry of Territorial Administration and Decentralization. The Committee regrets that more than a year after its previous recommendations, it appears that CSP's legal existence has not yet been recognized by the public authorities. The Committee recalls that the organization was founded in 2000, and urges the Government to take all necessary measures to grant CSP legal existence in order to enable it to represent its members and exercise all attendant rights.*
25. *Furthermore, the Committee notes with concern that no concrete information has been provided in relation to subsequent judicial action in the case of the seven trade unionists who were arrested in November 2010, or on any action taken in relation to the allegations of police violence and ill-treatment in detention. The Committee notes that the reported incidents and the ongoing proceedings date back almost three years, and reminds the Government of the importance it attaches to judicial proceedings being concluded expeditiously, as justice delayed is justice denied. [See **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 104]. Furthermore, excessive delays in the proceedings may have an intimidating effect on the union officials concerned, thus having repercussions on the exercise of their activities. The Committee expects the Government to report without delay on the judicial decisions issued in relation to the seven trade unionists who were arrested and prosecuted following a sit-in in November 2010 (Mr Jean-Marc Bikoko, President of CSP; Mr Maurice Phouet Foé, General Secretary of SNAEF; Mr Thobie Mbassi Ondo, Director-General of FECASE; Mr Eric Nla'a, Accountant of CSP; Mr Joseph Ze, General Secretary of SNUIPEN; Mr Charles Felein Clause, a member of SNUIPEN; and Mr Effoa Nkili, a member of SNUIPEN) and on all enquiries made into the allegations of police violence and ill-treatment in detention.*
26. *Finally, the Committee requests the Government to expedite action on the single Act on trade unions so that it may be adopted in the near future, in full conformity with Conventions Nos 87 and 98, and requests the Government to keep it informed of the progress made in this regard.*

### **Case No. 2257 (Canada (Quebec))**

27. The Committee last examined this case, which concerns the exclusion of managerial staff from Quebec's Labour Code, which prevents them from forming unions and therefore from enjoying rights and prerogatives such as true collective bargaining, a dispute settlement procedure in the absence of the right to strike, and legal protection against acts of interference by employers, at its meeting in November 2011 [see 362nd Report, paras 33–38]. On that occasion, the Committee noted that no progress had been made with regard to the need to amend the Labour Code of Quebec so that managerial personnel enjoy the right to benefit from the general provisions of collective labour law and form associations that enjoy the same rights, prerogatives and means of redress as other workers' associations and urged the Government of Quebec to maintain a continuous dialogue with the representatives of the organizations concerned regarding following up its

recommendations. Furthermore, the Committee noted that no ruling had been handed down by the Labour Relations Board of Quebec regarding the application for certification filed on 10 November 2009 by the Association of Managerial Staff of the Société des casinos du Québec (ACSCQ), either on the application itself or on the constitutionality of subparagraph 1 of paragraph 1 of section 1 of the Labour Code. The Committee therefore requested the Government to keep it informed without delay of any new development or ruling handed down with respect to the application.

28. In a communication dated 10 January 2013, the Government sent the observations of the Government of Quebec, which indicated that the new chairperson and managing director of Loto-Québec had decided not to meet the chairperson of the ACSCQ, as the ACSCQ's application for certification was still pending before the courts and the memoranda of understanding governing the relationship between the ACSCQ and the management still appeared to be appropriate. The provincial Government adds that the management of the Société des casinos du Québec applies these memoranda, informing the ACSCQ, among others, of any imminent decisions relating to it, and mentions that meetings were held with the chairperson of the ACSCQ on at least four occasions during the course of 2012 to provide information regarding developments in the organization of work.
29. In a communication dated 4 October 2012, the ACSCQ alleges that there has been no improvement in the situation since the complaint was lodged in March 2003. The organization indicates that the numerous steps that have been taken and representations made with the various parties representing the Government of Quebec over the past five years have only resulted in three fruitless meetings and the submission of a guide on good governance, which was rejected by the complainant organization as it could not be applied, even in the opinion of the Government of Quebec, to state enterprises or to the managers that the ACSCQ represents. Furthermore, the organization cites the lack of any response by the Government, despite the numerous letters that have been sent in recent years requesting official meetings.
30. *The Committee notes the information received. It deeply regrets that, according to the complainant, no progress has been made in this case even though more than nine years have passed since it made its recommendations on the substance of the case, on the need to amend the legislation of the Province of Quebec. The Committee further regrets the absence of dialogue between the parties and recalls that engaging in ongoing tripartite dialogue constitutes a fundamental element of respect for the principles deriving from freedom of association. In this regard, the Committee urges the Government of Quebec to re-establish and maintain a continuous dialogue with the representative associations concerned with a view to making the legislative amendments to the Labour Code necessary to ensure its compliance with the principles of freedom of association, that were proposed a number of years ago, and to keep it informed of developments in this regard. The Committee requests the Government to keep it informed of developments in the legal proceedings relating to the ACSCQ's certification process and to the contesting of the constitutionality of subparagraph 1 of paragraph 1 of section 1 of the Labour Code of Quebec before the Labour Relations Board of Quebec.*

### **Case No. 2848 (Canada)**

31. The Committee last examined this case at its June 2012 meeting [see 364th Report, paras 391–431]. On that occasion, the Committee made the following recommendations:
  - (a) The Committee requests the Government to rapidly take all necessary measures, including legislative reforms, in consultation with the social partners, to ensure that all mail contractors of the Canada Post Corporation (CPC) fully enjoy the rights to organize and to bargain collectively, as any other worker. Where needed, the Committee requests

the Government to lift any obstacles – whether implicit or explicit – to the exercise of these rights and to keep it informed of any development in this respect.

- (b) The Committee requests the Government and the complainant to provide information on the outcome of the hearing by the Federal Court of Appeal of the judicial review of the Canada Labour Relations Board jurisdictional decision on the Charter issue in relation with section 13(5) of the Canada Post Corporation Act.
- (c) The Committee requests the Government to consider, in full consultation with the social partners concerned, the ratification of Convention No. 98.

**32.** In its communication dated 7 February 2013, the Government reiterates that the Canadian Union of Postal Workers (CUPW) concluded a new collective agreement with the CPC. New collective agreements for both the Urban Postal Operations Workers and the Rural and Suburban Mail Carriers (RSMC) took effect on 21 December 2012 and are in effect until 2016. The Government further indicates that the Canada Industrial Relations Board rendered its decision on 28 January 2013 on a case filed in 2008 by the CUPW seeking that the Board grant a common employer declaration with respect to CPC and a CPC contractor pursuant to section 35 of the Canada Labour Code, a matter which, the Committee observes, was not the subject of this complaint.

**33.** *The Committee notes the information provided by the Government, but regrets that no new information has been provided on the measures, including legislative reforms, taken in consultation with the social partners, to ensure that all mail contractors of the CPC fully enjoy the rights to organize and to bargain collectively, as any worker; and to lift any obstacles – whether implicit or explicit – to the exercise of these rights. The Committee therefore reiterates its previous request and asks the Government to keep it informed of any development in this respect.*

**34.** *The Committee also once again requests the Government to provide information on the outcome of the hearing by the Federal Court of Appeal of the judicial review of the Canada Labour Relations Board jurisdictional decision on the Charter issue in relation with section 13(5) of the Canada Post Corporation Act.*

### **Case No. 2595 (Colombia)**

**35.** The Committee last examined this case at its meeting in March 2010 [see 356th Report, paras 53–57], when it requested the Government: (1) to keep it informed of the registration of Mr Ernesto Estrada Prada as a member of the executive board of the National Union of Food Workers (SINALTRAINAL); (2) to send its observations concerning the right of the workers of Acueducto Metropolitano de Bucaramanga to join SINALTRAINAL; and (3) to keep it informed of the existence of an industrial inquiry into the Ayuda Integral Company for anti-union harassment in connection with the dismissal of Mr Martínez Moyano.

**36.** In communications dated 29 April and 10 June 2010, SINALTRAINAL presented new allegations. The Government sent its observations in communications dated 15 February and March 2011.

37. Specifically, the complainant alleges that:

- Industria Nacional de Gaseosas SA (henceforward “the company”) has refused to recognize the appointment of a number of workers as members of the SINALTRAINAL Complaints Committee on the grounds that they are “workers of confidence” and has therefore refused to recognize their trade union immunity, in violation of articles 3 and 4 of the collective agreement. In this connection, the Government sent the Committee a communication from the company stating that, while it recognizes its workers’ right to freedom of association, it considers null and void, pursuant to article 389, as amended, of the Labour Code, the appointment to union posts of workers whose functions require them to represent the company, as is the case of senior sales personnel and operational coordinators. *The Committee takes note of this information and recalls that workers and their organizations should have the right to elect their representatives in full freedom and that the latter should have the right to put forward claims on their behalf [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 389]. The Committee observes further that it is not for the employer to determine whether or not the appointment of a union official complies with legal requirements. The Committee trusts that its observations will be taken fully into consideration by the company and, if relevant, by the competent institutions.*
- The company refuses to grant trade union immunity to SINTRAINAL’s Complaints Committee, contrary to the understanding in the 2008–10 collective agreement. In this connection, the Government forwards the company’s statement that, pursuant to article 406 of the Labour Code, a company cannot have more than one statutory Complaints Committee. The company adds that the 2008–10 collective agreement does not provide for the creation of complaints committees within each trade union. *The Committee takes note of this information and of the different interpretations of the 2008–10 collective agreement. The Committee trusts that this point of contention will have been resolved with the signing of a new collective agreement in 2011.*
- Mr José Hernando Uribe Zambrano, a member of the Complaints Committee of the Coca Cola bottling plant in Bucaramanga, has been illegally dismissed in violation of his trade union immunity. In this connection, the Government informs the Committee of the company’s position that, when his contract was terminated, Mr Uribe Zambrano was neither affiliated to the union nor a member of the Complaints Committee and that he therefore did not have trade union immunity. The company adds that the case is currently before the Fourth Bogota Circuit Labour Court. *The Committee takes note of this information and requests the Government to keep it informed of the outcome of the judicial proceedings under way.*
- In violation of their trade union immunity, Mr Juan Manuel Concha, member of the Complaints Committee of the Coca Cola bottling plant in Bucaramanga, and Mr Gerson Fabian Mantilla Torres, member of SINALTRAINAL’s executive board in Bucaramanga, have been transferred to new posts. In this regard, the Government forwards the company’s statement that the new post assigned to Mr Concha is a career development move and that Mr Mantilla Torres was promoted to a new post at a higher salary. *While taking note of this information, the Committee recalls the principle that a deliberate policy of frequent transfers of persons holding trade union office may seriously harm the efficiency of trade union activities [see **Digest**, op. cit., para. 802].*
- On 18 September 2009, Mr Álvaro Enrique Benítez, a member and former official of SINALTRAINAL, was dismissed without just cause. In this connection, the Government informs the Committee of the company’s position that Mr Benítez was

dismissed for a serious failure to fulfil his duties and that his appeal was rejected by the courts at every level. *The Committee takes note of this information.*

- Mr Andrés Olivar, a member of the executive board of SINALTRAINAL–Bogota is not paid the same salary as other workers in the same post. In this regard, the Government forwards the company’s statement that the company has reviewed the matter and adjusted Mr Olivar’s salary retroactively. *The Committee takes note with interest of this information.*
  
- On 10 January 2010, SINALTRAINAL’s notice board at the Medellín plant was removed and three union officials were suspended for five days, in violation of the collective agreement and due process. In this connection, the Government informs the Committee of the company’s position that SINALTRAINAL had damaged company installations by writing insulting graffiti directed against its management. The company denies that it removed the notice board but states that it convened the workers involved and, as they were unable to justify their actions, it proceeded to suspend them. The three workers lodged complaints with the labour courts. While the courts were examining the complaints lodged by Mr Jimmy Fontecha and Mr Alexander Rincón, a ruling was handed down by the Sixth Industrial Court of Bucaramanga on 14 October 2010 on the complaint lodged by Mr Nelson Pérez stating that his suspension was legal. In a decision of 31 January 2011, the Ministry of Social Welfare’s Territorial Directorate of Santander declared that the right of trade unions to notice boards presupposed that they would be properly and respectfully used. *The Committee takes note of this information and requests the Government to keep it informed of the outcome of the court proceedings under way. The Committee wishes to recall 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 opinions, trade union organizations should respect the limits of propriety and refrain from the use of insulting language [see *Digest*, op. cit., para. 154]. The Committee trusts that these principles will be taken fully into consideration by the enterprise, the complainant organization and the competent tribunals.*
  
- Trade union leave in Medellín has been denied in violation of the collective agreement, and a series of disciplinary sanctions have been handed down, especially on union leader Andrés Olivar. In this regard, the Government forwards the company’s statement that union leave to attend two trade union meetings was refused because the amount of leave provided for in the collective agreement had already been used up and that the sanctions imposed on Mr Olivar were for absences that had not been the subject of any request for union leave. *The Committee takes note of this information.*
  
- The procedure for requesting trade union leave was made the subject of regulations laid down by the company unilaterally on 12 March 2010, in violation of the collective agreement. In this connection, the Government informs the Committee of the company’s position that, given the union’s failure to request union leave in compliance with the provisions of the collective agreement, the human resources department wrote to SINALTRAINAL to remind it of the procedure stipulated in the agreement. *The Committee takes note of this information.*
  
- Non-unionized workers were subjected to pressure on a number of occasions in 2009 to sign up to the collective accord. In this regard, the Government forwards the company’s statement that it made all the necessary means available and gave every guarantee for the collective agreement that came to an end on 28 February 2010 to be



renegotiated. It had written to the trade unions proposing that negotiations on the new agreement take place before the negotiation of the collective accord, whose clauses are no more favourable than those stipulated in the agreement. Before the negotiation of the collective accord, 627 company workers were union members, and afterwards the number rose to 642. *The Committee takes note of this information and recalls that the Collective Agreements Recommendation, 1951 (No. 91), emphasizes the role of workers' organizations as one of the parties in collective bargaining and refers to representatives of unorganized workers only when no organization exists. In such cases, direct negotiation between the undertaking and its employees, by-passing representative organizations where these exist, might in certain cases be detrimental to the principal that negotiation between employers and organizations of workers should be encouraged and promoted [see Digest, op. cit, paras 944 and 945]. The Committee observes, moreover, that the Committee of Experts on the Application of Conventions and Recommendations, in its 2011 observation on the application of Convention No. 98, recalled that when there is a trade union at the enterprise, collective agreements should not be concluded with non-unionized workers. The Committee therefore requests the Government to take the necessary measures to ensure that this principle is respected by the company and to keep it informed of any developments in this regard.*

- The company attempted to modify the agreement with SINALTRAINAL unilaterally on 17 July 2009. In this respect, the Government informs the Committee of the company's position that the list of demands presented by SINALTRAINAL and the Union of Beverage Industry Workers of Colombia (SINALTRAINBEC) for the country's northern region was adopted on that date and that the company's only request was that the text of the agreement be incorporated into the collective agreement for all the companies in the group. The company states that, as no common ground could be found, the agreement was officially registered with the Ministry of Social Welfare and has since been fully complied with. *The Committee takes note of this information.*
- The company has denied SINALTRAINAL the right to negotiate its list of demands independently. In this connection, the Government forwards the company's statement that it had endeavoured to obtain SINALTRAINAL's consent to take part in a single series of negotiations with the other trade unions, as had been the established practice for over ten years. The company adds that an agreement was finally signed with SINALTRAINAL on 12 February 2011, with retroactive effect from 1 March 2010. The Government feels that the signing of a collective agreement between the company and the complainant organization on 12 February 2011 shows that, on that point, the complaint is no longer relevant. *The Committee notes this information with interest.*

- 38.** The Committee takes note of the Government's final observations regarding the new allegations presented by the complainant organization. The Government states that it has been informed by the Ministry of Social Welfare's Territorial Directorate for Antioquia that it has not received any complaint from SINALTRAINAL. The Government also recalls that there are a number of administrative and judicial institutions in Colombia to defend trade union rights and collective bargaining, and that the union could start by lodging appeals with them if it felt that its rights had been infringed. The Government further recalls the existence of the Special Committee for the Handling of Conflicts referred to the ILO (CETCOIT) and to the possibilities that it affords for improving relations between the company and the complainant organization. *The Committee takes note of this information and, in turn, invites the company and the complainant organization to use the social dialogue machinery available to them to contribute to the resolution of any areas of conflict that may exist.*

39. Finally, the Committee again requests the Government to provide, without delay, the information it requested on the right of the workers of *Acueducto Metropolitano de Bucaramanga* to join *SINALTRAINAL*, on the registration of Mr Ernesto Estrada Prada as a member of *SINALTRAINAL*'s executive board and on the existence of an industrial inquiry into the *Ayuda Integral* company for anti-union harassment.

### Case No. 2450 (Djibouti)

40. The Committee last considered this case at its March 2012 session. On that occasion it made the following recommendations [see 363rd Report, paras 134–149]:

- (a) With regard to the reinstatement of the workers dismissed in 1995 who have not yet been reinstated, the Committee again requests the Government: (i) to provide information, if any, on the outcome of the negotiations with Ms Mariam Hassan Ali and Mr Habib Ahmed Doualeh; (ii) to indicate the current employment situation of Mr Adan Mohamed Abdou and, if he has declined to be reinstated, to specify the date of the negotiations and his reasons for declining; and (iii) to state whether the issue of the gap in annuities of Mr Kamil Diraneh Hared has been resolved so that he can draw his retirement pension.
- (b) As for the circumstances of the dismissal of Mr Hassan Cher Hared from the post office in September 2006, the Committee requests the Government to provide all pertinent documents (reports, correspondence, judicial decisions) in support of its claims with regard to the dismissal, and to provide information on his present situation.
- (c) Concerning the proceedings brought since 2006 against Mr Hassan Cher Hared, Mr Adan Mohamed Abdou, Mr Mohamed Ahmed Mohamed et Mr Djibril Ismael Egueh for “delivering information to a foreign power”, the Committee requests the Government to provide information on the situation.
- (d) The Committee also insisted once again on the need for the Government to guarantee the right to hold free and transparent elections to all trade unions in the country, particularly the Djibouti Union of Workers (UDT) and its affiliated organizations or, as appropriate, the General Union of Djibouti Workers (UGTD) and its affiliated organizations, in a framework which fully respects their capacity to act in total independence.

41. Concerning recommendation (a), the trade union confederation (UDT/UGTD) states, in particular, in a communication of 20 August 2012, that Ms Mariam Hassan Ali, on returning to the country, has, since 2010, attempted on a number of occasions to enter into discussions with the Government about her reinstatement and her arrears of salary. She was however put under pressure and exposed to threats by the politicians responsible, to dissuade her from pursuing the matter. In this respect the Government, in a communication of 12 June 2013, reports that its efforts during the ongoing negotiations will shortly lead to the reinstatement of Ms Mariam Hassan Ali and Mr Habib Ahmed Doualeh. It also explains that Ms Mariam Hassan Ali has been reimbursed the sums deducted from her salary. As for Mr Adan Mohamed Abdou, the Government states that he has been elected to the National Assembly as a representative of the National Salvation Union (USN), an opposition party. The Government also reports that, in conformity with the recommendations of the direct contacts mission to Djibouti in 2008, it has undertaken, through the Ministry of Labour, to take responsibility for the missing social security contributions of Mr Kamil Diraneh Hared. *The Committee notes this information with interest and requests the Government to keep it informed of the progress of the negotiations concerning the forthcoming reinstatement of Ms Mariam Hassan Ali and Mr Habib Ahmed Doualeh, and of the actual payment of the retirement pension of Mr. Kamil Dinareh Hared, also covering the gap in annuities.*

42. Concerning recommendation (b), the Government confirms that Mr Hassan Cher Hared was dismissed by the governing board of the post office having been found guilty of abuse of power and misuse of company property, after all the statutory disciplinary measures had

been exhausted. It annexes a copy of correspondence between him and the post office administration, and documents relating to the dismissal of Mr Hassan Cher Hared from 25 September 2006 for serious professional misconduct (repeated absence from duty without permission). In June 2011 the complainant was living in Switzerland as an asylum seeker, according to a copy of an article in a local newspaper. He is still living there. *The Committee takes due note of this information and requests the Government to state whether any judicial appeal was lodged against the administrative decision to dismiss Mr Hassan Cher Hared.*

43. Concerning recommendation (c), the Government states that it has taken the necessary steps to communicate, at a later date, the outcome of the proceedings brought against Mr Hassan Cher Hared, Mr Adan Mohamed Abdou, Mr Mohamed Ahmed Mohamed and Mr Djibril Ismael Egueh for “delivering information to a foreign power”. *The Committee regrets that, seven years after these proceedings were initiated, there has been no decision grounded in explicitly stated facts. It requests the Government to keep it regularly informed of the course of these proceedings, even if the charges in question are ultimately dropped.*
44. *Finally, the Committee recalls that the Credentials Committee of the International Labour Conference, at its 102nd Session, Geneva, June 2013, firmly invited the Government to respect fully the capacity of genuine workers’ organizations in Djibouti to act with complete independence vis-à-vis the Government, in accordance with the provisions of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). The Committee again finds itself compelled to insist on the need for the Government to guarantee the right to free and transparent elections for all trade union organizations in the country, especially the UDT and its affiliated organizations or, as appropriate, the UGTD (Mr Diraneh Hared) and its affiliated organizations, in a framework that fully respects their capacity to act in complete independence. It expresses the firm hope that the Government will, without delay, be in a position to determine, together with these organizations, objective and transparent criteria for nominating workers’ representatives to national and international tripartite bodies and to the International Labour Conference.*

### **Case No. 2678 (Georgia)**

45. The Committee last examined this case, which concerns interference in trade union activities of the Educators and Scientists Free Trade Union of Georgia (ESFTUG) and dismissals of trade unionists, at its November 2011 meeting [see 362nd Report, paras 65–74]. On that occasion, it requested the Government to: (i) take the necessary measures to ensure that the check-off facilities previously enjoyed by the ESFTUG are re-established without delay and to ensure that any remaining arrears are paid to the union; (ii) conduct an independent inquiry into the allegation of dismissal of 11 workers from Public School No. 1 of Dedofliskaro district and, if it is found that these teachers were dismissed on account of their ESFTUG affiliation, to take the necessary measures to reinstate them without loss of pay. If reinstatement is not possible for objective and compelling reasons, the Committee requested the Government to take the necessary measures to ensure that the trade union leader and members concerned were paid adequate compensation which would represent a sufficiently dissuasive sanction for anti-union dismissal; (iii) take the necessary measures, without delay, in full consultation with the social partners concerned, to amend the Labour Code so as to ensure specific protection against anti-union discrimination, including anti-union dismissals, and to provide for sufficiently dissuasive sanctions against such acts; (iv) indicate the measures taken or envisaged to promote collective bargaining in the education sector and to inform it as to whether any collective agreement had been signed in the education sector and whether the ESFTUG was a party to such an agreement or participated in the negotiation; and

(v) provide further information on the status of the Professional Education Syndicate (PES). The Committee noted the establishment of various bodies to address urgent and outstanding issues in the education sector and requested the Government to take the necessary measures to ensure that the abovementioned recommendations were brought to their attention without delay.

46. By its communication dated 14 June 2012, Education International (EI) transmits the ESFTUG's report, dated May 2012, on the situation of freedom of association and collective bargaining rights in Georgia. The report contains the following allegations: On 19–22 January 2012, a delegation of the Independent Trade Union of Educational Workers of the Azerbaijan Republic visited the ESFTUG and financed a two-day-long seminar for the ESFTUG members/teachers from the Azerbaijani ethnic minority, living and working in Georgia. The seminar was held on the weekend of 21–22 January 2012, and was attended by teachers from different regions of Georgia: Marneuli, Gardabani, Dmanisi and Sagarejo. Teachers from the Gardabani region of Georgia, who had arrived in Tbilisi on 20 January (Friday evening) were forced to go back to Gardabani at the order of the Head of the Gardabani Educational Resource Centre (ERC) of the Ministry of Education and Science (MES) and were told that if they refused to do so they would be dismissed. Eleven teachers from the Gardabani region went back on the same day. The Chairperson of the ESFTUG called the Head of the Gardabani ERC and explained that the teachers had arrived to Tbilisi to attend a trade union seminar during the weekend, to which the Head of the Gardabani ERC replied that teachers should have consulted her and obtained authorization before attending the event. The ESFTUG Chairperson argued, however, that, in accordance with the legislation, teachers were attending the ESFTUG seminar during the weekend and that the ESFTUG was not obliged to obtain a prior authorization. The ESFTUG Chairperson called the Head of the International Department of the MES in order to inform the Minister of Education about this act of intimidation, but is yet to receive a reply. The ESFTUG further alleges that teachers from the Dmanisi region, who also wanted to attend the seminar, were threatened with dismissals by the Dmanisi school principal, who, according to the complaint, had himself been threatened by the Head of the Dmanisi ERC. A clear chain reaction had been created, as another four teachers were called on 22 January to leave the seminar on the second day.
47. The ESFTUG further alleges that, on 23 February 2012, its Chairperson and the Head of the ESFTUG Didube–Chugureti County organization in Tbilisi were planning a meeting with teachers of Tbilisi Public School No. 155, which had been agreed to by the school principal. However, on the same day, the latter changed her decision and refused to allow the ESFTUG leader to meet with teachers on the school premises. According to the complainant, during the first half of December 2012, several school principals told the ESFTUG representatives that two weeks earlier they had received instructions from the MES to cooperate with the trade union in accordance with the legislation. Yet, two weeks later, the ERC warned the school principals to abstain from such cooperation. The complainant further alleges that under the school principal's intimidation and pressure, the staff of Tbilisi Public School No. 142 withdrew their ESFTUG membership.
48. As regards the collection of trade union dues, the ESFTUG indicates that, since 2011, it has been working on an alternative way of transferring membership dues, using a “bank system” (transfer of membership dues from members' private accounts to the trade union's account on the basis of the members' written statements). According to the ESFTUG, school principals and the MES create obstacles for the ESFTUG in the implementation of this new method of collection of trade union dues. According to the complainant, in December 2011, the Head of the Marneuli ERC met with school principals and ordered them to make sure that there were no ESFTUG members in the Marneuli region. To this end, the Head of the Marneuli ERC requested the Marneuli regional branch of the Liberty Bank to provide a list of teachers whose trade union membership dues were deducted and

transferred to the ESFTUG account. This act provoked fear among teachers. The same occurred in the Tkibuli region. Furthermore, the principals of Tbilisi Public Schools Nos 22 and 139 allegedly requested the union to provide the lists of teachers who have requested that their membership dues be transferred via the “bank system”. The complainant considers that such requests constitute a clear act of interference by the school principals in its trade union activities.

- 49.** Furthermore, on 18 January 2012, during a meeting between the ESFTUG Chairperson and the Minister of Education, the Minister indicated that 600 schools did not have accountants and therefore were not able to process financial operations involving the transfer of dues. In response, the ESFTUG Chairperson reminded the Minister that the “yellow” union, the PES, gets its membership dues transferred to its account without any problems. The ESFTUG Chairperson also pointed out that money transfers were being made for other facilities provided to teachers.
- 50.** The EFSTUG concludes by indicating that the Minister of Education sent a letter to the ESFTUG Chairperson, on 2 February 2012, expressing his readiness to restore a relationship with the union in line with Georgian legislation. But, in the complainant’s opinion, the Ministry is not interested in dealing with the violations committed by the heads of the ERCs or school principals who do not implement the law and collective agreements. The complainant considers that, in order to effectively implement the right to collective bargaining and freedom of association, it is necessary for the status of collective agreements to be clearly defined and not be confused with ordinary labour contracts under the Labour Code (according to the legislation in force, a collective agreement and a labour contract have the same status); it is further necessary to provide in the legislation for the procedures and mechanisms to implement collective agreements.
- 51.** In its communication dated 14 November 2012, the Government transmits the comments made by the MES on the ESFTUG’s allegations transmitted by the EI. The MES indicates that, according to the Law on General Education, schools are legal entities of public law. Pursuant to section 2(1) of the Law on Legal Entities of Public Law, such entities carry out political, social, educational, cultural and other activities independently from the legislative or state governing bodies, subject, pursuant to section 11(1), to state control and monitoring of their financial and economic activities. According to section 49(1) of the Law on General Education, the MES is responsible for the supervision of the compliance by public schools with the legislation and the MES’s administrative and legal acts. According to section 43 of the Law, school principals manage schools, oversee the learning process and represent their schools in relations to third parties. Furthermore, school principals, respective structural units and/or their members are responsible for implementing the national curriculum. In case of a failure to fulfil their obligations, school principals are held accountable pursuant to the legislation. Therefore, a school principal is entitled to restrict free movement on the school territory if he/she deems it necessary for ensuring proper functioning of the school. Thus, in the light of the above, public schools make appropriate decisions within the scope of their discretionary power, however, if such decisions violate the rights of others, the legislation provides for the possibility of addressing appropriate courts.
- 52.** With regard to the actions taken by the heads of the MES territorial units towards teachers, the Government indicates that, should the respective documents and concrete information be submitted to it, the MES Internal Audit Department will take all measures to examine these cases and to immediately eliminate the violations.
- 53.** With regard to the right to conclude collective agreements, the Government refers to the independence of schools as legal entities, as discussed above. The Government points out

that, in this sense, school principals are considered to be the teachers' employers and not the MES.

54. In respect of check-off facilities, the Government reiterates that, pursuant to section 25 of the Law on Trade Unions, "employer, administrator of enterprise, establishment or organization shall deduct membership fees from the employee's monthly salary and transfer it to the account of a trade union on the basis of a written statement made by its member, in accordance with the terms and conditions provided for in the collective agreement". In the light of these legal requirements, paragraph 4.13 of the sectoral agreement, dated 22 April 1998, obliges administrations of educational establishments (and not the MES) to deduct trade union membership fees from the salary of a trade union member and transfer them to the trade union bank account. However, a public school is not allowed to transfer trade union dues without the written consent of an employee and in the absence of a collective agreement.
55. With regard to the legislative regulation of collective agreements as suggested by the ESFTUG, the Government points out that the Law on Collective Agreements, dated 10 December 1997, became obsolete following the adoption of the Labour Code, which provides for collective agreements under Title 3 entitled Collective Labour Relations.
56. In its communication dated 27 February 2013, the Government indicates that the MES has radically changed its attitude towards the ESFTUG and is collaborating with all organizations and associations working on the challenges in the education system and the harmonization of labour relations. The approach of the MES is to support trade unions and to take into consideration their recommendations. It is important for the MES that every organization in the field of education has equal rights and that educational institutions have freedom of choice of cooperating with such organizations. In addition, the Ministry of Justice, together with the Ministry of Labour, Health and Social Affairs, is working on a new draft Labour Code which would better protect the rights of employees and their trade unions.
57. *The Committee takes note of the allegations transmitted by the EI which refer to new instances of interference into the ESFTUG's internal affairs and which would appear to indicate that no measures were taken to implement the Committee's previous recommendations. The Committee notes that, in its communication dated 27 February 2013, the Government indicates that the MES has radically changed the attitude towards the ESFTUG and is now cooperating with all organizations in the sector. The Committee understands that the Labour Code has been amended in consultation with the social partners to better protect the rights of employees and their unions. The Committee expects that, in the spirit of the stated improved cooperation between the MES and the complainant organization, the Government will take the necessary steps to implement all of the abovementioned outstanding recommendations without delay. It requests the Government to provide detailed information on the steps taken in this regard.*

### **Case No. 2304 (Japan)**

58. The Committee last examined this case, which concerns the arrest and detention of officers and members of the Japan Confederation of Railway Workers' Unions (JRU), massive searches of trade union offices and residences of trade union leaders, and the confiscation of trade union property, at its November 2010 meeting. On that occasion, with respect to the JR Urawa Electric Train Depot case, the Committee requested to be kept informed of any decision handed down by the Supreme Court which was seized by seven defendants when the Tokyo High Court upheld the lower court's decision and rejected their appeal. With regard to the case of six workers dismissed by the JR East Company in August 2007 who demanded continuation of their employment, the Committee requested to be kept

informed of any decision from the courts. Finally, while expressing its concern at the apparent severity of the conviction of a member of the JRU (six months in prison, with a two-year suspension of the sentence, for stealing 31 sheets of paper belonging to the company), the Committee requested the Government to transmit its observations in respect of the matter.

- 59.** The complainant kept the Committee informed of developments concerning the pending issues in communications dated 15 September and 4 October 2011, and 13 February, 4 April and 2 October 2012. With regard to the JR Urawa Electric Train Depot case, in a decision rendered on February 2012, the Supreme Court denied the appeal made by the seven defendants and their suspended sentences have been finalized. Thus their individual probation periods have begun. The JRU regretted that the Court merely confirmed the lower courts' verdicts and expressed its concern on the impact of such decision on the social right to organize that has been won over an era where organizing a trade union was considered to be a crime. As concerns the case before the civil court to confirm the status of employees of six union members who were dismissed by the company, the JRU informed that the Tokyo High District Court handed down a decision on 17 October 2012 whereby it recognized the status of two out of the six as employees, ordered the payment of unpaid wages. The verdict also recognized the dismissal with prejudice on the merits with regard to the remaining four union members. The complainant, while noting a partial victory, informed of its intention of bringing the case before the Tokyo High District Court. It also stated that the company was unable to accept the verdict and appealed against the two workers whose status was reconfirmed in the verdict.
- 60.** In communications dated 4 September 2012 and 4 September 2013, the Government confirmed that the decision handed down on 10 February 2012 by the Supreme Court dismissing the appeal by the seven defendants in the JR Urawa Electric Train Depot case became final. The Government also informed that the civil lawsuit is still pending before the Tokyo High District Court. Finally, the Government indicated that it is not in a position to comment any specific lawsuit such as the case of a JRU member sentenced to six months in prison, with a two-year suspension of the sentence, for stealing 31 sheets of paper belonging to the company. It however indicated that the case is a theft case in which the accused allegedly copied classified documents of the company.
- 61.** *The Committee takes due note of the information provided by the Government and the complainant. With respect of the JR Urawa Electric Train Depot case, the Committee notes that on 10 February 2012 the Supreme Court upheld the lower court's decision and rejected the appeal made by the seven defendants and that its decision became final. Furthermore, as concerns the case before the civil court to confirm the status of employees of six union members who were dismissed by the company, the Committee notes that the Tokyo High District Court handed down a decision on 17 October 2012 whereby it recognized the status of two out of the six as employees as well as dismissal with prejudice on the merits with regard to the remaining four union members. The Committee notes that the JRU decided to bring the case of the four union members before the Tokyo High District Court. The Government confirmed that the case is pending before court. Consequently, the Committee requests the Government to keep it informed of the decision of the Tokyo High Court in this case. It also requests the Government to indicate whether the company has finally reinstated the two union members (Tomio Yatsuda and Kakunori Oguro) with payment of unpaid wages following the Tokyo High District Court decision of 17 October 2012. The Committee notes the Government's comments concerning the case of a JRU member in the Gamagori Station case which it characterized as a theft case in which the accused allegedly copied classified documents of the company. The Committee notes that the judgment was upheld by the Supreme Court.*

**Case No. 2844 (Japan)**

- 62.** The Committee last examined this case; which concerns allegations that the dismissal of workers by Japan Airlines International was carried out in such a way as to discriminate against workers who are members of certain trade unions, at its June 2012 meeting [see 364th Report, paras 594–649]. On that occasion, the Committee made the following recommendations:
- (a) The Committee requests the Government to ensure that during the process of workforce reduction, measures are taken in consultation with the parties concerned, for the functioning of the union and the continuing representation of the workers.
  - (b) Noting that 148 workers dismissed by the company filed a lawsuit against the company before the Tokyo District Court, in January 2011, to request confirmation by the court of the existence of legally binding contracts between themselves and the company, the Committee requests the Government to provide information on the outcome of the pending cases in court.
  - (c) The Committee stresses the importance of engaging in full and frank consultation with trade unions when elaborating restructuring programmes, since they have a fundamental role to play in ensuring that programmes of this nature have the least possible negative impact on workers. The Committee hopes that the Government will ensure full respect for this principle.
  - (d) With regard to the order of remedies rendered on 3 August 2011 by the Tokyo Metropolitan Labour Relations Commission on “unfair labour practices by the Enterprise Turnaround Initiative Corporation (ETIC)”, the Committee requests the Government to provide information on the outcome of the appeal lodged by the company on 1 September 2011 to the Tokyo District Court requesting the remedies be set aside.
- 63.** In a communication dated 10 October 2012, the Japan Airlines Flight Crew Union (JFU) and the Japan Airlines Cabin Crew Union (CCU) indicated that, following the Committee’s recommendations, they called upon the authorities – namely the Ministry of Land, Infrastructure, Transport and Tourism and the Ministry of Health, Labour and Welfare – and the company to ensure that consultations are held between the parties concerned during the process of workforce reduction. The complainant alleges, however, that the Ministries, without having examined the Committee’s recommendations, simply responded that they would report at an appropriate time to the ILO. On its part, the company argued that being the defendant in a lawsuit pending before the Tokyo High Court, it had to be cautious about talks with the unions on the dismissals and it would respond to the Committee’s recommendations following requests from the authorities. With regard to the situation of workers in the company, the complainants stated that, in April 2012, the company announced that it would start the recruitment of 710 cabin attendants. As of July 2012, 510 workers joined the company. In July 2012, the company announced that it would further recruit 230 cabin attendants, making the total 940. However, the reinstatement of the dismissed workers has not been effective despite repeated requests from the CCU and support from the public. According to the complainants, the total workforce of the company decreased from 48,714 in March 2010 to 31,263 in March 2011. There was now an extremely serious staff shortage in every workplace. Moreover, drastic pay cuts, deteriorating working conditions and staff reductions had impacted on the workers’ motivation resulting in 100 pilots, 700 cabin attendants and 200 engineers voluntarily leaving the company during the period after the compulsory redundancy carried out until September 2012.
- 64.** In a communication dated 27 August 2013, the Government considered, with regard to recommendations (a) and (c) of the Committee, that sufficient measures existed in Japan to allow for negotiations between employers and labour unions. With regard to the lawsuit filed by 146 workers to request confirmation by the Tokyo District Court of the existence of legally binding contracts between themselves and the company, the Government



indicated that the lawsuit was rejected, however the plaintiffs appealed the verdict to the Tokyo High Court and the case was pending. With regard to the appeal lodged by the company to the Tokyo District Court concerning the order of remedies of the Tokyo Metropolitan Labour Relations Commission, the Government indicated that the case was still pending.

65. *The Committee takes due note of the information provided by the Government and the complainants. With respect to the lawsuit filed by 146 workers to request confirmation of the existence of legally binding contracts between themselves and Japan Airlines International, the Committee notes that the lawsuit was rejected on March 2012, however the plaintiffs appealed to the Tokyo High Court on April 2012 and the case was pending. The Committee requests the Government to keep it informed of the decision of the Tokyo High Court, as well as any follow-up measures taken as a result. With reference to the appeal lodged by the company to the Tokyo District Court concerning the order of remedies of the Tokyo Metropolitan Labour Relations Commission, the Committee notes that the case is still pending and requests the Government to keep it informed of any outcome to the appeal.*
66. *Nothing further that, according to the complainant, the company announced a recruitment campaign of 940 cabin attendants in 2012, the Committee recalls, from its previous examination of this case, the importance it places on the engagement of full and frank consultations with trade unions when companies elaborate restructuring programmes and expects that such consultations will also be engaged in with all the trade unions concerned with respect to the new recruitment campaign so that their views concerning the rehiring of workers following termination for economic reasons may be taken into account.*

### **Case No. 2833 (Peru)**

67. The Committee last examined this case at its March 2013 meeting, when it made the following recommendation [see 367th Report, para. 103]:
- While recalling that justice delayed is justice denied [see *Digest of decisions and principles of the Committee on Freedom of Association*, fifth (revised) edition, 2006, para. 105], the Committee hopes that the judicial authority will issue a ruling in the very near future in the proceedings contesting dismissal filed by Mr Iván Bazán Villanueva in 2009 and requests the Government to keep it informed in this regard. Furthermore, the Committee requests the Government to send its observations relating to the new allegations submitted by the complainant concerning the difficulties faced by SUTCORAH with regard to bargaining on lists of demands with CORAH and concerning the invitations to resign from the union sent to unionized workers between January 2011 and January 2012.
68. In its communication dated 6 August 2013, the Government states that the first (single) Labour Court of Ucayali issued a ruling on 15 January 2013 in which it: (i) partially granted Mr Bazán Villanueva's petition against unfair dismissal and ordered that he be reinstated in the same position as supervisor in the maintenance department, or in another position at the same or a similar level; and (ii) declared inadmissible Mr Bazán Villanueva's request that CORAH Special Project be ordered to pay the lost remuneration for the period in which he did not work. The ruling has been appealed by CORAH and referred to the Civil Chamber of the Court of Ucayali. Mr Bazán Villanueva requested an interim measure against the CORAH, which was granted on 28 January 2013, ordering that he be temporarily reinstated as supervisor of the maintenance department or in another position at the same or a similar level. On 6 March 2013, the entity temporarily reinstated Mr Bazán Villanueva. *The Committee requests the Government to keep it informed of the outcome of the appeal lodged by CORAH.*

69. As for the trade union's difficulties in negotiating its 2009, 2010 and 2011 lists of demands with CORAH, and the invitations to resign from the union sent to unionized workers between January 2011 and January 2012, the Government states that CORAH has indicated that it has been negotiating with the union on the list of demands for 2009–10; since no agreement was reached, the matter has been submitted for optional arbitration before the Ministry of Labour. To date, both CORAH and the union have appointed their arbitrators to continue with the process established under the law, pending the appointment of the Chairperson of the Arbitration Tribunal.
70. The Government adds that the Directorate-General of Labour of the Ministry of Labour, in its capacity as Technical Secretariat of the Special Council established by Supreme Decree No. 009-2012-TR, received, on 4 June 2013, the request of the Single Union of Workers at CORAH (SUTCORAH) for the appointment of a chairperson of the Arbitration Tribunal for an optional arbitration process involving a public institution. The Technical Secretariat of the Special Council transmitted SUTCORAH's request to the Chairperson of the Special Council with a view to the appointment of a chairperson of the Arbitration Tribunal. The appointment is still pending. *The Committee regrets the delay in the arbitration procedure and expects an arbitral award to be issued in the very near future.*
71. The Government also adds that Mr Juver García Irarica, Mr Luis Ríos Chávez and Mr Sandro Javier Aguilar Vásquez resigned voluntarily from the CORAH Special Project, on 16 December 2011, 19 October 2011 and 25 May 2011, respectively. As for Mr Edgar Perdomo García and Mr Elmer Reyna Macedo, the Government states that they were dismissed on 21 June 2011 for serious misconduct due to their repeated resistance to orders issued with regard to their work and observation of the staff regulations. Both have initiated legal proceedings which are pending before the courts. *The Committee requests the Government to keep it informed of the outcome of these proceedings.*

### **Case No. 2910 (Peru)**

72. At its March 2013 meeting, the Committee made the following recommendations on the matters still pending [see 367th Report, para. 1074]:
- (a) The Committee requests the Government to keep it informed of the administrative decision handed down in respect of the disciplinary proceedings brought against: (1) the union member David Coloma on 27 December 2011 for the alleged irregular payment of 18,081.24 soles for social security contributions and bonuses for July and December 2009 to employees of the National Library; (2) the union member Patxi Sarmiento Vidal for the alleged illegal payment of bonuses and for acts related to the recruitment of staff; and (3) the union members Delia Córdova and Ana María Maldonado for acts relating to the recruitment of staff.
  - (b) As regards the facilities that workers' representatives should enjoy for the proper exercise of their functions, the Committee suggests that the modalities for the use of the email system by the trade union be a matter for negotiation between the parties.
73. In its communication of 3 May 2013, the Government informs the Committee that, in relation to recommendation (a), a national directorial resolution, dated 3 February 2012, nullified national directorial resolutions Nos 130 and 131-2011 of the National Library of Peru, dated 21 and 22 December, respectively, thus deferring prescription of the decision to institute administrative disciplinary proceedings against the public servants David Jorge Coloma Santibañez, Paxy Paola Sarmiento Vidal, Delia Elvira Córdova Pintado and Ana María Maldonado Castillo. As regards recommendation (b), the Government states that the National Directorate of the National Library of Peru has decided to take into account the recommendation of the Committee on Freedom of Association, since its Directorate-

General of Administration and the Technical Development Department consider that the modalities for the use of the email system are a matter for negotiation between the organization and the trade union associations of the National Library of Peru.

74. *The Committee notes this information with interest and expects that the parties will reach an agreement on the modalities for the use of the email system at the National Library of Peru in the near future.*

### **Case No. 2528 (Philippines)**

75. The Committee last examined this case at its June 2012 meeting [see 364th Report, paragraphs 913–970], at which time it made the following recommendations:

- (a) The Committee welcomes the measures taken by the Government so far and requests the Government to continue to keep it informed of the steps taken and envisaged to ensure a climate of justice and security for trade unionists in the Philippines.
- (b) Noting the efforts made by the Government to involve the KMU in the resolution of the cases involving its members and leaders, the Committee expects that the Government will continue to engage with the KMU in dealing with these cases and invites the complainant organization to cooperate as far as possible with the Government to this end. The Committee requests to be kept informed in this respect.
- (c) With respect to the alleged extrajudicial killings, the Committee:
  - (i) reiterating that such cases should, due to their seriousness, be investigated and, where evidence exists, prosecuted ex officio without delay, urges the Government to do its utmost to ensure the swift investigation and prosecution as well as a fair and speedy trial for the remaining four on-trial cases, the four cases still under investigation by the DOJ (particular regard being had to the peculiar circumstances of the case of Samuel Bandilla) and the four CHR cases referred back to the PNP Task Force Usig and the CHR for further investigation, and requests the Government to keep it informed of any developments in this respect;
  - (ii) expressing its deep concern that, as regards the Hacienda Luisita incident, the Government indicates that the case of John Jun David et al. has been dismissed because the accused are at large but that steps are being taken to reopen investigation with a view to identifying the perpetrators and apprehending them, the Committee expects that the Government will do its utmost to ensure that the investigation is pursued and that the guilty parties are brought to trial and convicted;
  - (iii) concerning the allegations of murder and attempted murder, brought forward by the KMU in communications dated 30 September and 10 December 2009 as well as 2 June 2010, expects that these cases will be reviewed by the TIPC and that the Government will make every effort to ensure the speedy investigation, prosecution and judicial examination of these new allegations, and urges the Government to indicate without delay the progress made in this regard; and
  - (iv) requests the Government to keep it informed of developments in the procedure of indictment of General Palparan for failing to prevent, punish or condemn killings that took place under his command responsibility.
- (d) As to the alleged cases of abduction and enforced disappearance, the Committee:
  - (i) firmly expects that the cases of abduction recommended for closure due to unavailability of witnesses or for lack of interest of the parties to pursue the case, will be the subject of inquiries and investigations for evidence including forensic evidence, and expects that the Government will soon be in a position to inform on progress made in investigating and prosecuting without delay all cases of abduction and enforced disappearance and provide any relevant court judgments; and

- (ii) further requests the Government to keep it informed of the progress made in the adoption of the Bill “defining and penalizing the crime of enforced or involuntary disappearance and for other purposes”, or of any other relevant legislative measures.
- (e) As to the issue of lengthy procedures, the Committee:
  - (i) noting the information concerning action taken by the Supreme Court to expedite the resolution of cases of extrajudicial killings, requests the Government to supply information on the working of the regional trial courts, including on the length of procedures in practice; and
  - (ii) requests the Government once again to provide information regarding the adoption and implementation of the “Omnibus Rules” elaborated by the CHR, which would require cases to be treated within a maximum of one year.
- (f) Furthermore, the Committee requests the Government to keep it informed on: (i) the review by the Supreme Court and the CHR of the witness protection programme on the Writ of Amparo adopted in 2007; (ii) any application of the Anti-Torture Act No. 9745; and (iii) any application of Act No. 9851 on crimes against international humanitarian law, genocide, and other crimes against humanity.
- (g) In relation to the alleged cases of harassment and intimidation, the Committee:
  - (i) requests the Government to keep it informed on the outcome of the discussion by the National TIPC Monitoring Body of all remaining alleged acts of harassment;
  - (ii) trusting that due account is being taken of the fact that victims of acts of intimidation or harassment might refrain from lodging a complaint out of fear, requests the Government to indicate the progress made in ensuring their full and swift investigation and resolution;
  - (iii) requests the Government to keep it informed on further progress achieved towards facilitating the settlement of labour disputes.
- (h) As regards the alleged militarization of workplaces, the Committee:
  - (i) once again urges the Government to communicate its observations on the outstanding allegations;
  - (ii) the PNP Guidelines on the accountability of the immediate officer for the involvement of his subordinates in criminal offences to strengthen command responsibility; and
  - (iii) requests the Government to continue to keep it informed regarding the measures taken or envisaged, in particular the issuance of appropriate high-level instructions, to: (a) bring to an end prolonged military presence inside workplaces which is liable to have an intimidating effect on the workers wishing to engage in legitimate trade union activities and to create an atmosphere of mistrust which is hardly conducive to harmonious industrial relations; (b) ensure that any emergency measures aimed at national security do not prevent in any way the exercise of legitimate trade union rights and activities, including strikes, by all trade unions irrespective of their philosophical or political orientation, in a climate of complete security; and (c) ensure the strict observance of due process guarantees in the context of any surveillance and interrogation operations by the army and police in a way that guarantees that the legitimate rights of workers’ organizations can be exercised in a climate that is free from violence, pressure or threats of any kind against their leaders and members.
- (i) With respect to the alleged cases of arrest and detention, the Committee:
  - (i) urges the Government to communicate its detailed observations, including further specific information in relation to the arrests and the legal or judicial proceedings upon which they were based, in respect of the allegations of illegal arrest and detention regarding the AMADO–KADENA officers and members; the 250 workers of Nestlé Cabuyao; and the 72 persons in Calapan City, Mindoro Oriental, of which 12 are trade union leaders and advocates;

- (ii) once again requests the Government to take all necessary measures so as to ensure that the investigation and judicial examination of all cases of illegal arrest and detention proceed in full independence and without further delay, so as to shed full light on the current situation of those concerned and the circumstances surrounding their arrest; and also requests the Government to communicate the texts of any judgments handed down in the above cases, together with the grounds adduced therefore; and
- (iii) while welcoming the information provided by the Government that all the (19) workers of Karnation Industries are now out on bail, trusts that this case will be concluded without delay and requests the Government to keep it informed in this regard.
- (j) 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.

**76.** In its communication dated 2 May 2013, the Government indicates that, as regards the 39 extrajudicial killings:

- (i) from the four cases before the courts:
  - in the case of Teotimo Dante, four persons were convicted on 28 May 2012;
  - the case of Ricardo Ramos resulted in the acquittal of the accused person on 7 February 2012 for failure to prove his guilt beyond reasonable doubt;
  - in the case of Antonio Pantonial, one person was convicted for murder and the issuance of an arrest warrant was ordered for two accused presently at large;
  - in the case of William Tadena, the hearings have been concluded and the decision is pending.
- (ii) from the 11 cases before the Department of Justice (DOJ):
  - five cases (Paquito Díaz, Victoria Samonte, Abelardo Ladera, Rolando Mariano and Samuel Bandilla) had been previously dismissed at the prosecution level, and the DOJ directed the Office of the Prosecutor-General to reinvestigate and resolve the said cases;
  - the DOJ considered reopening three archived cases (Noel Garay, Ramon Namuro and John Jun David et al.) for reinvestigation by the Prosecutor-General.
  - the DOJ considered reopening three cases that are under investigation (Leodegario Punzal, Samuel Dote, and Tirso Cruz).
- (iii) from the four cases that had been referred back to the Commission on Human Rights (CHR) and Philippine National Police (PNP)-Task Force Usig for further investigation (the Monitoring Body of the National Tripartite Industrial Peace Council (NTIPC-MB) Resolution No. 1, Series of 2012):
  - in the cases of Jesus Butch Servida and Gerardo Cristobal, the PNP-Task Force Usig determined that these are two separate cases and recommended that they be treated and investigated as regular cases due to lack of evidence of a link to the exercise of trade union rights;

- the case of Armando Leabres-Pallarca is recommended for closure by the PNP-Task Force Usig due to lack of witnesses and desistance to pursue the case; and
- in the case of Gerson Lastimoso, the suspects have not yet been identified, and the PNP-Task Force Usig has recommended investigating the case as a regular police case due to absence of a labour dispute or trade union campaign that could link the incident to the exercise of freedom of association.

The recommendations are being considered by the NTIPC-MB.

- (iv) Two cases had been permanently dismissed (Ronald Andrada and Angelito Mabansag) and 18 cases had been recommended for closure through NTIPC-MB Resolution No. 2 (Series of 2010) and Resolution No. 1 (Series of 2011), due to desistance or disinterest to pursue the case or lack of witnesses, without prejudice to its reopening should new leads or evidences be available.

**77.** The Government further indicates that, as regards the 11 cases of abduction and enforced disappearances:

- (i) two cases (Robin Solano et al. and Ronald Intal) had been, through Resolution No. 2, Series of 2012, recommended for closure by the NTIPC-MB, without prejudice to their reopening should new leads or evidence be available;
- (ii) as regards the remaining nine cases that had been referred to the appropriate agencies for further investigation and subsequently forwarded to the DOJ:
  - in the case of Virgilio Calilap, et al, only one person (Bernabe Mendiola) remains missing up to this date but the person who alleged abduction at the police station is unwilling to make a sworn statement; the PNP-Task Force Usig has recommended investigating the case as a regular police case due to absence of a labour dispute or trade union campaign that could link the incident to the exercise of freedom of association;
  - Perseus Geagoni is the accused in the criminal case of rebellion docketed as CC No. 1367, and the Regional Trial Court (RTC), Branch 55 of Himalayan City, has issued a warrant of arrest against him; the PNP-Task Force Usig has recommended investigating the case as a regular police case for the above reasons;
  - in the case of Rogelio Concepcion, there is a lack of witnesses; and the PNP-Task Force Usig has recommended investigating the case as a regular police case for the above reasons;
  - in the case of Leopoldo Ancheta, there is a lack of witnesses, and the PNP-Task Force Usig has recommended investigating the case as a regular police case for the above reasons; and
  - in the case of Lourdes Rubrico, the victim filed a case against three accused persons with the Deputy Ombudsman for the Military, which was dismissed on 11 June 2010;
  - in the case of Normelito Galon et al, the case filed in 2009 by the Philippine Economic Zone Authority (PEZA) against Normelito Galon, Aurora Afable and 13 other persons was dismissed; the PEZA Special Investigation Team created in 2007 recommended on 19 October 2012 to consider the case closed, since it had

found no direct evidence that could link Phils-Jeon officials to the incident and the complainants and witnesses had been unable to identify the perpetrators.

- Jaime Rosios is wanted in the criminal case of arson docketed as CC No. 6788 (RTC of Koronodal City); there is no evidence for the alleged abduction;
- as to Rafael Tarroza, no abduction case has been reported, and it appears that he is now residing in an undisclosed place; the PNP-Task Force Usig has thus recommended the closure of the case.

The above recommendations are being considered by the NTIPC-MB.

**78.** The Government adds that out of the 12 cases of harassment, five have been recommended for closure by the NTIPC-MB without prejudice to their reopening should new evidence be available, and seven cases have been the subject of Resolution No. 3 (Series of 2012) whereby the CHR was requested to expedite their resolution (Fresh Banana Agricultural Corporation – Osmiguel; Fresh Banana Agricultural Corporation – Suyapa; Members of Sulpicio Lines Workers’ Union; and Edison Alpiedan et al.).

**79.** Lastly, with respect to the additional list of incidents alleged by the complainant in their communications dated 30 September and 10 December 2009:

- (i) one case of extrajudicial killing (Maximo Barranda) was classified as possibly not labour-related (NTIPC-MB Resolution No. 7, Series of 2012) since the alleged facts would not constitute an infringement of freedom of association;
- (ii) from two cases of harassment and intimidation, one case (Farm workers in the Cagayan Valley, Bukidnon and Davao del Sur) was classified as possibly not labour-related (NTIPC-MB Resolution No. 7, Series of 2012) and one case (Remigio Saladero) was recommended for closure;
- (iii) the remaining cases were referred to the concerned agencies for prompt action; information and recommendations will be considered by the NTIPC-MB.

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

**81.** *With respect to the alleged extrajudicial killings, the Committee reiterates that such cases should, due to their seriousness, be investigated and, where evidence (not necessarily in the form of witnesses) exists, prosecuted ex officio without delay (regardless of desistance or disinterest of the parties to pursue the case). Noting the reasons given for the recommendation to treat certain cases of killings as regular police cases, the Committee further emphasizes that the mere absence of a labour dispute or trade union campaign does not necessarily preclude any connection of the crime with the exercise of trade union activities, membership or office.*

**82.** *Furthermore, welcoming the Government’s indication that the case of John Jun David et al. (Hacienda Luisita incident) has been reopened for investigation by the Prosecutor-General with a view to identifying the perpetrators and apprehending them, the Committee expects that the Government will do its utmost to ensure that this investigation is pursued thoroughly and expeditiously and that the guilty parties are brought to trial and convicted. The Committee urges the Government to do its utmost to ensure the swift investigation and prosecution as well as a fair and speedy trial for the other ten cases still under investigation by the DOJ (particular regard being had to the peculiar circumstances of the case of Samuel Bandilla), the remaining on-trial case, and the four cases referred back to the PNP-Task Force Usig and the CHR for further*

investigation, and requests the Government to keep it informed of any developments in this respect.

- 83.** *While noting the information provided by the Government concerning the additional list of incidents brought forward by the KMU, the Committee expects that the totality of cases of murder and attempted murder alleged on 30 September and 10 December 2009 as well as 2 June 2010, will be reviewed by the TIPC and that the Government will make every effort to ensure the speedy investigation, prosecution and judicial examination of these allegations; and urges the Government to indicate without delay the progress made in this regard. The Committee also requests the Government to keep it informed of developments in the procedure of indictment of General Palparan for failing to prevent, punish or condemn killings that took place under his command responsibility.*
- 84.** *As to the alleged cases of abduction and enforced disappearance, the Committee firmly expects that the cases of abduction recommended for closure due to unavailability of witnesses or for lack of interest of the parties to pursue the case, will be the subject of inquiries and investigations for evidence including forensic evidence. Noting the reasons given for the recommendation to treat certain cases of abductions as regular police cases, the Committee further emphasizes that the mere absence of a labour dispute or trade union campaign does not necessarily preclude any connection of the crime with the exercise of trade union office, membership or activities. The Committee once again firmly expects that the Government will soon be in a position to inform on progress made in the investigation, prosecution and trial without delay of all cases of abduction and enforced disappearance and provide any relevant court judgments. It further requests the Government to keep it informed of the progress made in the adoption of the Bill “defining and penalizing the crime of enforced or involuntary disappearance and for other purposes”, or of any other relevant legislative measures.*
- 85.** *In relation to the remaining alleged cases of harassment and intimidation, the Committee, trusting that due account is being taken of the fact that victims of acts of intimidation or harassment might refrain from lodging a complaint out of fear, requests the Government to indicate the progress made in ensuring their full and swift resolution by the CHR and requests the Government to keep it informed on the outcome.*
- 86.** *In the absence of any information provided by the Government concerning the previous recommendations (e), (f) and (i), the Committee is bound to recall the following points:*

*As to the issue of lengthy procedures, the Committee, noting the information concerning action taken by the Supreme Court to expedite the resolution of cases of extrajudicial killings, once again requests the Government to supply information on the working of the regional trial courts, including on the length of procedures in practice; and the adoption and implementation of the “Omnibus Rules” elaborated by the CHR, which would require cases to be treated within a maximum of one year.*

*Furthermore, the Committee once again requests the Government to keep it informed on: (i) the review by the Supreme Court and the CHR of the witness protection programme on the Writ of Amparo adopted in 2007; (ii) any application of the Anti-Torture Act No. 9745; and (iii) any application of Act No. 9851 on crimes against international humanitarian law, genocide, and other crimes against humanity.*

*With respect to the alleged cases of arrest and detention, the Committee:*

- (i) *once again urges the Government to communicate its detailed observations, including further specific information in relation to the arrests and the legal or judicial proceedings upon which they were based, in respect of the allegations of illegal arrest and detention regarding the AMADO–KADENA officers and members; the 250 workers of Nestlé Cabuyao; and the 72 persons in Calapan City, Mindoro Oriental, of which 12 are trade union leaders and advocates;*



- (ii) *once again requests the Government to take all necessary measures so as to ensure that the investigation and judicial examination of all cases of illegal arrest and detention proceed in full independence and without further delay, so as to shed full light on the current situation of those concerned and the circumstances surrounding their arrest; and also requests the Government to communicate the texts of any judgments handed down in the above cases, together with the grounds adduced therefore; and*
- (iii) *while welcoming the information provided by the Government that all the (19) workers of Karnation Industries are now out on bail, firmly trusts that this case will be concluded without delay and once again requests the Government to keep it informed in this regard.*

**87.** *As regards recommendations (h) and (g)(iii), given that part of the allegations in this case refer to general harassment and militarization of the workplace being addressed in Case No. 2745, the Committee will pursue its further examination of these matters within the framework of Case No. 2745.*

### **Case No. 2652 (Philippines)**

- 88.** The Committee last examined this case at its November 2012 meeting [see 365th Report, paragraphs 168–188]. The present case concerns the alleged failure of the Government to secure the effective observance of Conventions Nos 87 and 98, with respect to several allegations of infringements of the right to organize and collective bargaining on the part of Toyota Motor Philippines Corporation (TMPC), such as interference in the trade union's establishment and activities, refusal to bargain collectively despite the certification of the union as the sole and exclusive bargaining agent, anti-union discrimination through the dismissal of union members further to their participation in union activities and in particular in strike action. During the last examination of this case, the Committee urged the Government to pursue its efforts to intercede with the parties so as to reach an equitable negotiated solution in this longstanding case with respect to the approximately 100 workers who did not previously accept the compensation package offered by the company in their previous employment including, if their reinstatement was no longer possible for objective and compelling reasons, the payment of adequate compensation. Furthermore, the Committee trusted that the criminal proceedings – which were initiated over ten years ago – would finally be dismissed or withdrawn given the time that has elapsed and the conclusions made by the Committee on this matter over the years.
- 89.** In its communication dated 15 November 2012, the complainant elaborates upon the information provided concerning the 2010 line-stoppage incident which resulted in the allegedly illegal dismissal of four trade union leaders and members. Furthermore, by communication dated 7 June 2013, the complainant announces that the Toyota Motor Philippines Corporation Workers' Association (TMPCWA) succeeded in getting the over ten year long criminal cases against several union officers and members definitively dismissed by the court, following the withdrawal of the case by the complainants from the company side.
- 90.** In its communication dated 2 May 2013, the Government reiterates the information previously supplied as regards the line-stoppage incident and indicates that, after the National Labor Relations Commission affirmed the company's decision, the case is currently pending resolution before the Court of Appeals. As to the financial assistance offered by the TMPC management, 156 of the 233 of the dismissed workers (or 67 per cent) have individually requested and accepted the compensation package. By communication of 29 July 2013, the Government likewise informs about the dismissal of the criminal proceedings against Mr Ed Cubelo et al. and hopes for the nearing closure of the present case, assuring that the Government is continuously exerting efforts to intercede

with the parties so as to reach an equitable negotiated solution on the remaining issue (i.e. compensation for the approximately 100 workers).

91. *The Committee takes due note of all information provided. In particular, it notes with satisfaction the final court judgment which, in view of the desistance of the complainants and considering that the prosecution would not be able to prove beyond reasonable doubt the guilt of the accused, has permanently dismissed on 28 May 2013 the criminal cases against several TMPCWA union officers and members, directed the parties to live in peace and not to take any retaliatory action against each other and ordered the cancellation of any arrest warrants issued against the accused.*
92. *Furthermore, reaffirming the freedom of association principles it enounced and the conclusions it made in this regard when it examined this case at its meeting in March 2010 [see 356th Report, paras 1215–16], the Committee understands that the complainant is addressing its claims (for reinstatement or payment of adequate compensation to approximately 100 workers) to the Department of Labor and Employment, and trusts that the Government will continue to do its utmost to intercede with the parties with a view to reaching, in the near future, an equitable and mutually satisfactory negotiated solution in this longstanding case.*

### **Case No. 2611 (Romania)**

93. The Committee last examined this case, which concerns obstacles to collective bargaining in a public administration (Court of Audit), at its March 2012 meeting [see 363rd Report, paras 209–214, approved by the Governing Body at its 313th Session]. On that occasion, noting with interest the information to the effect that, on the initiative of the Court of Audit, meetings had been held since February 2011 between the Court and the trade unions active within it on modalities for the negotiation of a collective labour agreement, the Committee requested the Government to continue to inform it of any new developments in that regard. As to its recommendations concerning the need to amend Act No. 130/1996 on collective labour agreements and Act No. 188/1999 on the status of civil servants so that they do not limit the scope of negotiation of collective agreements in the public service, the Committee noted with regret that the Government's report did not contain any information on the measures taken or envisaged to amend those legislative texts, which had been the subject of recommendations for many years. Noting that the Government had referred to Act No. 284/2010 on the unitary remuneration of staff paid out of public funds, under which the salaries of civil servants and contract employees cannot be negotiated collectively and are established solely by law, the Committee was bound to request the Government once again to take all the steps necessary to amend the Act so as to ensure that base salaries, pay increases, allowances, bonuses and other entitlements of public service employees are no longer excluded from the scope of collective negotiations. Similarly, the Committee once again urged the Government to take all the necessary steps to amend the Act so that it no longer limits the scope of matters that can be negotiated in the public administration, in particular those that normally pertain to conditions of work and employment. The Committee also encouraged the Government once again to draw up guidelines on collective bargaining with the social partners concerned and thus to define the scope of bargaining, in accordance with ILO Conventions Nos 98 and 154, which it has ratified. Lastly, the Committee drew the legislative aspects of this case to the attention of the Committee of Experts on the Application of Conventions and Recommendations (CEACR).
94. In a communication dated 10 September 2012, the Government reiterates that the dispute in question no longer has any legal basis. Since the date on which Act No. 62/2011 on social dialogue entered into force, no complaints against the Court of Audit concerning the violation of the new legal provisions have been filed. In accordance with section 141(3) of

the Act, if, within an enterprise, there is no collective labour agreement, the parties may call for negotiations on that subject at any time. The initiative lies with the employer or, otherwise, with the relevant trade union organizations (section 140). Any refusal by an employer to bargain collectively is penalized in accordance with section 217(b). Moreover, the Government notes that the guarantees offered by Conventions Nos 98 and 154 do not extend to public servants engaged in the administration of the State (*fonctionnaires publics*) and, in all cases, it is the obligation of States to encourage and promote the use of machinery for negotiation established by the social partners and not to impose collective bargaining, which should be free and voluntary) in the sense of the aforementioned Conventions (Articles 4–6 of Convention No. 98 and Articles 1 and 5 of Convention No. 154). Bearing in mind the particularity of the powers of the Court of Audit of Romania and the differentiated legal status of the staff it employs (which is similar to the status of magistrates), the rights and working conditions of staff, as well as industrial relations, are regulated, in consultation with the trade unions through specific statuses (the status of public auditors, the status of members of the Court of Audit of Romania and the status of public officials), by Framework Act No. 284/2010 and other specific laws, as well as by the Labour Code.

95. *The Committee takes note of this information. Above all, it wishes to recall that Romania has ratified the Collective Bargaining Convention, 1981 (No. 154), and that, in its 2013 General Survey, the Committee of Experts on the Application of Conventions and Recommendations has emphasized that Conventions Nos 151 and 154, whether in unitary or federal States, apply in particular to civil servants engaged in the public administration, such as public servants in ministries and other similar government bodies, as well as their auxiliary staff and all other persons employed by the government. They also apply to all public servants and employees of local authorities and their public bodies. The scope of application of Conventions Nos 151 and 154 also includes employees of public enterprises, municipal employees, employees of decentralized institutions and public sector teachers, whether or not they are considered under the national legislation as being in the category of public servants (see General Survey 2013, para. 256). Furthermore, the Committee shares the Government's view that, in the sense of Article 4 of Convention No. 98, the obligation of governments is to take measures to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements. However, in this context, the Committee notes with regret that the Government's reply does not contain any information on the developments in the negotiation of a collective labour agreement between the senior officials of the Court of Audit and the trade unions active within it, or in the work of the committee that was established previously to monitor relations between the Court and the trade union organizations. The Committee once again requests the Government to continue to inform it of any new developments in this regard.*

### **Case No. 2428 (Bolivarian Republic of Venezuela)**

96. In its previous examination of the case in November 2010, the Committee formulated the following conclusions and recommendation on the issues that were still pending [see 358th Report, paras 116–120]:

The Committee recalls that the allegations in this case refer to refusal by the authorities to engage in collective bargaining with the FMV, refusal to grant trade union leave to its officials and obstacles by the authorities to trade union elections in the Federation despite its attempts over the years to hold such elections. When the Committee examined this case for the first time, it requested the Government to amend the Practice of Medicine Act so that, among other things, the FMV would not include both doctors and employers that are owners of medical establishments and, in the meantime, pending amendment of the Act, to promote collective bargaining between the FMV and the doctors' associations with the public

employing bodies [see 340th Report, para. 1441], so that the Federation could continue to bargain collectively as authorized by law, as it had done. The Government informed the Committee that the revision of the Practice of Medicine Act was before the National Assembly and that it would keep the Committee informed in that regard [see 356th Report, para. 192].

The Committee takes note once again of the Government's observations on the new rules of the CNE and the voluntary nature of its intervention, as well as the fact that the FMV consists of doctors' associations, not trade unions. The Committee notes that the Government denies that there has been any interference and states that the CNE has provided all the support requested by the FMV in 2009, but that the CNE does not have any information indicating that the FMV has set up an electoral committee or whether it has given up its intention to hold new elections.

The Committee observes that the Government has not provided any information indicating that the authorities have engaged in collective bargaining with the FMV or that a solution has been found to the problem of the refusal by the authorities to grant trade union leave. The Committee observes that the Government has not informed it of any developments in the process of adoption of the draft Practice of Medicine Act. Lastly, as regards the intervention by the CNE and the elections for the executive committee of the FMV, the Committee notes that the Government had stated that the call for elections had been scheduled for 20 January 2010 [see 356th Report, para. 195] and now states that the CNE does not have any information as to whether the Federation has given up its intention to hold elections or whether an electoral committee has been set up.

The Committee recalls that, according to the complaint presented by the FMV, the Federation considers that the intervention by the CNE in its trade union elections violates trade union rights and that it submitted to it because it could not avoid it. Given that the Government states that intervention by the CNE is voluntary, the Committee invites the Government to inform the FMV in writing that it may hold its trade union elections without intervention or supervision (including in regard to appeals) by the CNE, to comply with its previous recommendations on the Practice of Medicine Act, and to ensure that collective bargaining takes place between the FMV and the authorities until such time as the Act is amended. Lastly, the Committee once again requests the Government to maintain the existing entitlement to trade union leave of FMV officials.

The Committee requests the Government to keep it informed of any developments relating to these issues.

**97.** In its communication dated 7 June 2011, the Venezuelan Medical Federation (FMV) alleges that the Government is blocking, obstructing and freezing all matters concerning this case and that none of the pending issues have been resolved:

- Discussion and signing of the collective agreement. The current Government has frozen the collective agreement since 1 January 2003, the date on which the next agreement was due to be signed. The FMV has submitted at least five draft collective agreements to the labour inspectorate, all of which have been rejected even though they were fully in compliance with the law, on the grounds of a so-called "electoral default" that has kept the salaries of Venezuela's medical association at a pittance.
- Blocking of elections to associations by the Government through the National Electoral Council (CNE): The Government lied to the Committee when it said that elections to associations had been scheduled for the (far too ambitious) date of 20 January 2010, as no such elections were ever convened in the Bolivarian Republic of Venezuela. In January 2011 the FMV submitted a new electoral proposal, in response to which the national electoral commission of the FMV was ignored, and once again had to appeal to the courts.
- Establishment of trade union leave as a labour right in all collective agreements signed by the FMV with previous governments, including the current Government. The Government continues to refuse to grant trade union leave for FMV officials,

members of doctors' associations and members of a number of national and/or regional labour committees, who, in some cases, have had to appeal to the labour inspectorate to draw attention to the illegality of its refusal. The Government has gone so far as to order the retirement of the President and the Secretary-General of the FMV without their having reached the age stipulated in the collective agreement, against which a judicial appeal has been lodged with the competent authorities.

98. Since the Government has not responded to the FMV's demands for an increase in salary and has once again excluded the FMV from the salary increases provided for in the presidential decree, on 27 April 2011, the Federation declared a labour dispute with the national Government, which is the Bolivarian Republic of Venezuela's biggest employer of physicians.
99. In its communication dated 17 October 2011 the Government repeats that, in compliance with its legal mandate, the CNE adheres to the rules on providing technical assistance and logistical support for trade union elections, and that the electoral authorities only take action if they receive a voluntary request for such technical assistance and logistical support from trade union organizations wishing to organize elections; the FMV made such a request of the CNE in 2008. Consequently, since the Government has taken on board the observations made by the International Labour Organization (ILO) with regard to the CNE, it cannot understand how the Committee can continue referring to interference by the electoral authority, since the measures it has taken are designed to protect the principles of trade union democracy, rotation, impartiality, equality, transparency and respect for freedom of association. The Government therefore vigorously contests the Committee's assertion that the CNE is hampering and delaying trade union elections, not only because there is no legal basis for such an assertion, but also because it contradicts the manner in which the FMV's electoral process takes place, since the transitional electoral committee of the FMV submitted a proposal in the first half of 2011 with regard to the election of the FMV's electoral committee. The Government will inform the Committee of further developments in this process in due course. *The Committee takes note of the information provided by the Government and requests it to keep it informed of developments, while recalling that the FMV has for years been endeavouring without success to organize its union elections through the CNE.*
100. The Government states further that, to the best of its knowledge, the FMV and the doctors' associations have not presented any draft collective agreements since 17 September 2008. The mandate of the Federation's executive board ended in 2001, which according to article 128 of the regulations established under the Labour Code prevents the board members of the Federation in question from representing their members in collective bargaining and collective disputes, especially in conciliation and arbitration proceedings. Hence they have no authority to promote, negotiate, sign, amend or modify collective labour agreements, as that would exceed the strictly administrative functions that the law grants them. In addition, as has already been amply explained, the FMV's members are doctors' associations and not trade unions. In other words, it is made up of workers and employers, whereas the "purity principle" laid down in article 118 of the regulations under the Labour Code stipulates that no trade union may be constituted which seeks to represent the interests of both the workers and the employers. The Government points out that the Committee cannot ask it to contravene the law and to negotiate a collective agreement with a group that has no authority and no mandate to do so. *The Committee recalls that it had requested the Government to amend the legislation on doctors' associations so as to guarantee the principle referred to by the Government, but that it had requested the Government, in the meantime, to engage in collective bargaining with the FMV so that the FMV could defend the labour rights of physicians.*

- 101.** Regarding the question of trade union leave for FMV officials, the Government states that, as stipulated in the labour legislation, union officials who are members of the executive board of the Federation are entitled to trade union leave, and it wishes to draw this to the attention of the Committee. *The Committee takes note of this information.*
- 102.** *Finally, the Committee requests the Government to inform it of the outcome of the judicial appeal against the alleged compulsory retirement of the President and Secretary-General of the FMV by order of the authorities, in violation of the collective agreement.*

### **Case No. 2674 (Bolivarian Republic of Venezuela)**

- 103.** In its previous examination of the case in June 2011, the Committee made the following recommendations on matters still pending [see 360th Report, para. 1165]:

The Committee requests the Government to guarantee in writing that FEDEUNEP and FETRASALUD can hold executive committee elections without any involvement by the National Electoral Council, including with regard to resources, as it is not a judicial body and does not enjoy the confidence of a large number of trade union organizations in the country. The Committee expresses the firm hope that the FEDEUNEP and FETRASALUD executive committee elections will take place without delay and that, in the future, the authorities will engage in collective bargaining with these organizations. The Committee requests the Government to keep it informed in this regard.

- 104.** In its communication dated 17 October 2011, the Government reiterates its previous information regarding the electoral default of the executive committee of the federations in question, which precludes them from collective bargaining.
- 105.** The Government adds that, in a communication of 3 May 2010, the members of the executive committee of FETRASALUD informed the electoral authorities of a decision to hold an election of the executive committee of that federation. However, at a later date the interested parties indicated that they would not continue that electoral process as they were introducing an amendment to the statutes. Then, on 4 August 2011, they indicated that the federation's electoral process would be held in 2011 and to that end they submitted the text of the new internal statutes of FETRASALUD; however, they were notified that certain documents were missing and to this date the interested parties have not appeared again before the corresponding authorities. Therefore, the Government again reiterates that it is not a question of refusal by the corresponding authorities or the national Government itself to enter into dialogue or collective bargaining with those trade union organizations, but of compliance and enforcement of the legal regulations in this regard and the faithful implementation of ILO Conventions Nos 87 and 98.
- 106.** *The Committee reiterates its recommendation to the Government to provide FEDEUNEP and FETRASALUD with written guarantees that they can hold their elections without any intervention by the National Electoral Council with a view to their being able to bargain collectively.*

### **Case No. 2736 (Bolivarian Republic of Venezuela)**

- 107.** At its June 2011 meeting, the Committee made the following recommendations on the matters still pending concerning the Single Organized National Trade Union of Workers of the Judiciary (SUONTRAJ) [see 360th Report, para. 129]:

The Committee deeply regrets that the Government has not provided the information requested on report No. 138 and therefore once again requests the Government to explain for what purpose report No. 138 of 14 July 2009 was drawn up identifying persons attending the

meeting organized by the complainant organization, which according to the latter was possibly intended to enable action to be taken that would be prejudicial for the participants.

- 108.** At its meeting on 17 October 2011, the Government explained in relation to the preparation of report No. 138, dated 14 July 2009, to which the Committee refers that: at 8.30 a.m. on Tuesday, 14 July 2009, the members of the SUONTRAJ called on the court workers to hold an extraordinary general assembly in the vicinity of the seat of the municipal courts during working hours, of which neither the Executive Directorate of the Magistracy, nor the judicial coordination department was aware, however, some workers responded to the invitation and grouped at the main entrance to the building. The officials' participation in this activity meant that they were unexpectedly absent from the job, which affected the normal operation of work within the institution responsible for the administration of justice. This was neither the fault of the judges nor the will of the state institutions, but was a sudden, unplanned situation which was unexpected by the judicial authorities, and hence it was necessary to make a record of the event as a new situation which disrupted citizens' timely access to justice. This was the sole purpose, as is evident in one of the paragraphs, which is quoted from the report: "It is noted that at around 8.30 a.m. this morning a group of officials of the Judicial Circuit assembled on the ground floor of the courthouse building in response to the invitation from the Steering Committee of the East Caracas branch of SUONTRAJ ... However, the Municipal Courts with their seat in the building agreed to perform [the work], even though the document reception and distribution unit and the records management department, which are very important support services in the work of the courts, did not have all their full complement of staff."
- 109.** The Government adds that highly sensitive areas of the court's activity were obviously disrupted as a result, but that there is no evidence in the full report of any intimidation by the judicial authority, still less of threats or coercion, of the officials identified in the report or of the complainant trade union organization.
- 110.** *The Committee notes the Government's explanations concerning the preparation of the report.*

\* \* \*

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

Case	Last examination on the merits	Last follow-up examination
1962 (Colombia)	November 2002	June 2008
2086 (Paraguay)	June 2002	November 2012
2096 (Pakistan)	March 2004	March 2011
2153 (Algeria)	March 2005	November 2012
2173 (Canada)	March 2003	June 2010
2291 (Poland)	March 2004	June 2013
2355 (Colombia)	November 2009	June 2013
2361 (Guatemala)	November 2011	June 2013
2400 (Peru)	November 2007	June 2013
2533 (Peru)	June 2011	June 2013
2583 (Colombia)	June 2008	March 2010
2664 (Peru)	June 2011	June 2013
2679 (Mexico)	June 2010	June 2013

<b>Case</b>	<b>Last examination on the merits</b>	<b>Last follow-up examination</b>
2680 (India)	November 2009	March 2013
2700 (Colombia)	March 2010	March 2011
2702 (Argentina)	March 2013	–
2716 (Philippines)	November 2010	–
2722 (Botswana)	June 2010	March 2013
2724 (Peru)	November 2010	March 2013
2737 (Indonesia)	November 2010	June 2013
2751 (Panama)	March 2012	June 2013
2752 (Montenegro)	March 2012	–
2755 (Ecuador)	June 2010	March 2011
2758 (Russian Federation)	November 2012	June 2013
2764 (El Salvador)	November 2010	March 2013
2788 (Argentina)	November 2011	March 2013
2796 (Colombia)	June 2013	–
2818 (El Salvador)	June 2011	June 2013
2825 (Peru)	November 2011	March 2013
2827 (Bolivarian Republic of Venezuela)	March 2013	–
2836 (El Salvador)	November 2011	March 2013
2837 (Argentina)	March 2012	June 2013
2843 (Ukraine)	November 2011	June 2013
2850 (Malaysia)	March 2012	June 2013
2862 (Zimbabwe)	June 2012	June 2013
2864 (Pakistan)	June 2012	June 2013
2867 (Plurinational State of Bolivia)	March 2012	June 2013
2870 (Argentina)	November 2012	–
2872 (Guatemala)	November 2011	–
2877 (Colombia)	March 2013	–
2894 (Canada)	March 2013	–
2895 (Colombia)	March 2013	–
2907 (Lithuania)	March 2013	–
2909 (El Salvador)	March 2013	–
2914 (Gabon)	June 2013	–
2916 (Nicaragua)	June 2013	–
2919 (Mexico)	June 2013	–
2930 (El Salvador)	March 2013	–
2933 (Colombia)	June 2013	–
2934 (Peru)	November 2012	–
2938 (Benin)	March 2013	–
2940 (Bosnia and Herzegovina)	March 2013	–
2942 (Argentina)	June 2013	–
2944 (Algeria)	March 2013	–



Case	Last examination on the merits	Last follow-up examination
2952 (Lebanon)	March 2013	–
2959 (Guatemala)	June 2013	–
2964 (Pakistan)	June 2013	–
2972 (Poland)	June 2013	–
2976 (Turkey)	June 2013	–
2977 (Jordan)	March 2013	–
2980 (El Salvador)	June 2013	–
2984 (the former Yugoslav Republic of Macedonia)	June 2013	–
2991 (India)	June 2013	–

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

**113.** In addition, the Committee has received information concerning the follow-up of Cases Nos 1787 (Colombia), 1865 (Republic of Korea), 2225 (Bosnia and Herzegovina), 2228 (India), 2341 (Guatemala), 2382 (Cameroon), 2384 (Colombia), 2430 (Canada), 2434 (Colombia), 2460 (United States), 2478 (Mexico), 2488 (Philippines), 2512 (India), 2540 (Guatemala), 2547 (United States), 2602 (Republic of Korea), 2616 (Mauritius), 2634 (Thailand), 2654 (Canada), 2656 (Brazil), 2660 (Argentina), 2667 (Peru), 2690 (Peru), 2699 (Uruguay), 2706 (Panama), 2710 (Colombia), 2719 (Colombia), 2725 (Argentina), 2741 (United States), 2746 (Costa Rica), 2750 (France), 2763 (Bolivarian Republic of Venezuela), 2772 (Cameroon), 2775 (Hungary), 2777 (Hungary), 2780 (Ireland), 2793 (Colombia), 2815 (Philippines), 2816 (Peru), 2820 (Greece), 2826 (Peru), 2838 (Greece), 2840 (Guatemala), 2854 (Peru), 2856 (Peru), 2860 (Sri Lanka), 2890 (Ukraine), 2905 (Netherlands), 2915 (Peru) and 2981 (Mexico), which it will examine at its next meeting.

CASE NO. 2997

INTERIM REPORT

### **Complaint against the Government of Argentina presented by**

- **the Light and Power Workers' Union of Zárate (SLFZ) and**
- **the Confederation of Workers of Argentina (CTA)**

***Allegations: The complainant organizations report anti-union dismissals and the suspension of workers on account of their affiliation to the Light and Power Workers' Union of Zárate-CTA and for participating in industrial action, and the physical assault of one union member and death threats to an affiliate***

**114.** The complaint is contained in communications from the Light and Power Workers' Union of Zárate (SLFZ) and the Confederation of Workers of Argentina (CTA), dated 25 June and 28 November 2012 respectively.

**115.** The Government sent its observations in a communication dated 28 May 2013.

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

#### **A. The complainants' allegations**

- 117.** In their communications of 25 June and 28 November 2012, the SLFZ and the CTA indicate that the SLFZ is a first-level trade union organization for workers in the production, exploitation, marketing, transmission and/or distribution of energy, in national, provincial, municipal, cooperative, joint venture or private companies, including manual, technical, professional or administrative workers. The complainants add that Zárate Electricity and Related Services Cooperative Ltd was founded in 1935 and is organized under the cooperative company regime.
- 118.** The complainant organizations indicate that the violations of freedom of association reported in this case arose from the conflict that began on 16 April 2012 as a result of the discriminatory and anti-union dismissal of the workers Mr Christian Altamirano and Mr Roberto Funes. According to the complainants, the workers received identical letters indicating that “in view of your disobedience and refusal to comply with express work orders from your hierarchical superior, and the persistence of this behaviour in breach of your work duties, this administration considers that the continuation of our employment relationship is no longer feasible. Therefore, I hereby notify you of your dismissal on grounds of your exclusive responsibility.” According to the complainants, the text in question implies that they supposedly committed the same act of misconduct at the same time, which they consider to be practically impossible since both workers were posted in different sectors. According to the complainants, the text also failed to mention the orders that had not been carried out by the dismissed workers. The complainants allege that the dismissals occurred shortly after the workers in question communicated their decision to leave the Light and Power Workers' Union of the Paraná Area and join the SLFZ–CTA.
- 119.** The complainants add that, as a result of the dismissals, the SLFZ workers decided to take direct action measures. They allege that when the industrial action began (stoppages for three or four hours followed by an open-ended strike), the company proceeded to suspend all the workers affiliated to the trade union for two or three days. The complainants indicate that the company carried out the aforementioned suspensions claiming that the workers' actions were politically motivated. The complainants also indicate that on 8 June 2012, on the occasion of a national strike organized by the CTA, the workers affiliated to the SLFZ marched to the Zárate City Hall to submit a petition and request the Mayor to intervene to resolve the dispute. The complainants allege that on the same day at 7 p.m., after participating in the march, the union member, Mr Ricardo Rossi, was physically assaulted by two individuals – one being the company coordinator of the department dealing with power restoration requests – on the work premises, with the clear intention of killing him. Mr Rossi suffered a triple jaw fracture and other injuries. Moreover, the union member, Mr Oscar Martínez, who went to Mr Rossi's aid, received death threats. The complainant organization also alleges that from the day that Mr Rossi was attacked, the company stopped paying his wages and although a court ruled in favour of the union member's claims, the company refuses to comply with the court order.
- 120.** The complainants state that, on 9 August 2012, the company agreed to initiate a dialogue process over a period of 60 days and it committed itself to the temporary suspension of the effects of the dismissals during the dialogue period and to guarantee, together with the trade union, faithful compliance with labour standards. The complainants allege that the company did not fulfil its commitments and that the workers, together with the trade union, requested precautionary measures and filed *amparo* proceedings to achieve the reinstatement of the dismissed workers. The complainants also state that the Ministry of

Labour of the Province of Buenos Aires was notified of all the actions carried out by the SLFZ, giving rise to a number of administrative proceedings, in the course of which labour inspections and inquiries were carried out. The complainants indicate that at the time the complaint was submitted, the administrative decisions regarding the violations committed by the company were still pending.

## B. The Government's reply

- 121.** In its communication dated 28 May 2013, the Government states that the corresponding legal proceedings to obtain the reinstatement and back payment of the wages of the dismissed workers had been initiated and that criminal charges had been filed against the Director of the Cooperative for assault and injury.
- 122.** The Government adds that in the context of the dispute over the direct action measures and the subsequent negotiations, the provincial Ministry of Labour, on the request of the trade union, initiated the corresponding proceedings and carried out the requested inspections, as indicated by the complainants. Lastly, the Government states that the denounced acts have duly been referred to the corresponding judicial and administrative authorities, and in order to avoid unnecessary recourse to international jurisdiction, it requests that the complaint be set aside.

## C. The Committee's conclusions

- 123.** *The Committee observes that in this case the complainant organizations allege the dismissal, on 16 April 2012, of two workers (Mr Christian Altamirano and Mr Roberto Funes) from the company Zárate Electricity and Related Services Cooperative Ltd on account of their affiliation to SLFZ-CTA; that the company suspended for two or three days all the workers affiliated to SLFZ-CTA who participated in direct action (stoppages for three or four hours followed by an open-ended strike) to protest against the dismissals; and that on 8 June, on the occasion of the participation of SLFZ-CTA in the national strike organized by the CTA, the union member, Mr Ricardo Rossi, was physically assaulted (he suffered a triple jaw fracture and other injuries) on the company premises and that the union member, Mr Oscar Martínez, who went to his aid received death threats. The Committee also observes that the complainants report that union member, Mr Rossi, has not received payment of his wages since the day of his assault (according to the complainants the court ordered the payment of his wages but the company has not complied with the court order); that on 9 August 2012, a dialogue process was initiated for a period of 60 days, which among other things, provided for the suspension of the effects of the dismissals, but the company did not fulfil its commitments and complaints were filed before the Ministry of Labour of the Province of Buenos Aires, giving rise to various administrative proceedings that are still pending decision.*
- 124.** *As regards the alleged dismissal of Mr Christian Altamirano and Mr Roberto Funes on account of their affiliation to the SLFZ-CTA, the Committee notes that the Government indicates that – as the complainants have indicated – the corresponding legal proceedings to obtain their reinstatement and the back payment of their wages have been initiated. In this regard, the Committee requests the Government to keep it informed of the outcome of the ongoing legal proceedings.*
- 125.** *As regards the alleged suspension for two or three days of all the workers affiliated to the SLFZ-CTA for participating in direct action measures to protest against the dismissals, the Committee observes that the Government declares that, in the context of the dispute over the direct action measures and the subsequent negotiations, the provincial Ministry of Labour, on the request of the trade union, initiated the corresponding proceedings and*

carried out the requested inspections. In these conditions, in order to examine the allegations in full knowledge of the facts, the Committee requests the Government to indicate without delay the outcome of the investigations carried out by the provincial administrative authority and of the decisions adopted in this regard.

- 126.** *As regards the allegation that on 8 June 2012, on the occasion of the participation of the SLFZ–CTA in the national strike organized by the CTA, the union member, Mr Ricardo Rossi, was physically assaulted (suffering a triple jaw fracture and other injuries) on the company premises and that the union member, Mr Oscar Martínez, who went to his aid received death threats, the Committee notes that the Government indicates that criminal proceedings were filed against the Director of the Cooperative for assault and injury. In this regard, the Committee deeply regrets these acts of violence and expects that the criminal proceedings referred to by the Government have resulted in timely investigations to determine responsibilities, prosecute and sanction the guilty parties and prevent the repetition of similar acts. The Committee urges the Government to keep it informed in this regard.*
- 127.** *As regards the complainants’ allegations that the union member, Mr Rossi, has not received payment of his wages since the day on which he was assaulted (according to the complainants, the court ordered the payment of his wages but the company has not complied with the court order), the Committee urges the Government to ensure, without delay, compliance with the court order for the back payment of the wages owed to Mr Rossi and to keep it informed of any measures adopted in this regard.*
- 128.** *As regards the allegations that, on 9 August 2012, a dialogue process was initiated for a period of 60 days between the company and the SLFZ–CTA which, among other things, provided for the suspension of the effects of the dismissals, but that the company did not fulfil its commitments, the Committee notes that the Government reports that the provincial Ministry of Labour, on the trade union’s request, initiated the corresponding proceedings and carried out the requested inspections. The Committee takes note of this information and requests the Government to inform it without delay of the outcome of the investigations carried out by the provincial administrative authority and of the decisions that have been adopted in this regard. In addition, observing that there have been initiatives to create dialogue opportunities between the company and the SLFZ–CTA, the Committee requests the Government to take the necessary measures to promote dialogue between the parties with a view to achieving a harmonious industrial relations climate.*

## **The Committee’s recommendations**

- 129.** *In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) *As regards the alleged dismissal of Mr Christian Altamirano and Mr Roberto Funes on account of their affiliation to SLFZ–CTA, the Committee requests the Government to indicate the outcome of the ongoing legal proceedings.*
- (b) *As regards the alleged suspensions for two or three days of the workers affiliated to the SLFZ–CTA for participating in direct action measures to protest against the dismissal of the workers affiliated to the SLFZ–CTA, in order to examine these allegations in full knowledge of the facts, the Committee requests the Government to indicate without delay the outcome of the investigations carried out by the administrative authority of the province of Buenos Aires and of the decisions adopted in this regard.*

- (c) *As regards the allegation that, on 8 June 2012, the union member, Mr Ricardo Rossi, was physically assaulted (suffering a triple jaw fracture and other injuries) on the company premises and that the union member, Mr Oscar Martínez, who went to his aid received death threats, the Committee deeply regrets these acts of violence and expects that the criminal proceedings referred to by the Government have resulted in timely investigations to determine responsibilities, prosecute and sanction the guilty parties and prevent the repetition of similar acts. The Committee urges the Government to keep it informed in this regard.*
- (d) *As regards the complainants' allegations that the union member, Mr Rossi, has not received payment of his wages since the day on which he was assaulted (according to the complainants, the court ordered the payment of his wages but the company has not complied with the court order), the Committee urges the Government to ensure, without delay, compliance with the court order for the back payment of the wages owed to Mr Rossi and to keep it informed of any measures adopted in this regard.*
- (e) *As regards the allegations that on 9 August 2012 a dialogue process was initiated for a period of 60 days between the company and the SLFZ-CTA which, among other things, provided for the suspension of the effects of the dismissals, but that the company did not fulfil its commitments, the Committee requests the Government to inform it without delay of the outcome of the investigations carried out by the provincial administrative authority and of the decisions that have been adopted in this regard. The Committee also requests the Government to take the necessary measures to promote dialogue between the parties, with a view to achieving a harmonious industrial relations climate.*

CASE NO. 2956

DEFINITIVE REPORT

**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 objects to the restriction of the right to strike in the health sector and to the fact that work stoppages and strikes held because of the adoption of a supreme decree amending the working day of health professionals and workers were declared illegal by the administrative authority; it further alleges that the work stoppages and strikes led to dismissals in the health sector*

- 130.** The complaint is contained in communications from the Federation of Medical Practitioners' Unions and Allied Branches of the National Health Fund (FESIMRAS) dated 23 April and 11 May 2012. The FESIMRAS of the Oil Workers Health Fund forwarded allegations related to the complaint in a communication dated 26 June 2012. Furthermore, the FESIMRAS sent additional information in a communication dated 13 July 2012.
- 131.** The Government sent its observations in a communication dated 21 September 2012.
- 132.** 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**

- 133.** In its communications dated 23 April, 11 May and 13 July 2012, the FESIMRAS states that the Government adopted Supreme Decree No. 1126 on 24 January 2012, increasing the working day of health professionals and workers. The complainant organization adds that the decree's corresponding regulations (RM No. 0250) were issued on 26 March 2012 and confirms that the increase in working hours will not be commensurately and proportionately remunerated. The FESIMRAS considers that the supreme decree in question and its regulations constitute a direct violation of a right acquired under all pre-existing employment contracts and run counter to the constitutional mandate, which provides that acquired rights are inviolable. The complainant organization states that it lodged an appeal to revoke the decree, but that it received no reply from the Government, and that it also requested the National Health Fund (CNS) not to implement the decree.
- 134.** The complainant organization states that, in view of the lack of State mechanisms to which it could turn for help in seeking a solution to the violation of employment and constitutional rights, it was forced to hold a series of protest marches and work stoppages (a 24-hour work stoppage on 15 March; a 48-hour work stoppage on 20 and 21 March; and a strike that lasted from 28 March to 4 April 2012, when a truce was signed with the Ministry of Health and Sports). The complainant organization adds that the Ministry of Health and Sports failed to comply with the truce and therefore the Medical Association of the Plurinational State of Bolivia called for an indefinite general work stoppage as from 10 April 2012, seeking to have Supreme Decree No. 1126 revoked. The complainant organization alleges that, in response to these actions, the administrative authority, acting both as judge and party, declared the work stoppages and strike illegal. It also alleges that on 13 April 2012 the Ministry of Health began signing the first dismissal notifications. In the complainant's view, declaring the strikes illegal and acts of intimidation and persecution involving the dismissal of union members who took part in the work stoppages constitute violations of freedom of association. The FESIMRAS of the Oil Workers Health Fund refers to the same issues in its communication of 26 June 2012.
- 135.** In its communication of 13 July 2012, the FESIMRAS reports that a temporary solution was found to the change in the working day (the FESIMRAS provides a copy of a decree suspending and holding off implementation of Supreme Decree No. 1126 until after the National Summit for the Revolution of Public and Free Health Care, during which all stakeholders will analyse, discuss and agree on a new national health system). The FESIMRAS also provides a copy of the inter-agency agreement between the Ministry of the Interior and the National Health Commission (signed, *inter alia*, by the FESIMRAS), according to which: Professionals from the national health system and the public social security system who had been dismissed for the protest marches that led to the agreement will be reinstated in their posts immediately, thereby revoking the dismissal notifications and safeguarding respect for their employment rights and guarantees; and that, after

signing this agreement, the national Government is committed to refraining from instituting or continuing legal proceedings against union leaders, rank-and-file members, professionals and administrative staff who took part in the protests against Supreme Decree No. 1126. Lastly, the FESIMRAS alleges that no solution was found regarding the exercise of the right to strike in the health sector, which continues to be restricted.

## **B. The Government's reply**

- 136.** In its communication of 21 September 2012, the Government first states that, it appears from its analysis of the complaint that during the strike held by doctors and health workers of the Plurinational State of Bolivia in April and May 2012, the Government in no way violated the trade union immunity or trade union rights of the leaders of the complainant federation. According to the Government, neither the provisions of ILO Conventions Nos 87 and 98 nor national regulations for the protection of trade union immunity have been violated.
- 137.** The Government states that, following the work stoppages and strikes called for in the health sector, the Ministry of Health and Sports requested the Ministry of Labour and Social Security to declare them illegal, by taking appropriate legal action, in view of the perceived failure to comply with the relevant regulations on calling a strike. In this respect, and in the strict implementation of the regulations referred to in article 38(II) of the Constitution, which states that health services shall be provided without interruption (in accordance with the provisions of article 118 of the General Labour Act, prohibiting the suspension of work in public services, and the provisions of article 1(d) of Supreme Decree No. 1958 of 16 March 1950, prohibiting strikes in public services), the aforementioned strikes were declared illegal through the respective administrative rulings of the Directorate of Labour and Occupational Health and Safety. The Government adds that the FESIMRAS lodged appeals against the aforementioned rulings, as the law provides, and that these were rejected, thereby confirming that the strikes could be declared illegal.
- 138.** The Government also states that, despite the foregoing, during the dispute the Ministry of Labour and Social Security and the Ministry of Health and Sports in particular opened negotiation channels and spaces, not only with the health workers' unions and medical practitioners' professional associations of the Plurinational State of Bolivia, but also with the Bolivian Workers' Confederation, as the most effective way to find a satisfactory solution for the workers and end-users of public health services. As a result of those negotiations and as illustrated in the documents that the FESIMRAS itself sent to the ILO, the Government decided to suspend implementation of Supreme Decree No. 1126 concerning an eight-hour working day in the health sector pending agreement of a health-care package deal. In this regard, it was agreed to hold a National Summit for the Revolution of Public and Free Health Care, the agenda, programme of work, date and venue of which are being coordinated by the Government, the Bolivian Workers' Confederation, health workers' unions, medical professionals and the Executive Board of the Bolivian University. The Government adds that this summit will aim to develop a new health policy, taking into account the interests and needs of Bolivian health service union members, and to find short-, medium- and long-term solutions to all the challenges facing the health sector in the Plurinational State of Bolivia. The summit is planned for the final quarter of this year. The Government further emphasizes that, as a result of the agreement, the dismissal notifications were also revoked and a procedure to provide compensation for days not worked during the dispute was established by mutual agreement.
- 139.** The Government states that it is evident that the rights of the workers, let alone those of the union leaders, have not been violated, given that declaring the strikes called for by the FESIMRAS illegal was permitted in law; thus, there has been no violation of trade union immunity or existing national labour standards.

### C. The Committee's conclusions

140. *The Committee notes that in this case the complainant organization alleges that, following the adoption of Supreme Decree No. 1126 amending the working day of health professionals and workers, work stoppages and strikes were held, which were declared illegal by the administrative authority (the complainant organization objects to the restrictions on the right to strike in the health sector and to the fact that the administrative authority declared the industrial action illegal) and that many workers in the sector were subsequently dismissed.*
141. *In this respect, the Committee notes first with interest that the complainant organization and the Government provide a copy of an inter-agency agreement between the Ministry of the Interior and the National Health Commission (signed, inter alia, by the FESIMRAS), according to which: Professionals from the national health system and the public social security system who had been dismissed for the protest marches that led to the agreement will be reinstated in their posts immediately, thereby revoking the dismissal notifications and safeguarding respect for their employment rights and guarantees; and that, after signing this agreement, the national Government is committed to refraining from instituting or continuing legal proceedings against union leaders, rank-and-file members, professionals and administrative staff who took part in the protests against Supreme Decree No. 1126. The Committee also duly notes that the Government and the complainant organization provide a copy of a decree suspending and holding off implementation of Supreme Decree No. 1126 (which was the root cause of the dispute in this case) until after the National Summit for the Revolution of Public and Free Health Care, during which all stakeholders will analyse, discuss and agree on a new national health system. Under these circumstances, the Committee will not pursue its examination of these allegations.*
142. *Finally, as regards the allegations that the right to strike continues to be restricted in the health sector, the Committee takes note of the Government's statement that national legislation prohibits strikes in the health sector. In this respect, the Committee recalls that the right to strike may be restricted or prohibited in essential services in the strict sense of the term (that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population) [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 576] and deems that the health sector may be considered as an essential service. However, the Committee wishes to recall that "where the right to strike is restricted or prohibited in certain essential undertakings or services, adequate protection should be given to the workers to compensate for the limitation thereby placed on their freedom of action with regard to disputes affecting such undertakings and services" and that "as regards the nature of 'appropriate guarantees' in cases where restrictions are placed on the right to strike in essential services and the public service, restrictions on the right to strike should be accompanied by adequate, impartial and speedy conciliation and arbitration proceedings in which the parties concerned can take part at every stage and in which the awards, once made, are fully and promptly implemented" [see **Digest**, op. cit., paras 595 and 596].*

### The Committee's recommendation

143. *In the light of its foregoing conclusions, while recalling that in cases where restrictions are placed on the right to strike in essential services and the public service, these restrictions should be accompanied by adequate, impartial and speedy conciliation and arbitration proceedings, the Committee invites the Governing Body to consider that this case does not call for further examination.*



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CASE NO. 2318

INTERIM REPORT

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

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

- 144.** The Committee has already examined the substance of this case on eight occasions, most recently at its November 2012 session where it issued an interim report, approved by the Governing Body at its 313th Session [see 365th Report, paras 282–290].
- 145.** The complainant submitted additional information and new allegations in a communication dated 30 May 2013.
- 146.** As the Government has not replied, the Committee has been obliged to adjourn its examination of this case on several occasions. At its 21 June 2013 meeting [see the Committee's 368th Report, para. 5], 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 observations or information requested had not been received in due time. To date, the Government has not sent any information.
- 147.** Cambodia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). It has not ratified the Workers' Representatives Convention, 1971 (No. 135).

**A. Previous examination of the case**

- 148.** In its previous examination of the case, regretting the fact that, despite the time that had elapsed, the Government had not provided any observation, the Committee made the following recommendations [see 365th Report, para. 290]:
- (a) The Committee deeply deplores that, despite the time that has passed since it last examined this case, the Government has not provided its observations, although it has been invited on a number of occasions, including by means of an urgent appeal, to present its comments and observations on the case. The Committee urges the Government to be more cooperative in the future. The Committee reminds the Government of the possibility to avail itself of the technical assistance of the Office.
  - (b) As a general matter regarding all the subsequent issues, the Committee once again strongly urges the Government to take measures to ensure that the trade union rights of all workers in Cambodia are fully respected and that trade unionists are able to exercise their activities in a climate free of intimidation and risk to their personal security and their lives, and that of their families.
  - (c) The Committee once again urges the Government to take the necessary measures to ensure that Born Samnang and Sok Sam Oeun are exonerated of the charges brought against them and that the bail be returned to them. Furthermore, the Committee once again strongly urges the Government to ensure that thorough and independent

investigations into the murders of Chea Vichea, Ros Sovannareth and Hy Vuthy are carried out expeditiously, so as to ensure that all available information will finally be brought before the courts in order to determine the actual murderers and instigators of the assassination of this trade union leader, punish the guilty parties and thus bring to an end the prevailing situation of impunity as regards violence against trade union leaders. The Committee requests to be kept informed in this regard.

- (d) As concerns trade union leader Hy Vuthy, the Committee requests the Government to confirm that the Supreme Court ordered the Phnom Penh Municipal Court to reopen the investigation into his death on 3 November 2010.
- (e) Recalling the importance it attaches in this case to capacity building and the institution of safeguards against corruption necessary for the independence and effectiveness of the judicial system, the Committee strongly urges the Government to indicate the steps taken in this regard.
- (f) The Committee strongly urges the Government, once again, to institute without delay independent judicial inquiries into the assaults on trade unionists Lay Sophead, Pul Sopheak, Lay Chhamroeun, Chi Samon, Yeng Vann Nuth, Out Nun, Top Savy, Lem Samrith, Chey Rithy, Choy Chin, Lach Sambo, Yeom Khum and Sal Koem San, and to keep it informed of the results of these inquiries.
- (g) The Committee strongly requests the Government to indicate the steps taken to prevent the blacklisting of trade unionists.
- (h) With regard to the dismissals of Lach Sambo, Yeom Khun and Sal Koem San following their convictions for acts undertaken in connection with a strike at the Genuine garment factory, the Committee once again strongly urges the Government to inform it of the status of their appeals proceedings and to indicate their current employment status.
- (i) The Committee continues to express its profound concern with the extreme seriousness of the case and the repeated absence of information on the steps taken to investigate the above matters in a transparent, independent and impartial manner, a necessary prerequisite to creating a climate free from violence and intimidation necessary for the full development of the trade union movement in Cambodia.
- (j) Given the lack of progress on these very essential points, the Committee is bound, once again, to call the Governing Body's special attention to the extreme seriousness and urgency of the issues in this case.

## **B. The complainant's new allegations**

**149.** In its communication of 30 May 2013, the International Trade Union Confederation (ITUC) provided an update on the Chea Vichea murder trial and also reported on other matters relating to freedom of association in Cambodia. The ITUC reported that Born Samnang and Sok Sam Oeun have been sent back to prison. The two men initially were convicted and imprisoned in 2005 for the 2004 murder of Chea Vichea, then President of Cambodia's Free Trade Union (FTUWKC). Human rights organizations raised concerns about the lack of due process and evidence leading to the convictions, and campaigned for their release. On 31 December 2008, the Supreme Court ordered a retrial and released them on bail. Their return to prison follows the retrial by the Appeals Court in which it upheld the original verdict on 27 December 2012. The two men have appealed this decision.

**150.** The ITUC called for an independent and impartial investigation into the prosecution of the two men, including allegations of torture and other ill-treatment by police, intimidation of witnesses and political interference with the judicial process. The ITUC also called for a new investigation, and the arrest and prosecution of the real killers.

**151.** The ITUC also alleged that Chhouk Bandith, former Governor of the town of Bavet, fired shots into a group of mainly women workers employed at the Kao Way Sports Ltd

Factory. Three women were shot and seriously wounded. According to the Coalition of Cambodian Apparel Workers' Democratic Union (C.CAWDU), many of the 6,000 workers employed at the factory had engaged in a strike on 17–18 February 2012. When the strike resumed on 20 February, Chhouk Bandith emerged from a vehicle with a body guard and a policeman and fired shots from a high-powered gun. After firing, he is said to have fled in another vehicle and truckloads of police then moved in to quell the strike.

152. According to the ITUC, Bandith was charged in April 2012 with “unintentional injury” despite the overwhelming eyewitness evidence of an intentional attack on the striking workers with a gun. The investigating judge in Svay Rieng Provincial Court dropped the charges against him in December 2012. The Prosecutor General attached to the Court of Appeal appealed this decision. In March 2013, the Court of Appeal ordered the Svay Rieng Provincial Court to reinvestigate the case. This decision came after two days of hearings that included over two dozen witness testimonies, all but one of whom supported Bandith’s side of the story. The one witness who challenged Bandith’s version of accounts, Prasat commune Deputy Police Chief Long Phorn, said he was just seven meters away from Bandith when the former governor opened fire.
153. The ITUC reported that victims, unions and human rights organizations were pleased that the case had been re-opened, but sceptical of the prospects for a fair investigation at the lower court. In addition, they were disappointed that the “unintentional” charge remained, rather than a stronger “intentional” charge. The unintentional injury offence covers injuries resulting from “imprudence, carelessness or negligence”, which in no way reflects the nature of what is alleged by many eyewitnesses to have occurred. Further, if convicted, the sentence would range from six days to two years’ imprisonment, and a fine of between 1 and 4 million Cambodian riels, which, according to the ITUC, would be insufficient penalty for the crime. The ITUC submitted that he should be charged with attempted murder due to his actions, which demonstrated a clear intention to seriously injure, if not kill, the protestors.
154. Reports indicate that rights groups have criticized the authorities for not bringing Bandith to justice, saying it is typical of the impunity that occurs in Cambodia. Police have stated that the search is ongoing.
155. In addition to the allegations of violence directed towards unionists, along with the failure to hold those responsible accountable, the complainant raised a number of other allegations relating to the draft trade union law, and fixed-duration contracts.

### C. The Committee’s conclusions

156. *The Committee deeply deplores that, despite the time that has passed since it last examined this case, the Government has not provided its observations, although it has been invited on a number of occasions, including by means of an urgent appeal, to present its comments and observations on the case. The Committee urges the Government to be more cooperative in the future. The Committee reminds the Government of the possibility to avail itself of the technical assistance of the Office.*
157. *Hence, in accordance with the applicable rules of procedure [see 127th Report, para. 17, approved by the Governing Body at its 184th Session], the Committee finds itself obliged to present a report on the substance of the case without the benefit of the information which it had expected to receive from the Government.*
158. *The Committee once again reminds the Government that the purpose of the whole procedure established by the International Labour Organization (ILO) 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 [see the Committee's First Report, para. 31].*

- 159.** *The Committee is compelled, once again, to express its deep concern and regret at the seriousness of this case that concerns, inter alia, the murder of trade union leaders, Chea Vichea, Ros Sovannareth and Hy Vuthy. The Committee deeply deplores these events and once again draws the Government's attention to the fact that a climate of violence leading to the death of trade union leaders is a serious obstacle to the exercise of trade union rights. The Committee is deeply concerned by the climate of impunity that exists surrounding acts of violence directed towards trade unionists, and the seriously flawed judicial processes evident throughout this case.*
- 160.** *The Committee notes with grave concern the complainant's allegations contained in its communication of 30 May 2013 that Born Samnang and Sok Sam Oeun had been sent back to prison for the murder of Chea Vichea following a retrial by the Appeals Court on 27 December 2012, despite the lack of new evidence to support the convictions.*
- 161.** *While recalling that it had previously expressed serious misgivings as to the regularity of the trial concerning Chea Vichea's murder, and of the proceedings leading to it, the Committee welcomes the judgment on appeal by the Supreme Court which has definitively acquitted Born Samnang and Sok Sam Oeun and the dropping of all charges against them.*
- 162.** *The Committee notes that according to the information provided by the Government to the Committee on the Application of Standards in 2013 during the discussion of the application of Convention No. 87, following meetings with representatives from the ILO, and upon the initiative of the Minister for Labour and Vocational Training, the Prime Minister issued an order through the Cabinet of the Council of Ministers on 6 March 2013 (No. 397) to establish a Coordinating Committee that will include the Ministry of Justice, Ministry of Interior, and the Ministry of Labour and Vocational Training with the exclusive mandate to coordinate the ministries involved to respond to the questions put forth by the ILO relating to this case. The Committee further notes that the Government has subsequently sent to the ILO a decision of the Government granting permission to the Ministry of Interior, the Ministry of Justice and the Ministry of Labour and Vocational Training to cooperate to give clarification to the Committee concerning the murders of trade union leaders, Chea Vichea, Hy Vuthy and Ros Sovannareth, but nevertheless observes that no detailed information has yet been provided in this regard.*
- 163.** *The Committee further notes with concern the complainant's latest grave allegations regarding another act of violence against trade unionists, namely the shooting, by former Governor Chhouk Bandith, of workers engaged in a strike, and the circumstances related to Chhouk Bandith's subsequent trial. The Committee notes that these events further contribute to the concerns raised by the complainant about a climate of impunity in relation to acts of violence directed towards trade unionists and urges the Government to provide detailed information in reply to these allegations.*
- 164.** *The Committee once again stresses the importance of ensuring full respect for the right to freedom and security of persons, and freedom from arbitrary arrest and detention, as well as the right to a fair trial by an independent and impartial tribunal, in accordance with the provisions of the Universal Declaration of Human Rights. The Committee again emphasizes that acts of violence directed towards trade union leaders and trade unionists require the prompt institution of independent judicial inquiries in order to fully uncover*

*the underlying facts and circumstances, identify those responsible, punish the guilty parties, and prevent the repetition of similar events.*

- 165.** *The Committee urges the Government to bring to an end the climate of impunity in the country, including, in particular, impunity in relation to violent acts against trade unionists. The Committee requests the Government to reopen the investigation into the murder of Chea Vichea and to ensure that the perpetrators and the instigators of these heinous crimes are brought to justice. The Committee further calls on the Government to conduct an independent and impartial investigation into the prosecution of Born Samnang and Sok Sam Oeun, including allegations of torture and other ill-treatment by police, intimidation of witnesses and political interference with the judicial process and to keep it informed of the outcome and the measures of redress provided for their wrongful imprisonment.*
- 166.** *Furthermore, the Committee once again strongly urges the Government to ensure that thorough and independent investigations into the murders of Ros Sovannareth and Hy Vuthy are carried out expeditiously and to keep it informed of the progress made in this regard. As concerns trade union leader Hy Vuthy, the Committee requests the Government to confirm that the Supreme Court ordered the Phnom Penh Municipal Court to reopen the investigation into his death on 3 November 2010 and to keep it informed of any progress made in this regard.*
- 167.** *Finally, as regards the new allegations relating to the draft labour code and fixed-duration contracts, the Committee considers that the vastly different nature of these allegations should be dealt with in a separate case and intends to come back to this matter at its next meeting.*

### **The Committee's recommendations**

- 168.** *In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) *The Committee deeply deplores that, despite the time that has passed since it last examined this case, the Government has not provided its observations, although it has been invited on a number of occasions, including by means of an urgent appeal, to present its comments and observations on the case. The Committee urges the Government to be more cooperative in the future. The Committee reminds the Government of the possibility to avail itself of the technical assistance of the Office.*
- (b) *As a general matter regarding all the subsequent issues, the Committee once again strongly urges the Government to take measures to ensure that the trade union rights of all workers in Cambodia are fully respected and that trade unionists are able to exercise their activities in a climate free from intimidation and risk to their personal security and their lives, and that of their families.*
- (c) *The Committee requests the Government to conduct an independent and impartial investigation into the prosecution of Born Samnang and Sok Sam Oeun, including allegations of torture and other ill-treatment by police, intimidation of witnesses and political interference with the judicial process and to keep it informed of the outcome and the measures of redress for their wrongful imprisonment.*

- (d) *Furthermore, the Committee once again strongly urges the Government to ensure that thorough and independent investigations into the murders of Chea Vichea, Ros Sovannareth and Hy Vuthy are carried out expeditiously to ensure that all available information will finally be brought before the courts in order to determine the actual murderers and instigators of these trade union leaders, punish the guilty parties and bring to an end the prevailing situation of impunity as regards violence against trade union leaders. The Committee requests to be kept informed in this regard.*
- (e) *As concerns trade union leader Hy Vuthy, the Committee requests the Government to confirm that the Supreme Court ordered the Phnom Penh Municipal Court to reopen the investigation into his death on 3 November 2010 and to keep it informed of any progress made in this regard.*
- (f) *The Committee further urges the Government to provide detailed observations in relation to the latest allegations of the shooting of demonstrating workers by Chhouk Bandith and the impunity which has allegedly characterized his trial.*
- (g) *Recalling the importance it attaches in this case to capacity building and the institution of safeguards against corruption necessary for the independence and effectiveness of the judicial system, the Committee strongly urges the Government to indicate the steps taken in this regard.*
- (h) *The Committee strongly urges the Government, once again, to institute without delay independent judicial inquiries into the assaults on trade unionists Lay Sophead, Pul Sophead, Lay Chhamroeun, Chi Samon, Yeng Vann Nuth, Out Nun, Top Savy, Lem Samrith, Chey Rithy, Choy Chin, Lach Sambo, Yeon Khum and Sal Koem San, and to keep it informed of the results of these inquiries.*
- (i) *The Committee strongly requests the Government to indicate the steps taken to prevent the blacklisting of trade unionists.*
- (j) *With regard to the dismissals of Lach Sambo, Yeom Khun and Sal Koem San following their convictions for acts undertaken in connection with a strike at the Genuine garment factory, the Committee once again strongly urges the Government to inform it of the status of their appeals proceedings and to indicate their current employment status.*
- (k) *The Committee continues to express its profound concern with the extreme seriousness of the case and the repeated absence of information on the steps taken to investigate the above matters in a transparent, independent and impartial manner, a necessary prerequisite to creating a climate free from violence and intimidation necessary for the full development of the trade union movement in Cambodia.*
- (l) *Given the lack of progress on these very essential points, the Committee is bound, once again, to call the Governing Body's special attention to the extreme seriousness and urgency of the issues in this case.*

CASE NO. 2951

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

**Complaint against the Government of Cameroon  
presented by  
the Confederation of Autonomous Trade Unions of Cameroon (CSAC)**

***Allegations: The complainant organization denounces the interference of the authorities in its management by supporting a dissident faction and excluding it from collective bargaining forums***

- 169.** The complaint is contained in a communication from the Confederation of Autonomous Trade Unions of Cameroon (CSAC) dated 23 May 2012.
- 170.** The Government sent its observations in a communication dated 3 June 2013.
- 171.** Cameroon has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Workers' Representatives Convention, 1971 (No. 135).

**A. The complainant's allegations**

- 172.** In a communication dated 23 May 2012, the CSAC denounces the interference of the authorities in its operation and in the management of its activities since July 2011.
- 173.** The complainant organization indicates that at that time, as the mandate of the confederation office of the organization, elected in December 2005, was coming to an end, the Secretary-General had requested the President of the confederation to convene an executive board meeting to prepare the sittings of the National Council and of the Congress, in accordance with the organization's statutes and internal regulations. However, according to the complainant organization, a dissident group made up of seven members of the executive board, out of the total of 74 members, supported by the Government, organized an alternative congress in the city of Limbe, in the south-west of Cameroon, on 23 July 2011. The Congress was opened by representatives of the sub-prefect of Limbe and the representative of the regional delegation of the Ministry of Labour for the south-west. At the end of its work, a so-called National Board of the CSAC was established and set up by the representative of the regional delegation of the Ministry of Labour for the south-west.
- 174.** The complainant organization indicates that, from 26 July 2011, the Secretary-General of the outgoing executive board addressed two letters to the Ministry of Labour and to the clerk of the trade unions, respectively, notifying them of the anomalies contained in the documents resulting from the meeting in Limbe, and, in particular, of the absence of a quorum to approve the meeting, the inflation of the number of participants and the presence of delegates of professional organizations that were not registered with the CSAC.
- 175.** According to the complainant, the majority of organizations affiliated to the CSAC condemned the work of the dissident congress in Limbe and requested that a second

ordinary CSAC Congress be urgently convened in accordance with the mandatory and regulatory provisions in force. This ordinary congress was held from 23 to 24 September 2011 in Yaoundé, with the participation of a large majority of the organization's delegates. The work of the congress led to the democratic election of a new national executive board, and the acts adopted by the congress were communicated to the authorities for the record.

- 176.** The complainant denounces the fact that, despite these procedures, the CSAC has since been excluded from all official activities and events, and from all bargaining structures involving the participation of trade union organizations. According to the complainant, the authorities were thereby making every attempt to impose the organizers of the Limbe meeting on the management of the CSAC. The complainant organization states that its letters of February and March 2012, in particular, denounced the complicity of the Secretary-General of the Ministry of Labour – who is also the trade unions' clerk – in attempting to destabilize the CSAC.
- 177.** According to the complainant organization, on 18 April 2012, the new Minister of Labour summoned the national President of the CSAC from the Yaoundé Congress, and the confederation President from the Limbe Congress, giving them 15 days, renewable once, in which to resolve any differences and present a united front. Although this goes against the provisions of Article 3 of Convention No. 87, the group from the Yaoundé Congress made unsuccessful attempts to reconcile itself with the dissident party with a view to holding a united congress. However, at the same time, the Government decided to appoint the Secretary-General elected by the dissident Limbe Congress, Mr Pierre Louis Mouangue, as representative of the CSAC to the delegation of workers' representatives to the 101st Session of the International Labour Conference (ILC). The complainant organization is surprised by the Government's decision and condemns an appointment which it considers to be an act of partisan interference, when only a few days earlier the organization had received a letter from the Ministry of Labour and Social Security inviting it to take part in a meeting in preparation for Labour Day.
- 178.** In conclusion, the complainant organization denounces the clear violation of the provisions under Conventions Nos 87 and 98 and requests that the Government be condemned for yet another example of interference in the internal affairs of a trade union organization.

## **B. The Government's reply**

- 179.** In its communication of 3 June 2013, the Government refers to the provisions of article 5, of the first chapter of the Labour Code, which forbid all act of interference in trade union activities, declaring that it abides by those provision and that the allegations presented by the complainant organization, through Mr Louis Sombes, are therefore unfounded.
- 180.** The Government declares that the management of the CSAC has been undergoing a crisis since 2010. The first crisis causing the organization's split into two factions set the President of the organization, Mr Verwesse, up against the Secretary-General, Mr Sombes, who signed the complaint currently before the committee and who had been elected as President. In light of the continuation of this crisis, in April 2012, the Ministry of Labour and Social Security summoned both factions to request them to settle their difference within a period of 15 days, renewable once. In the event of their failure to do this, the Ministry of Labour would suspend its collaboration with the CSAC. According to the Government, in general, the Ministry of Labour and Social Security has carried out a series of consultations to resolve differences within the management of trade union organizations subject to the suspension of its collaboration with the organizations in question. The Government adds that, since the death of Mr Verwesse, the CSAC has undergone a second crisis since both the Vice-President (Ms Assango) and the Secretary-General



(Mr Mouangue) from Mr Verwesse's faction have claimed the presidency of the CSAC, as Mr Sombes has done on behalf of his own faction.

- 181.** As regards the appointment of a representative of the CSAC to the 101st Session of the ILC, the Government refers to the reply that it gave the Credentials Committee following a complaint from the CSAC at the 102nd Session of the ILC. In its reply, the Government indicates that it has suspended all collaboration with the CSAC following the organization's split into two factions and that it decided not to invite the organization to participate in the 102nd Session of the ILC. The Government specifies that the Workers' and Employers' delegates that participated in the ILC were appointed by their respective groups through separate consultations.
- 182.** Lastly, the Government rejects the complainant's allegations regarding its exclusion from official activities and collective bargaining forums. In this regard, the Government confirms that the CSAC did take part in the organization of Labour Day. The Government adds that the representatives of the CSAC are still members of various joint commissions responsible for the negotiation of national conventions in sectors such as trade, processing industries, forestry, etc.

### C. The Committee's conclusions

- 183.** *The Committee notes that this case refers to the alleged interference of the authorities in the internal management of a trade union organization as well as their support of a dissident faction, resulting in the exclusion of the organization in question from collective bargaining forums.*
- 184.** *The Committee notes the CSAC's indication that, as the mandate of the executive board of the organization, elected in December 2005, was coming to an end, the Secretary-General requested the President of the confederation to convene a meeting of the executive board to prepare the sittings of the National Council and of the Congress, in accordance with the organization's statutes and internal regulations. However, according to the complainant, a dissident group made up of seven members of the executive, out of a total of 74 members, organized an alternative congress in the city of Limbe, in south-west Cameroon, on 23 July 2011. At the end of its work, a so-called National Board of the CSAC was established and set up by the representative of the regional delegation of the Ministry of Labour for the south-west. The complainant organization allegedly denounced the Limbe Congress before the Ministry of Labour and Social Security, indicating a number of anomalies, in particular, the absence of a quorum to approve the meeting, the inflation of the number of participants and the presence of delegates from professional organizations that were not registered with the CSAC.*
- 185.** *The Committee notes that the complainant indicates that the majority of the organizations affiliated to the CSAC condemned the work of the dissident congress in Limbe and requested a second ordinary CSAC Congress, which was eventually held on 23 to 24 September 2011 in Yaoundé, with the participation of a large majority of the organization's delegates. The work of the congress led to the election of a new executive board, and the acts adopted were communicated to the authorities.*
- 186.** *The Committee notes that the complainant indicates that on 18 April 2012, the newly appointed Minister of Labour summoned the President of the CSAC from the Yaoundé Congress, and the President elected by the Limbe Congress to give them 15 days, renewable once, in which to resolve any differences and present a united front. According to the complainant, although this goes against the provisions of Article 3 of Convention No. 87, the group from the Yaoundé Congress made unsuccessful attempts to reconcile itself with the dissident party in order to hold a united congress.*

- 187.** *The Committee notes that, for its part, the Government states that the CSAC executive has been undergoing a power crisis since 2010. According to the Government, the first crisis causing the organization's split into two factions set the President of the organization, Mr Verwesse, up against the Secretary-General, Mr Sombes, who signed the complaint currently before the Committee and who had been elected as President. In light of the continuation of the crisis, in April 2012 the Ministry of Labour and Social Security summoned both the factions to request them to settle their differences within a period of 15 days, renewable once. In the event of their failure to do this, the Ministry of Labour would suspend its collaboration with the CSAC. According to the Government, in general, the Ministry of Labour and Social Security has carried out a series of consultations to resolve differences within the management of trade union organizations subject to the suspension of its collaboration with the organizations in question. The Committee moreover notes that, according to the Government, since the death of Mr Verwesse, the CSAC has undergone a second crisis since both the Vice-President (Ms Assango) and the Secretary-General (Mr Mouangue) from Mr Verwesse's faction have claimed the presidency of the CSAC, as Mr Sombes has done in his own faction.*
- 188.** *Firstly, the Committee recalls 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]. Taking note of the difficulties expressed by the Government regarding the dispute within the CSAC and welcoming its will to clarify the situation of the trade union movement in the country, the Committee however observes that some of the facts presented and not contested by the Government, such as the presence of representatives of the Ministry of Labour at the Congress in Limbe or the appointment of a faction of the organization to the 101st Session of the ILC, could be interpreted as a lack of neutrality on behalf of the authorities. As a result, the Committee is obliged to request the Government to show restraint in this case, and in particular to abstain from all actions in favour or against one of the factions of the CSAC, which could be perceived as a form of interference.*
- 189.** *The Committee notes that, according to an order of December 2011 of the Ministry of Labour and Social Security establishing the national classification of trade union confederations arising from the elections of the staff delegates organized from 1 February to 30 April 2011, the Ministry recorded the CSAC in second position with 12.84 per cent of the votes. The Committee wishes to remind the Government of the importance, for the preservation of a country's social harmony, of regular consultations with employers' and workers' representatives, and that such consultations should involve the whole trade union movement. The Committee also considers it useful to refer to the Consultation (Industrial and National Levels) Recommendation, 1960 (No. 113), which in Paragraph 1 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. Under Paragraph 5 of the Recommendation, such consultation should aim at ensuring that the competent public authorities seek the views, advice and assistance of employers' and workers' organizations in an appropriate manner, especially in respect of the preparation and implementation of laws and regulations affecting their interests [see **Digest**, op. cit., paras 1065 and 1068].*

- 190.** *The Committee notes that, according to the complainant, despite the proceedings it has undertaken before the authorities and its warnings, it now finds itself excluded from all official activities and events, and from collective bargaining forums on the issue of the divergence in the union's leadership. The Government confirms that it has ended all collaboration with the CSAC following its second leadership crisis but adds that the representatives of the CSAC are still members of a number of joint commissions responsible for negotiating national collective agreements in sectors such as trade, processing industries, forestry, etc. Noting that the Government confirms that it has ended all collaboration with the CSAC until an uncontested and legitimate representation has been re-established, the Committee wishes to remind it that, by according favourable or unfavourable treatment to a given organization as compared with others, a government may be able to influence the choice of workers as to the organization they intend to join [see **Digest**, op. cit., para. 340]. The Committee moreover considers that suspending its collaboration with a trade union organization is not likely to ensure peaceful industrial relations.*
- 191.** *The Committee therefore urges the Government to promote dialogue and consultations on matters of common interest between the public authorities and the most representative sectoral and national professional organizations, ensuring regular consultations with the whole trade union movement, including the CSAC.*
- 192.** *Regarding the differences within the CSAC, the Committee recalls that in the case of conflicts within a trade union it has always maintained that judicial intervention would permit the clarification of the situation from a legal point of view for the purpose of settling questions concerning the management and representation of the trade union concerned. Another possible means of settlement would be to appoint an independent arbitrator to be agreed on by the parties concerned, to seek a joint solution to existing problems and, if necessary, to hold new elections. In either case, the Government should recognize the leaders designated as the legitimate representatives of the organization [see **Digest**, op. cit., para. 1124]. Therefore, the Committee invites the complainant to seek the appropriate avenues to overcome its internal differences and to clarify the situation of its legitimate representation and to keep it informed in this regard.*
- 193.** *Lastly, as regards the appointment of a delegate to represent the CSAC at the ILC, while it recalls that the question of representation at the Conference falls within the purview of the Conference Credentials Committee, the Committee recalls the special importance it attaches to the right of workers' and employers' representatives to attend and to participate in meetings of international workers' and employers' organizations and of the ILO [see **Digest**, op. cit., para. 766].*

### **The Committee's recommendations**

- 194.** *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 show restraint in this case, and in particular to abstain from any action in favour or against one of the factions of the Confederation of Autonomous Trade Unions of Cameroon (CSAC), which could be perceived as a form of interference.*
- (b) *The Committee urges the Government to promote dialogue and consultations on matters of common interest between the public authorities and the most representative professional organizations at industrial and*

*national levels, ensuring regular consultations with the whole trade union movement, including the CSAC.*

- (c) *The Committee invites the complainant to seek the appropriate avenues to overcome its internal differences and to clarify the situation regarding its legitimate representation and to keep it informed in this regard.*

CASE NO. 2971

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

### **Complaint against the Government of Canada presented by**

– **the Fédération des travailleurs du Québec (FTQ-Construction)**

**supported by**

– **the Conseil provincial du Québec des métiers de la construction (International)**

*Allegations: The complainant alleges that Bill 33 adopted by the Government of Quebec imposes on trade unions in the Quebec construction industry overriding conditions on bargaining, representation and the right to strike which restrict and impede the lawful exercise of the rights of workers' and employees' associations*

- 195.** The complaint is contained in a communication from the Fédération des travailleurs du Québec (FTQ-Construction) dated 4 June 2012. It is supported by the Conseil provincial du Québec des métiers de la construction (International) in a communication dated 13 September 2012.
- 196.** The Government of Canada transmitted the observations of the Government of Quebec in a communication dated 8 May 2012.
- 197.** Canada has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), but has not ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

#### **A. The complainant's allegations**

- 198.** In its communication of 4 June 2012, FTQ-Construction states that, on 2 December 2011, the Government of Quebec adopted an Bill to Eliminate Union Placement and Improve the Operation of the Construction Industry (hereinafter "Bill 33"). The complainant states that this Bill imposes on trade union associations in the Quebec construction industry conditions pertaining to bargaining, representation and acquisition of the right to strike, which restrict or impede the exercise of the rights of workers and employees' associations. Bill 33 amends the Act Respecting Labour Relations, Vocational Training, and Workforce Management in the Construction Industry (hereinafter "Act R-20"), which governs labour relations in the construction sector. The Act provides for compulsory union membership for workers in five employees' associations (of which FTQ-Construction is the largest,

representing more than 44 per cent of all construction workers in Quebec province), collective bargaining mechanisms for certain sectors of the construction industry and a body with equal labour/management representation, the Commission de la construction du Québec. The Act also addresses, inter alia, the application of collective agreements, the right to strike, and a prohibition on holding certain trade union positions.

- 199.** The complainant contends that Bill 33 violates rights under the collective agreement, inter alia, by excluding, in its introductory provisions, forest access roads from the scope of Act R-20.
- 200.** FTQ-Construction adds that sections 43.7 and 44 of the Bill do not comply with the principles of collective bargaining, in that the Bill provides for an anti-democratic process of bargaining and adoption of collective agreements, by requiring the mandatory participation in negotiations of three of the five associations with greater than 50 per cent representation. Furthermore, FTQ-Construction states that, in view of the fact that the two main employees' associations have an overwhelming majority of union membership among workers (of almost 75 per cent), Bill 33 in fact requires the participation of a third, minority, employees' association in order for a collective agreement to be signed. This requirement is designed to favour certain associations which are sympathetic to the Government and which each individually represent only around 10 per cent of workers in the industry.
- 201.** In addition, the complainant submits that the Government forcibly repatriated a workforce development fund of several million dollars by entrusting the Commission de la construction du Québec with the management of the fund. However, the fund had been created and negotiated by mutual agreement between the employees and employers.
- 202.** FTQ-Construction adds that the provisions of Act R-20 as amended by Bill 33 concerning the right to strike in the construction industry violate the international standards in force, in that they make it de facto impossible to exercise the right to strike. For a strike to be lawful, the said Bill requires more than 50 per cent of the vote of the entire province for each of the five sectors. Such a right to strike does not take into account the specific nature of the trades and occupations in the context of bargaining, or any regional differences. The complainant alleges that this section, as amended by Bill 33, requires a vote of more than 50 per cent from three employees' associations. It also notes that section 60.2 of the amended Act R-20 makes similar requirements of major construction projects.
- 203.** FTQ-Construction submits that the new Bill creates restrictions on union representation which are inconsistent with the collective agreement, in that it prohibits workers who have committed any of the offences referred to in section 26 of the amended Act R-20 from becoming a shop steward. However, the prohibition in that section refers not only to offences and serious crimes, but also to petty crimes such as common assault and anti-union discrimination. The complainant objects to the State's interference in the choice of its union representatives.
- 204.** The complainant states that section 3.2 of the amended Act R-20 provides for reduced union and employer representation on the board of directors of the Commission de la construction du Québec compared with the situation prior to the amendment, and notes that union representatives may not sit on the board of directors without Government authorization.
- 205.** The complainant also objects to section 24 of the Act, in that it empowers the Commission des relations du travail, which is responsible for the application of Act R-20, to change the union affiliation of a worker who complains of arbitrary or discriminatory conduct or acts of bad faith on the part of the association. FTQ-Construction considers that the Act may

provide for prohibitions and disciplinary action, but cannot interfere in the freedom to choose a union, especially since the provision in the Act does not require the employee's consent.

- 206.** Lastly, FTQ-Construction expresses its dissatisfaction that, under section 119.0.1 of the amended Act, associations are prohibited from providing, directly or indirectly, labour-referral services to employers in the construction industry, as they did in the past. The prohibition impedes the employees' associations' representation duties and infringes their rights to represent employees and to provide them with union-related services.

## **B. The Government's response**

- 207.** In its communication dated 13 September 2012, the Government transmits a communication from the Provincial Government of Quebec, in which it states that Act R-20 governs labour relations in the Quebec construction industry and establishes the Commission de la construction du Québec, which is responsible for the administration of the Act. The Government states that Bill 33 is the result of consultations with various stakeholders on the functioning of the construction industry conducted by a group of independent experts commissioned by the Minister of Labour. This committee received around sixty memos and took statements from representatives of trade unions, employers' associations, contractors and their associations in the construction industry. The consultations took place in June and July 2011. In its analysis, the committee also took into account some twenty documents transmitted by organizations or individuals connected with the construction industry.

- 208.** The Government adds that, at the end of these consultations, the committee recommended that it legislate on the matter, while still retaining the guidelines pertaining to the Quebec construction industry: equal labour/management representation, mandatory unionization, trade union pluralism, legal framework of the bargaining process, and the role of the Commission de la construction du Québec in the governance of the industry and the application of collective agreements. The committee also recommended certain changes it considered essential to end the intimidatory and discriminatory practices in the construction industry. The Government emphasizes that Bill 33, which was based on the committee's report, was subsequently reviewed by a parliamentary committee of the Quebec National Assembly, in which all parties concerned could participate by presenting or submitting a paper.

- 209.** The Government emphasizes that, despite the complainant's claims concerning the exclusion of forest access roads from the scope of Act R-20, the law will apply to them as long as they have not been the subject of a special regulation, under the conditions of that regulation. The Government argues that no such regulation has been adopted. Furthermore, during the adoption process of a regulation, all interested persons may submit their comments. Moreover, even if forest roads were no longer to be subject to Act R-20, they would remain subject to the general regime set out in the Labour Code.

- 210.** The Government further submits that the amendments introduced by Bill 33 do not weaken the collective bargaining regime, but grant all trade union associations the right to participate in collective bargaining. It also states that the Bill retains the obligation to represent an absolute majority (50 per cent plus one) of workers in order to sign a collective agreement, and that that majority of workers must come from a majority of unions. The Government adds that these provisions strengthen trade union pluralism within the construction industry and ensure that the smallest organizations may participate effectively.

211. The Government goes on to state that the administration of workforce training and development funds had already been entrusted to the Commission de la construction du Québec, even though in practice they were managed by independent committees of that body, comprised of both union and employer members.
212. The Government explains that, as for the exercise of the right to strike, the requirement of a strike ballot at provincial level already existed prior to the amendments. What is new is that the strike must be voted for by a majority of 50 per cent plus one of workers coming from a majority of trade unions, which promotes greater trade union democracy.
213. The Government then turns to the restrictions on union representation and states that the prohibitions on workers who have committed certain criminal offences such as common assault or discrimination from becoming shop stewards were intended to guarantee the probity and integrity of trade union representatives.
214. As regards the appointment of persons from trade union or employer associations to the board of directors of the Commission de la construction du Québec, the Government states that such appointments have always been made by the Government after consultation with the organizations concerned. It explains that equal representation is maintained: four independent members (from neither the employers nor the unions) are members of the board of directors. This is a long-standing situation: only the selection criteria for the members of the organization's board of directors have been amended. The trade union and employer members remain in the majority and in equal numbers.
215. The Government states that workers may lawfully choose their union affiliation and that after making a complaint, a worker may not change union in an arbitrary or discriminatory manner merely on the pretext that the trade union association acted in bad faith. The worker must provide evidence of such before the Commission des relations du travail, which will authorize the change if it considers that the union was at fault. It is then the worker, not the Commission, who chooses the new affiliation.
216. The Government submits that the labour-referral system by the trade union associations has always existed, but that, from now on, referrals will be made via a centralized system which enables trade unions to be informed of and respond to labour needs. This enables all workers who meet the job requirements to be referred, no matter which union they belong to.

### C. The Committee's conclusions

217. *The Committee notes that, in this case, the complainant alleges that, by promulgating Bill 33, the Government of Quebec has amended the labour relations regime of the construction industry, which is governed by the Act Respecting Labour Relations, Vocational Training, and Workforce Management in the Construction Industry, which has consequently amended and impeded the exercise of workers' trade union rights. In this regard, the Committee notes that the Government states that consultations with various stakeholders in the industry, including representatives of employer and trade union associations, were conducted by a committee of independent experts prior to the adoption of the bill, and that that committee's report was reviewed by a parliamentary committee of the Quebec National Assembly, in which all parties concerned could participate by presenting or submitting a paper.*
218. *The Committee notes that the complainant states that the Government forcibly repatriated within the Commission de la construction du Québec a workforce development fund which had been created during previous negotiations together with the employers and which was managed by employers and trade unions. In this regard, the Committee notes the*

Government's response that the administration of this fund is entrusted to the aforementioned Commission under Act R-20 and that it was only in practice that the management of the fund had been entrusted to independent committees of the Commission, whose members came from both the trade union and the employer spheres. The Committee also notes that the training regime is regulated within the Commission de la construction du Québec, in particular by the board of directors and the Committee on Vocational Training in the Construction Industry, which comprises 13 members, with equal numbers of employer and union members (five of each). The Committee notes that the complainant is represented on that committee.

- 219.** *The Committee observes that, according to the allegations before it, the amendments to the Act result in the exclusion of forest access roads from its scope. In this regard, the Committee notes the Government's response stating that the Act applies to these roads as long as they are not subject to a special regulation, in the preparation of which all interested parties may make comments. The Committee also notes the Government's statement that no such regulation has been adopted to date, and that, even if the forest access roads were no longer subject to the special provisions of Act R-20, they would remain subject to the Labour Code, which codifies the overall labour relations regime. In these circumstances, the Committee will not pursue its examination of this allegation any further.*
- 220.** *The Committee notes that the complainant alleges that the amendments to the Act require the participation of three out of five employees' associations whose representativeness is over 50 per cent of workers in order to initiate and conclude a collective bargaining process, whereas the two main associations currently represent 75 per cent of workers in the industry. The Committee notes that the Government responds to this statement by stating that the collective bargaining regime in the construction industry is not weakened by Bill 33 and that it maintains the requirement for an absolute majority of workers represented by the majority of trade unions to sign a collective agreement in the sector. The Government adds that the new provisions strengthen trade union pluralism within the industry and ensure the effective participation of smaller organizations. The Committee notes that, under section 44, "[i]n order to be considered as the collective agreement applicable in a sector, an agreement respecting the conditions of employment ... must be made by at least three associations whose representativeness is more than 50 per cent ...". The Committee recalls that collective bargaining systems which give exclusive rights to the most representative trade union, and systems that enable several trade unions to participate in collective bargaining, are both compatible with the principles of freedom of association. However, in the case at hand, the Committee considers that, given the trade union representation as described by the complainant, the double threshold prescribed by the legislation – that is, a majority of 50 per cent plus one and the obligation to have a third organization when two trade unions would have been sufficient to attain the majority of workers – might impede the signing of the collective agreement in the sector. The Committee requests the Government, in consultation with all of the relevant social partners, to consider amending section 44 of Act R-20 so as to ensure that the signing of the collective agreement is not obstructed, taking into account the overall representativeness of the unions. The Committee requests the Government to keep it informed in this respect.*
- 221.** *The Committee observes that the complainant submits in its allegations that the Government's amendments to Act R-20 prevent the effective exercise of the right to strike, in that a lawful strike must now receive more than 50 per cent of the vote at the sectoral level by three out of five employees' associations in order to be adopted, whereas the two main associations alone represent 75 per cent of construction workers. The Committee notes that the Government states that the requirement of a ballot at the provincial level has always been necessary to call a strike, and that the reason for the new requirement that*



three associations participate is based on the need to promote greater trade union democracy. The Committee observes that under the amended section 45.4, “[a] strike is permitted ... provided that it is called for all the employees working in the sector and that it has been authorized, by secret ballot, by a majority of the voting members of at least three associations whose representativeness is 50 per cent or more”. The Committee requests the Government, in consultation with all of the relevant social partners, to consider amending this provision so as to ensure that recourse to strike action is also possible at the enterprise level. Furthermore, given the fact, that in the current context, under the amended section the two workers’ organizations representing 75 per cent of workers may be prevented from calling a strike, the Committee requests the Government and the unions concerned to seek a mutually acceptable solution in order to ensure that the workers’ right to strike is not impeded. The Committee requests the Government to keep it informed in this respect.

**222.** The Committee observes that the complainant alleges that the new composition of the board of directors of the Commission de la construction du Québec has reduced union and employer representation, and that the union representatives may sit on the board only after receiving the Government’s permission. In this respect, the Committee notes the Government’s response stating that it has always made appointments to the board of directors after consultation with the organization concerned. The Committee in fact notes that under the amended section 3.2, with the exception of the Chairperson, the 15 members of the board of directors are appointed as follows:

...

- (1) one member after consultation with the employers’ association;
- (2) four members after consultation with the contractors’ associations;
- (3) five members after consultation with the [employees’] representative associations;
- (4) four independent members, taking into account the expertise and experience profiles approved by the board of directors.

...

**223.** The Committee also notes that, according to the complainant, the amendments to Act R-20 prevent employees’ associations from providing, directly or indirectly, labour-referral services to employers in the construction industry, as they had done previously. In this regard, the Committee notes the Government’s indication that it is still possible for workers’ associations to provide labour referrals, but that they must do so via a centralized system enabling all trade unions to be informed of and respond to labour needs. The Committee considers that such a system enabling all unions in the sector to participate does not restrict the trade union organizations’ means for action and representation.

**224.** The Committee notes that the complainant alleges a violation of the right to choose a union freely, in that the amendments to Act R-20 allow the Commission des relations du travail to order a worker who submits a complaint against his or her association to change affiliation in certain circumstances. The Committee notes in this regard that the Government assures the Committee that a worker’s union affiliation may be changed only after he or she has proved that the union has acted in bad faith or in an arbitrary or discriminatory manner towards him or her. It is subsequently the worker, not the Commission, who decides on the new affiliation. The Committee observes that the wording of the corresponding legislative provisions seems to confirm the Government’s response:

Act R-20

Art. 27 ...

However, section 47.2 of the [Labour] Code applies to such an association, with the necessary modifications. An employee who believes that the association that represents the employee has contravened that section may, within six months, file a complaint with the Commission des relations du travail and request that it exercise the powers granted under section 47.5 of the Code. In addition to the powers entrusted to it by the Code, the Commission des relations du travail may allow an employee to elect a new representative association within 30 days of the Commission's decision, in accordance with the procedure established by regulation under section 35.2 of this Act.

*Labour Code*

47.2. A certified association shall not act in bad faith or in an arbitrary or discriminatory manner or show serious negligence in respect of employees comprised in a bargaining unit represented by it, whether or not they are members.

**225.** *The Committee notes that the complainant alleges that the amendments to Act R-20 violate international labour standards in that they prevent a member of a trade union association who has committed certain offences from being elected as a shop steward. In this regard, the Committee notes that the Government states that the prohibition on workers who have committed certain criminal offences from becoming shop stewards is intended to safeguard the integrity of union representatives. The Committee notes the criminal convictions set out in section 26 of Act R-20:*

(1) *A person convicted, in Canada or elsewhere, of common assault, mischief, assault causing bodily harm, theft, intimidation, intimidation of justice system participants, an offence against freedom of association, criminal harassment, uttering threats, uttering threats and retaliating, drawing a document without authority, offering or accepting secret commissions, trafficking in substances under the Controlled Drugs and Substances Act (SC 1996, c.19), importation, exportation or production under that Act, conspiracy to commit any of those acts or a criminal offence under sections 467.11 to 467.13 of the Criminal Code (RSC 1985, c. C-46) or, if related to the activities the person carries out in the construction industry, an offence against a fiscal law or a criminal offence other than those listed in subsection 2, may not hold a management or representation position in or for an association listed or described in any of subparagraphs (a) to (c)(2) of the first paragraph of section 1 or an association of employees affiliated with a representative association, or be elected or appointed as job site steward, or be a member of the board of directors of the Commission or of a committee established under this Act.*

*Except where the person convicted is granted a pardon under the Criminal Records Act (R.S.C, 1985, c. C-47), the disqualification provided for above shall subsist for five years after the term of imprisonment fixed by the sentence; in the case of a sentence to a fine only or in the case of a suspended sentence, the disqualification shall subsist for five years from the date of the conviction.*

(2) *A person convicted, in Canada or elsewhere, of murder, attempted murder, manslaughter, robbery, extortion, arson, breaking and entering, fraud, kidnapping or aggravated assault, or of conspiracy to commit any of those acts, may not hold a management or representation position in or for an association listed or described in any of subparagraphs (a) to (c)(2) of the first paragraph of section 1 or an association of employees affiliated with a representative association, or be elected or appointed as job site steward, or be a member of the board of directors of the Commission or of a committee established under this Act.*

*The Committee recalls that freedom of association implies the right of workers to elect their representatives in full freedom [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 388]. While observing that some of the offences leading to the convictions above are of extreme seriousness and are likely to call into question the ability of a person to lead and manage an organization, the Committee notes that some other convictions, which may prohibit access, for a period of five years, to union positions on the grounds of criminal conviction*

may not be such as to call into question an individual's ability or integrity necessary to hold a trade union office. The Committee therefore requests the Government, in consultation with all relevant social partners, to review this provision so as to ensure that conviction on account of offences, the nature of which is not such as to call into question the integrity of the person concerned and is not such as to be prejudicial to the exercise of trade union functions, does not constitute grounds for the disqualification from holding trade union office [see *Digest*, op. cit., para. 422]. It requests the Government to keep it informed in this respect.

## **The Committee's recommendations**

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

- (a) *The Committee requests the Government, in consultation with all of the relevant social partners, to consider amending section 44 of Act R-20 so as to ensure that the signing of the collective agreement is not impeded, taking into account the overall representativeness of the unions. The Committee requests the Government to keep it informed in this respect.*
- (b) *The Committee requests the Government, in consultation with all of the relevant social partners, to consider amending section 45.4 of Act R-20 so as to ensure that strike action is also possible at the enterprise level. Furthermore, taking account of the fact that in the current context, under the amended legal provision, the two workers' organizations representing 75 per cent of workers may be prevented from calling a strike, the Committee requests the Government and the unions concerned to seek a mutually acceptable solution to ensure that the right to strike is not impeded. The Committee requests the Government to keep it informed of developments.*
- (c) *The Committee requests the Government, in consultation with all of the relevant social partners, to review section 26 of Act R-20 so as to ensure that conviction on account of offences, the nature of which is not such as to call into question the integrity of the person concerned and is not such as to be prejudicial to the exercise of trade union functions, does not constitute grounds for the disqualification from holding trade union office. It requests the Government to keep it informed in this respect.*

CASE NO. 2983

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

**Complaint against the Government of Canada  
presented by  
the International Association of Machinists and Aerospace Workers (IAM)  
supported by  
the Canadian Labour Congress (CLC)**

*Allegations: The complainant alleges that the Protecting Air Service Act violates air transport workers' freedom of association and collective bargaining rights by mandatorily extending the duration of a collective bargaining agreement, prohibiting strikes, mandating compulsory final offer selection arbitration, ordering that the arbitration must be based on predetermined legislative criteria, forcing the unions to pay for the costs for the compulsory arbitration, and providing punitive sanctions on the IAM (and the Air Canada Pilots Association) and their representatives for non-compliance with the Act*

227. The complaint is contained in a communication dated 27 August 2012 from the International Association of Machinists and Aerospace Workers (IAM). By a communication dated 9 August 2012, the Canadian Labour Congress (CLC) associated itself with the complaint.

228. The Government sent its observations in a communication dated 8 May 2013.

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

**A. The complainant's allegations**

230. In its communication dated 27 August 2012, the IAM, an affiliate of the CLC, explains that it represents over 40,000 Canadian workers, including over 8,000 employed by Air Canada. The IAM alleges that the Protecting Air Service Act (Bill C-33 entitled "An Act to provide for continuation and resumption of air services operations") violates air transport workers' freedom of association and collective bargaining rights. The IAM stresses that by virtue of its ILO membership, Canada is obligated to honour the ILO's Constitution, which recognizes the principle of freedom of association. Although Canada is yet to ratify Convention No. 98, it is also obligated to honour the principles of the fundamental rights enshrined therein. Canada has ratified Convention No. 87, which in the IAM's view, protects the right to strike. Referring to Articles 3 and 10 of the Convention, the IAM considers that the prohibition of strikes restricts trade unions from furthering and defending the interests of their members and the right of trade unions to organize their activities.

**231.** The IAM explains that the Protecting Air Service Act was introduced into Parliament on 12 March 2012 and proceeded through the House of Commons and Senate for proclamation on 15 March 2012. The complainant alleges that the law violates freedom of association and the principles of the right to collective bargaining for two specific groups of Air Canada employees: technical, maintenance and operational support employees represented by the IAM; and pilots, represented by the Air Canada Pilots Association (ACPA). It alleges that the law expressly denies freedom of association and the right to collectively bargain by mandatorily extending the duration of collective bargaining agreements, prohibiting otherwise lawful strikes, mandating compulsory final offer selection arbitration, ordering that the arbitration must be based on predetermined legislative criteria, forcing the unions to pay for the costs for the compulsory arbitration, and providing punitive sanctions on the IAM (and ACPA) and their representatives for violations of the law.

**232.** The union submits, in particular, that the law unilaterally and mandatorily forces workers to continue “or resume without delay, ... the duties of their employment” (section 6(b) of the Act). It further places the obligation of informing employees to resume work on the union. Section 8 of the law stipulates in this respect:

8. The union and each officer and representative of the union must

- (a) without delay on the coming into force of this Act, give notice to the employees that, by reason of that coming into force, air service operations are to be continued or resumed, as the case may be, and that the employees, when so required, are to continue, or resume without delay, as the case may be, the duties of their employment;
- (b) take all reasonable steps to ensure that employees comply with paragraph 6(b); and
- (c) refrain from any conduct that may encourage employees not to comply with paragraph 6(b).

**233.** Moreover, section 9 of the Act extends the collective bargaining agreement in force against the wishes of one of the parties:

9(1) The term of the collective agreement is extended to include the period beginning on April 1, 2011 and ending on the day on which a new collective agreement between the employer and the union comes into effect.

(2) Despite anything in the collective agreement or in Part I of the Canada Labour Code, the collective agreement, as extended by subsection (1), is effective and binding on the parties to it for the period for which it is extended. However, that Part applies in respect of the collective agreement, as extended, as if that period were the term of the collective agreement.

The Act also outlaws the right to strike:

10. Until the day on which the collective agreement, as extended by subsection 9(1), expires, it is prohibited ...

- (b) for the union and for any officer or representative of the union to declare or authorize a strike against the employer; and
- (c) for an employee to participate in a strike against the employer.

**234.** The IAM points out that the air transport workers that are the subject of the Act do not belong to any category of workers whose right to strike can be restricted: they are not public servants exercising authority in the name of the State, but are private sector workers; nor do they perform services which come within the definition of essential services. Referring to the Committee’s Digest, the IAM indicates that the withholding of labour by these workers would not “endanger the life, personal safety or health of the whole or part of the population” and that transport workers and airline pilots are not

included under the narrow definition of essential services. The IAM further points out that the railway services, which are closely analogous to airline services, are also specifically excluded from the definition of essential services. Moreover, according to the complainant, a strike by the workers in question would not create or exacerbate a national emergency. It further considers that despite the Government's suggestion otherwise, a strike by the workers could not cause the economic turmoil of a scale which would amount to a "national emergency". Air Canada operates in a competitive airline industry; where its employees exercise their fundamental right to strike, there is a multitude of other airline carriers that can service passengers. The IAM struck and shut down the company most recently for 17 days in 1987 without drastic repercussions to the economy. This was at a time when the company had a much larger role and share of the market in the Canadian air transport industry than it does currently.

**235.** The IAM further alleges that in violation of freedom of association and the right to collective bargaining, the Act provides for compulsory arbitration, regardless of the wishes of the parties. The complainant refers, in particular to its section 11 which provides for compulsory arbitration requiring each party to submit a final offer package addressing unresolved matters, and requiring the arbitrator to select one package to settle the remaining matters. According to the complainant, section 11 prevents the parties from choosing an arbitrator, vesting the power of appointment with the Minister of Labour. Furthermore, according to the IAM, subsection 14(2) of the Act significantly limits the arbitrator's discretion by setting out predetermined criteria that the arbitrator must consider in making his or her selection of the package which will become the unilaterally imposed collective bargaining agreement. The parties are then obligated to pay the costs of the compulsory arbitration. The IAM points out that while the Committee's Digest refers to cases where costs are incurred by the parties, these cases involve "voluntary" arbitration and are therefore distinguishable from the legislation in question, which makes arbitration compulsory and gives the Government the authority to appoint the arbitrator. The IAM is of the opinion that the following excerpts of the Act raise concerns regarding freedom of association and the right to collective bargaining:

11. The Minister must appoint as arbitrator for final offer selection a person that the Minister considers appropriate.

14(1) Subject to section 16, within 90 days after being appointed, or within any longer period that may be specified by the Minister, the arbitrator must

- (a) determine the matters on which the employer and the union were in agreement as of the date specified for the purposes of paragraph 13(1)(a);
- (b) determine the matters remaining in dispute on that date;
- (c) select, in order to resolve the matters remaining in dispute, either the final offer submitted by the employer or the final offer submitted by the union; and
- (d) make a decision in respect of the resolution of the matters referred to in this subsection and forward a copy of the decision to the Minister, the employer and the union.

(2) In making the selection of a final offer, the arbitrator is to take into account the tentative agreement reached by the employer and the union on February 10, 2012 and the report of the conciliation commissioner dated February 22, 2012 that was released to the parties, and is to be guided by the need for terms and conditions of employment that are consistent with those in other airlines and that will provide the necessary degree of flexibility to ensure

- (a) the short- and long-term economic viability and competitiveness of the employer; and
- (b) the sustainability of the employer's pension plan, taking into account any short-term funding pressures on the employer.

(3) If either the employer or the union fails to provide the arbitrator with a final offer in accordance with paragraph 13(1)(c), the arbitrator must select the final offer provided by the other party.

(4) The arbitrator's decision must be drafted in a manner that constitutes a new collective agreement between the employer and the union and, to the extent that it is possible, incorporate the contractual language that is referred to in paragraph 13(1)(a) and that is in the final offer selected by the arbitrator.

15. No order is to be made, no process is to be entered into and no proceeding is to be taken in court

- (a) to question the appointment of the arbitrator; or
- (b) to review, prohibit or restrain any proceeding or decision of the arbitrator.

17(1) Despite anything in Part I of the Canada Labour Code, the arbitrator's decision constitutes a new collective agreement between the employer and the union that is effective and binding on the parties beginning on the day on which it is made. However, that Part applies in respect of the new collective agreement as if it had been entered into under that Part.

(2) The new collective agreement may provide that any of its provisions are effective and binding on a day that is before or after the day on which the new collective agreement becomes effective and binding.

(3) Nothing in this Part is to be construed so as to limit or restrict the rights of the parties to agree to amend any provision of the new collective agreement, other than a provision relating to its term, and to give effect to the amendment.

33. All costs incurred by Her Majesty in right of Canada relating to the appointment of an arbitrator and the performance of an arbitrator's duties under this Act are debts due to Her Majesty in right of Canada and may be recovered as such, in any court of competent jurisdiction, in equal parts from, in the case of an appointment under Part 1, the International Association of Machinists and Aerospace Workers and the employer, and in the case of an appointment under Part 2, the Air Canada Pilots Association and the employer.

The complainant points out that the arbitrator's award (enclosed with the complaint) adopted the employer's position. Commenting on the award in a press release, the IAM stated that "The way the legislation was written ... left the arbitrator with little or no elbow room to come to any other decision ..."

- 236.** Finally, the complainant considers that the penalties for violating the Act discriminate against union representatives and are by themselves a violation of freedom of association and the right to collective bargaining. It explains in this regard that in addition to severe fines, even higher fines are imposed on anyone acting in the capacity of the IAM or the ACPA. Section 34 provides in this respect:

34(1) An individual who contravenes any provision of this Act is guilty of an offence punishable on summary conviction and is liable, for each day or part of a day during which the offence continues, to a fine of

- (a) not more than \$50,000 if the individual was acting in the capacity of an officer or representative of the employer, the International Association of Machinists and Aerospace Workers or the Air Canada Pilots Association when the offence was committed; or
- (b) not more than \$1,000 in any other case.

(2) If the employer, the International Association of Machinists and Aerospace Workers or the Air Canada Pilots Association contravenes any provision of this Act, it is guilty of an offence punishable on summary conviction and is liable, for each day or part of a day during which the offence continues, to a fine of not more than \$100,000.

36. If a person is convicted of an offence under section 34 and the fine that is imposed is not paid when required, the prosecutor may, by filing the conviction, enter as a judgment the amount of the fine and costs, if any, in a superior court of the province in which the trial was

held, and the judgment is enforceable against the person in the same manner as if it were a judgment rendered against the person in that court in civil proceedings.

The IAM considers that punishing workers for engaging in an otherwise lawful strike violates the fundamental rights and finds it is disturbing that the law specifically references the IAM and the pilots union and individuals representing the unions and subjects them to much greater fines.

## **B. The Government's reply**

**237.** By its communication dated 8 May 2013, the Government provides contextual information on the legislative regime for collective bargaining in Canada, presents a profile of Air Canada and its position in the air service industry in the country and an overview of the recent history of collective bargaining at the company, including the 2011–12 labour disputes. It further describes the economic context at the time of the dispute and discusses the impact of a work stoppage and the necessity of introducing the Protecting Air Service Act as an exceptional measure to protect the economy and public.

### ***The legislative regime for collective bargaining in Canada***

**238.** In Canada, the responsibility for labour matters is constitutionally divided between the federal, provincial and territorial governments. The majority of the Canadian labour force, currently around 19 million, is subject to the various provincial labour statutes which govern such intra-provincial activities as manufacturing, commerce, and municipal and provincial employment. Although only 6 per cent of the labour force is under federal jurisdiction, the key nature of the infrastructure and other industries falling within federal jurisdiction are of considerable importance to the economy. Industries that are subject to the federal private sector industrial relations legislation include: international and interprovincial transportation by land and sea, including railways, shipping, truck and bus operations; airports and airlines; communications and broadcasting, including telecommunications and radio and television broadcasting; federally chartered banks; port operations and long-shoring; federal Crown corporations and industries declared by Parliament to be for the general advantage of Canada such as grain handling and uranium mining. Part I of the Labour Code is the statute that covers employees engaged in these industries. Currently, approximately 800,000 employees are subject to Part I of the Code. The Minister of Labour is responsible to Parliament for the administration of the Code.

**239.** The Federal Mediation and Conciliation Service (FMCS) of the Labour Program of Human Resources and Skills Development Canada (HRSDC) administers the dispute settlement provisions of the Code. The procedures include all statutory conciliation and mediation functions. A conciliation officer's role is to foster harmonious relations between trade unions and employers by assisting them in the negotiation of collective agreements and their renewal as well as the management of the relations resulting from the implementation of the agreements. In addition, FMCS carries out non-statutory preventive mediation and grievance mediation programmes. The Industrial Relations Board is responsible for the quasi-judicial aspects of the application of the Code's provisions.

**240.** Part I of the Code sets the following general framework for collective bargaining in the federally regulated private sector:

(1) Exclusive bargaining rights are granted to bargaining agents representing employees in a given bargaining unit, generally on the basis of majority support. The Canada Industrial Relations Board determines the certification of bargaining agents and questions of membership support. The Board also decides matters such as the appropriateness and structure



of the bargaining unit, and may determine questions of employee status or exclusions. Voluntary recognition of bargaining agents and the units they represent is also permitted.

- (a) **Union status:** To be certified, an applicant trade union must establish its status as a trade union. The Board generally requires that an applicant employee association establish that it is an organization founded for the purpose of collective bargaining and that it has adopted statutes and by-laws providing for the election of officers. The association must also be free from employer interference or dominance. Once recognized by the Board, a trade union does not have to re-establish its status in subsequent applications, although its recognition may be revoked if there is proof of employer dominance.
- (b) **Certification:** Once its status is established, the applicant trade union must prove that it represents the majority of employees in the bargaining unit that the Board determines to be appropriate for collective bargaining.
- (c) **Revocation and Raids:** During established periods, the certification may be revoked, on application to the Board by the majority of employees in the bargaining unit, or a rival union may displace the bargaining agent by applying to the Board and establishing that it represents the majority of the employees in the unit.
- (d) **Bargaining units:** The Board has exclusive jurisdiction to determine the unit appropriate for collective bargaining. The nature of the industry, the organization of the company, and the skills and occupational groups of the employees are factors that are taken into consideration. Geographically, the resulting bargaining unit may encompass a single location of an employer, multiple locations of an employer in a municipal, provincial or regional area, or all locations of the employer across the country.

(2) Bargaining agents and employers have a duty to meet and bargain in good faith and to make every reasonable effort to conclude a collective agreement. The Board may decide on allegations of failure to bargain in good faith.

(3) Agreements must be of a fixed term of at least a year.

(4) Strikes and lockouts are not permitted during the term of an agreement. Where a strike or lockout does occur during the term of an agreement, the union or employer may apply to the Board for an order declaring the work stoppage illegal and requiring that normal activities be resumed immediately.

(5) Notice to bargain for renewal and revision of an existing collective agreement may be given by either party within the period of four months immediately preceding the date of expiration of the term of the collective agreement.

(6) If the parties fail to enter into or renew their collective agreement, either party may inform the Minister by sending a notice of dispute. The Minister can then appoint a conciliation officer, commissioner or Board. The Minister may also notify the parties in writing of her intention not to appoint any of the foregoing.

(7) The Minister may at any time appoint a mediator to assist the parties in settling a dispute. Such an appointment does not affect the parties' acquisition of strike or lockout rights.

(8) During a strike or lockout, the trade union and employees in the bargaining unit must continue the supply of services, operation of facilities and production of goods necessary to prevent an immediate and serious danger to the safety or health of the public. The Code outlines provisions related to negotiation of this maintenance of services agreement and for the resolution of issues related to its content.

**241.** The Government indicates that in 2011, where a notice of dispute was received by the Minister of Labour and the FMCS was involved in assisting the parties, nearly 94 per cent of the collective bargaining disputes were resolved without a work stoppage.

### ***Profile of air transportation and Air Canada***

**242.** Canada's land mass is the second largest in the world and spans six time zones. The airline industry is defined by the unique characteristics of the Canadian market: multiple hubs,

long distances between scattered populations, harsh winters that encourage people to vacation in the south, the importance of an air transportation network in the north, the seasonal nature of travel, climate and proximity to one of the world's largest markets, the United States. Canada has a number of international air carriers, including Air Canada, as well as smaller regional carriers and freighter operators. Canada's air sector depends on its 1,889 aerodromes, including 26 airports that are part of the National Airports System (NAS); 570 certified airports, heliports and waterdromes that support scheduled and non-scheduled flights; and 1,297 registered aerodromes and 22 other aerodromes. Canada's 26 NAS airports handle roughly 90 of all scheduled passengers and cargo volumes in Canada, are particularly important to Canada's trade and tourism industries, and contribute to national prosperity and international competitiveness. Canada also has smaller registered and certified airports and certified heliports, some of which serve communities without highway access – places where aviation is the only year-round transportation option.

- 243.** The Government reports that in 2011, passenger traffic at Canadian airports increased by 2.5 per cent compared to 2010, to a total of 78.4 million travellers. Year after year, domestic, Canada–US and other international traffic increased by 2.4, 1.6 and 0.4 per cents, respectively. The air cargo trade in 2011 grew 9.2 per cent from 2010 to reach \$110 billion (Canadian dollars here and throughout the text), with the volume of revenue cargo coming into and being sent from Canadian airports totalling 739 million tons, a 9.1 per cent decrease from the previous year. In terms of carrier-specific performance, the company and its regional affiliates transported almost 34 million passengers and posted a load factor of 81.6 per cent. Major scheduled carriers and charters reported an overall load factor of about 73 per cent in 2011 compared to 74.1 per cent in 2010.
- 244.** Air Canada is by far the national largest provider of scheduled passenger services in the Canadian market, the Canada–U.S. trans-border market and in the international market to and from Canada. In terms of passenger volume, the company is the world's 15th largest passenger airline (2010 figures) and has a mainline fleet of 205 aircraft, augmented by 157 aircraft flying under the Air Canada Express banner. In 2011, it carried almost 34 million passengers and provided passenger service to 180 direct destinations on five continents. On average, over 100,000 people travel with this company or one of its regional partners every day. In 2011, the company, together with other regional airlines operating flights on behalf of and under commercial agreements with Air Canada (which operate under the name “Air Canada Express”), operated, on average, 1,506 daily scheduled flights to 60 destinations in Canada, 57 destinations in the United States and 63 destinations in the Europe, Pacific, Caribbean/Central America and South America markets. Domestic, U.S. trans-border and international departures accounted for approximately 67 per cent, 25 per cent and 8 per cent, respectively, of the 1,506 average daily departures. In addition, the company provides passenger charter services.
- 245.** The company also has a freight division, Air Canada Cargo, that provides direct cargo services to over 150 Canadian, U.S. trans-border and international destinations and has sales representation in over 50 countries. It is Canada's largest provider of air cargo services as measured by cargo capacity. Air cargo services are provided on domestic and U.S. trans-border flights and on international flights on routes between Canada and major markets in Europe, Asia, South America and Australia.
- 246.** From a financial standpoint, in 2011, the company reported a net loss of \$249 million on revenues of \$11.6 billion. Its Earnings Before Interest, Taxes, Depreciation, Amortization and Rent (EBITDAR) was \$1.2 billion and its operating profit was \$179 million. In contrast, Chorus Aviation, the parent company of Jazz Aviation, reported a net profit of \$68.1 million on revenues of \$1.7 billion. Its EBITDAR was \$38 million and its operating profit was \$102 million.

**247.** Moreover, the company is subject to operating requirements under the Air Canada Public Participation Act that are not imposed on other Canadian earners. As such, this Act includes provisions for the location of operational and overhaul maintenance bases and a duty to ensure that any member of the travelling public can communicate and obtain services in either official language of Canada.

### ***History of collective bargaining at the company***

**248.** In 2011, the company's workforce was comprised of some 26,000 employees (23,000 full-time, full-year equivalents) across Canada. The vast majority of employees are unionized and are represented by the following unions:

- Air Canada Pilots Association (ACPA);
- Canadian Air Line Dispatchers Association (CALDA);
- Canadian Auto Workers (CAW) representing flight operations crew scheduling personnel and in-flight schedulers;
- National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) representing customer sales and service agents;
- Canadian Union of Public Employees (CUPE) representing flight attendants;
- the International Association of Machinists and Aerospace Workers (IAM) representing technical maintenance and operational support employees (TMOS); and,
- IAM representing clerical and office (financial officers) employees.

**249.** Since 1984, there have been 35 work stoppages in the airline industry, six of which involved Air Canada. In respect of the latter, the most recent, in June 2011, involved a three-day strike by the customer sales and service agents. Previously, the last work stoppage at the company was in 1998, when its pilots were on strike for 13 days. According to financial industry analysts, the company was forced to cancel flights and lost approximately \$300 million because of the work stoppage. However, in 1998, Canada had two large domestic airlines, Air Canada and Canadian Airlines International Limited, so there was a lesser impact of the work stoppage on the economy and the travelling public. Canadian Airlines International Limited ceased operation in 2001.

**250.** In 2003, the company entered bankruptcy protection. The company sought relief from its contractual obligations and laid off approximately 6,500 employees. Collective agreements for the period 1 June 2003–30 June 2009, were renegotiated under the supervision of a court-appointed facilitator and labour costs were reduced by over \$1.3 billion. Key issues during this round of negotiations included pension plan provisions and benefits. The collective agreements that expired in June 2009 contained a clause allowing for the reopening of the agreements in 2006 to negotiate wage increases. The parties agreed to refer the matter to binding arbitration if an agreement could not be reached. On 24 August 2006, an arbitrator issued a decision granting wage increases of 1 per cent effective July 2006, 1.75 per cent effective July 2007 and 1.75 per cent effective July 2008 for the IAM TMOS employees.

**251.** In 2009, the company reported significant financial difficulties and appeared close to requiring bankruptcy protection for the second time in six years. Collective bargaining negotiations were fast tracked and the company sought a 12–21 month extension of the existing collective agreements. This was a precondition for the company's access to

financing that would allow it to continue its operations and avoid bankruptcy proceedings. Pension plan provisions and benefits were key issues for both parties. The company proposed removing the pension issue from the bargaining table and a moratorium on its pension payments to help it maintain defined benefit pension plans. The company's unions were looking to recuperate some of the wage and benefits concessions they made during the bankruptcy restructuring initiated in 2003. The value of the concessions was estimated at over \$1 billion.

- 252.** On 4 June 2009, the Minister of Finance announced that the Honourable James Farley had been asked to provide mediation assistance to the company, its unions and its retiree associations in devising a sustainable path for the pension plan. On 17 June 2009, the Minister of Labour appointed a mediator to assist Justice Farley in his efforts to extend the collective agreements. With the assistance of the mediators, the collective agreements for all bargaining units at the company, including the technical maintenance and operational support employees were renewed for 21 months and a short-term pension funding moratorium was initiated.
- 253.** In 2011, the company reached collective agreements with the majority of the unions representing its employees with the exception of three bargaining agents. This included the IAM TMOS employees whose collective agreement covering a unit of 8,193 employees expired on 31 March 2011. The IAM's TMOS group is the largest group of unionized employees at the company. They are responsible for the servicing and overhaul of all of the company's aircraft at bases in Vancouver, Winnipeg, Montreal and Toronto. They include line and heavy maintenance mechanics, auto mechanics, millwrights, electricians, inspectors and technical writers. The IAM's TMOS bargaining unit also include cabin groomers, aircraft cleaners, baggage and cargo handlers, baggage and cargo agents, weight and balance agents, instructors and planners. TMOS members are also responsible for all purchases made on behalf of the airline as well as the distribution of parts and supplies.
- 254.** On 21 March 2011, the union served the employer with a notice to bargain for the purpose of renewing the collective agreement. The parties held direct negotiations from 6 April to 19 August 2011 and during the week of 31 October 2011. Key issues for the union were wages, paid lunch breaks, vacation, flexibility in scheduling and hours of work. Pension changes and wages were the key issues for the employer. After several months of direct negotiations, the parties reached an impasse.
- 255.** On 6 December 2011, a notice of dispute was received by the FMCS. On 21 December 2011, former Justice Louise Otis was appointed Conciliation Commissioner by the Minister of Labour to assist the parties in their negotiations. On 3, 4, 9–13, 16–21 January and from 30 January to 8 February 2012, the Conciliation Commissioner met with the parties. On 10 February 2012, the parties reached a tentative agreement with the assistance of the Conciliation Commissioner. The agreement was subject to a ratification vote by the union membership. On 19 February 2012, the parties were released from the conciliation process. According to the Conciliation Commissioner, although the process was tense and arduous, the tentative agreement was the result of a fair and productive negotiation process by competent negotiators.
- 256.** On 22 February 2012, the union announced that its membership had voted 65.6 per cent to reject the tentative agreement and 78 per cent in favour of strike action. On the same day, the Conciliation Commissioner filed her final report with the Minister of Labour and a copy of the report was sent to the parties the following day. Following the union's rejection of the tentative agreement, the Conciliation Commissioner stated: "Taking into consideration the situation of the parties, the tentative agreement is reasonable and fair. The negotiation process, which was carried out diligently and competently, has been exhausted ... Under the full circumstances, I consider that a reasonable agreement had been

reached”. The parties had the opportunity until noon 28 February 2012 to review the report and provide their comments.

- 257.** On 5 and 6 March 2012, negotiation meetings were held with the assistance of the FMCS. On 6 March 2012, the union served a strike notice indicating that its members would begin a legal strike on 12 March 2012 at 00.01. On 8 March 2012, the Minister of Labour referred the matter of the maintenance of activities agreement to the Industrial Relations Board for determination, to ensure that the safety and health of the public were protected in the event of a work stoppage.
- 258.** On 9 March 2012, the Minister of Labour placed Bill C-33 entitled “An Act to provide for continuation and resumption of air service operations” on the Parliamentary Order Paper. On 12 March 2012, the Bill was introduced in the House of Commons. The Bill was passed by the House of Commons on 14 March, by the Senate on 15 March and received Royal Assent the same day. The Protecting Air Service Act came into force on 16 March 2012. Bill C-33 provided for final offer selection as the dispute resolution mechanism. Under the provisions of the Bill, the Minister of Labour would appoint an arbitrator for the purpose of reaching a collective agreement. Within 90 days, or a longer period specified by the Minister, the arbitrator was responsible for determining the matters on which the employer and the union were in agreement and those remaining in dispute, select, in order to resolve the matters, either the final offer submitted by the employer or the final offer submitted by the union and make a decision in respect of the resolution of the matters referred. Bill C-33 also contained a clause indicating that nothing precluded the employer and the union from entering into a negotiated new collective agreement at any time before the arbitrator made a decision, and, if they did so, the arbitrator’s duties under the Bill would cease as of the day on which the new collective agreement is entered into (section 16).
- 259.** On 22 and 23 March 2012, a number of baggage handlers at Toronto Pearson International Airport and Montreal Trudeau International Airport walked off the job. The company asked the grievance arbitrator for the parties, Arbitrator Teplitsky, to issue an emergency cease and desist order to address the alleged illegal work stoppage. On 23 March 2012, all employees returned to work after Arbitrator Teplitsky issued the cease and desist order. The same day, the Industrial Relations Board issued an order in which it found that the actions of the members of the IAM of 22 and 23 March 2012 constituted an unlawful strike. On 2 April 2012, the union filed an application to the Ontario Superior Court of Justice to have Bill C-33 declared unconstitutional. The matter is still pending before the court.
- 260.** As part of the negotiation process and in anticipation of the appointment by the Minister of Labour of an arbitrator pursuant to Bill C-33, the parties concluded a Memorandum of Agreement dated 1 May 2012 which provided for ten days of negotiations after the appointment of an arbitrator. The Minister of Labour appointed Mr Michel G. Picher as arbitrator under section 11 of the Protecting Air Service Act on 1 May 2012 and the parties negotiated from 8 to 22 May with his assistance acting as a mediator. On 22 May 2012, the parties announced that they were moving to arbitration after they had failed to reach an agreement. As per section 14(2)(a) and (b) of the Act, in making the selection of a final offer, the arbitrator was to take into account the tentative agreement reached by the employer and the union on 10 February 2012 and the report of the Conciliation Commissioner dated 22 February 2012, the conditions of employment in other airlines, the economic viability and competitiveness of the employer and the sustainability of the employer’s pension plan. On 17 June 2012, the arbitrator rendered his final and binding decision. While the employer’s final offer was selected, the arbitrator indicated in his decision that the union’s members had gained not only pension security, but also benefits

beyond those which had been negotiated in the original unratified tentative agreement. The collective agreement was extended for five years and will expire on 31 March 2016.

### **Economic context**

- 261.** The Government explains that since the financial crisis of 2007–08, the world economy has experienced a period of turbulence characterized by a major recession and a subsequent unbalanced recovery which has been affecting the entire global economy to various degrees of severity. The Government refers to an ILO publication which finds that the global financial crisis had also profoundly affected civil aviation and that its impact on the industry has eclipsed that of 9/11 (International Labour Office (2009), *Sectoral coverage of the global economic crisis: The impact of the financial crisis on labour in the civil aviation industry*). Governments and central banks responded to the downturn with unprecedented fiscal and monetary stimulus. Canada's Economic Action Plan, tabled on 27 January 2009, was the Government's response to the crisis which aimed at protecting jobs and incomes by delivering a \$62 billion stimulus to the economy. By 2010–11, signs of a modest global recovery were becoming apparent. When in March 2011, the IAM served the employer with a notice to bargain, an uncertain and fragile global economic recovery was under way. In April 2011, an International Monetary Fund (IMF) report indicated that the recovery was gaining strength but unemployment remained high in advanced economies and new macroeconomic risks were building in emerging market economies. Financial conditions continued to improve although they remained unusually fragile. However, only six months later, the IMF warned that the global economy had entered a dangerous new phase; there were fears of a double-dip recession.
- 262.** In its November 2011 economic and fiscal projections, the Department of Finance highlighted that while Canada weathered the global recession better than most other industrialized countries, the global economy had slowed and uncertainty surrounding the short-term outlook had risen considerably and Canada was not immune to international developments. Private sector economists had revised downward their outlook for Canadian economic growth since the 2011 Budget, particularly for 2011 and 2012. Real gross domestic product (GDP) was expected to grow by 2.2 per cent in 2011 and 2.1 per cent in 2012. In addition, the deterioration of the global economic situation had also begun to be felt in Canadian employment, which has remained almost unchanged at 7.3 per cent since July 2011.
- 263.** In November 2011, the Government announced that it would continue to implement the Next Phase of its Economic Action Plan to support jobs and growth. In addition, it announced measures to reduce the maximum potential increase in employment insurance premium rates in 2012 and temporarily extend the enhancement to the Work-Sharing Program. The Government was prepared to respond in a flexible and measured manner to support jobs and growth while, at the same time, it was following through on its deficit reduction action plan in order to achieve at least \$4 billion in ongoing annual savings by 2014–15.

### **Impacts of a work stoppage**

- 264.** Given the uncertain global and Canadian economic context, the consequences of a work stoppage would have been acute not only for the company's operations and long-term viability but also for the national economy, company's partners, travellers and Canadians in remote communities. The scope of the work provided by IAM employees, more specifically the mechanics, extends across all of the company's operations. In the absence of a contingency plan, a work stoppage involving the IAM would have shut down the company. It was not known whether the company had a contingency plan in place.

According to Transport Canada, for safety and insurance reasons it was expected that the company could have begun shutdown protocols within 24 hours of a work stoppage. This would have ensured that aircrafts already in transit would return to base as soon as possible, which could have left travellers and cargo stranded. Third-party air earners operating as Air Canada Express could have also been subject to the company's shutdown protocol since their aircraft are serviced by bargaining unit members of the IAM. In the absence of the company's IAM baggage handlers and cargo agents, the efficient movement of baggage and air cargo would have ground to a slow pace for both shippers and customers. The company's IAM members also provide services to Star Alliance partner air carriers, thus, their operations could have also have been affected. Other impacts of a work stoppage at the company would have included temporary layoffs for some of their other employees, such as pilots, flight attendants, crew schedulers, dispatchers and customer sales and service agents, and possible indirect job losses for third-party service providers, such as caterers, fuel suppliers and travel agents.

- 265.** The Government further indicates that according to the abovementioned ILO publication, the civil aviation industry is a social and economic pillar of the world economy. For every one job lost in an airline, between four and ten jobs will be lost inside the perimeter of the airport and a minimum of a further three jobs per airline lost outside the perimeter. The Government further points out, referring to paragraph 621 of the Committee's Digest, that the Committee itself has acknowledged that the transportation of passengers and commercial goods is a public service of primary or fundamental importance.
- 266.** The Government considers that the IAM work stoppage would have had significant financial implications for the economy (estimated cost of between \$1 to \$22.4 million for each week of a work stoppage). Financial estimates varied depending on the value of the trips (passengers) and shipments (cargo) that could have been cancelled, postponed or placed on an alternative carrier. Based on Government's estimates, if there were no trip or cargo shipment cancellations because of the work stoppage, GDP would have declined by 0.003 per cent (\$1 million) for each week of the work stoppage. If 10 per cent of the value of Air Canada and Air Canada Express' sales in equivalent demand had not been assumed by other carriers (Canadian, US or other foreign), other modes of transportation (e.g. rail), and were not postponed, Canada's GDP would have fallen by 0.025 per cent (\$8 million). Similarly, if 20 per cent of the value had been lost, GDP would have decreased by 0.048 per cent (\$15.3 million); if 30 per cent is lost, GDP would have decreased by 0.07 per cent (\$22.4 million). In addition to short-term losses, a work stoppage could have further weakened the company's reputation among the travelling public and shaken the confidence of suppliers, as well as credit markets and potential investors with respect to its long-term prospects. Any scenario of reduced operations would have also adversely impacted Canadian airports as over 50 per cent of all airport revenues are attributable to the company's related activity. Airports have made significant infrastructure investments and incurred debt, based on forecasted revenues from airlines. If airports did not receive these forecasted revenues, this would have had negative financial implications on their operations.
- 267.** The Government further refers to the financial implications for the company and its viability and, in this respect, indicates that the airline industry has high fixed costs and a low profit margin even in periods of economic growth. The company has faced significant financial difficulties in the past decade and its financial position is not secure today. In April 2003, the financial pressures on the company became so severe that the corporation applied for bankruptcy protection. It emerged from that protection in September 2004 under a court approved plan which saw it stripped of its assets and restructured under the name, ACE Aviation Holdings Incorporated. After the 2008 global financial collapse, companies which provided defined benefit pension plans suddenly faced much higher funding obligations. The combined effect of the recession, less air travel, and the

company's contractual obligations led to further financial challenges. In 2008, in order to avoid the threat of bankruptcy again, it secured additional loans to continue its operations. On a number of occasions in recent years, the company has restructured and made cuts to its human and financial resources in order to maintain its viability.

- 268.** Following the IAM strike notice on 6 March 2012, the company indicated that the effects of the labour uncertainty had led to cancellation of flights on a daily basis and that cargo shipments were suppressed. It also indicated that it was operating close to a basic level of viability. A prolonged work stoppage could have had a significant impact on the company's return to profitability and there were bankruptcy concerns for the airline – 26,000 direct jobs would have been at risk and another 250,000 workers indirectly linked to the company would have been affected by a work stoppage. This would have inflicted significant damage to the economy.
- 269.** The company continues to face increasing competition from domestic airlines and it also faces competition internationally, especially for the movement of cargo. Other financial pressures include little control over items such as high fuel prices, which can constitute as much as a third of total operating costs, and foreign exchange rates. These price increases, coupled with a sluggish economy and increased domestic competition, resulted in a loss for the airline in 2011, including \$80 million in the fourth quarter alone. According to the company's annual report 2011, results of operations for 2011 compared to 2010 included operating income of \$179 million which decreased \$53 million from 2010 while EBITDAR of \$1,242 million declined \$144 million, both before a favourable adjustment of \$46 million to a provision for cargo investigations in 2010. Operating expenses increased \$879 million or 8 per cent from 2010, of which \$723 million was due to higher fuel expenses. A net loss of \$249 million or \$0.92 per diluted share was a deterioration of \$225 million from the net loss of \$24 million or \$0.12 per diluted share recorded in 2010. Free cash flow of \$366 million decreased \$380 million from \$746 million in 2010, largely due to a decline in net cash from operations of \$210 million and higher pension payments of \$129 million.
- 270.** As to the impact on passengers, the Government states that work stoppage involving IAM members could have effectively grounded Air Canada and Air Canada Express at a time when the airline was heading into a peak period of holiday travel. In Canada, during the month of March numerous educational institutions schedule week-long holiday breaks during which many people travel by air to reach their destinations. Over one million passengers were scheduled to travel with the company over the course of the week of 12 March 2012. The sheer size of Canada means that Canadians depend on air service more than citizens of most other nations. Given limited spare capacity among the company's competitors and the possible absence of a contingency plan, a large number of travellers would have been left stranded. Competitors might have considered adding extra flights to accommodate passengers, however, according to Transport Canada, the ability of other airlines to add additional capacity in the event of a work stoppage would have been limited, especially in the short term. Work rules and duty hour limits for flight crews (pilots and flight attendants) would have also precluded other airlines from significantly increasing services. Any additional service by other carriers would have been limited to routes already served, routes that serve large population areas, and those which are operated by the company mainline (e.g., Toronto–Vancouver). In urban areas, travellers often have access to other modes of transportation (car, bus, train, and different airlines from other hubs). However, even with these various alternatives, in the event of a work stoppage, travellers would likely have incurred extra expenses or delays in reaching their destinations.
- 271.** A work stoppage could have seriously disrupted the company's regional and trans-border air services, especially Air Canada Express which would have been grounded. Air Canada



Express operates flights on behalf of Air Canada as a contract earner. About 43 out of 145 domestic routes and 19 out of 41 trans-border routes are only served by Air Canada Express. Although alternate air carriers are available and could have served at least some of the passengers affected by a work stoppage, some communities would have been disproportionately affected because of a lack of alternative airlines and limited seat capacity (including Sault Ste Marie, Kamloops, Quebec City, Sydney, Timmins, Fort St. John, North Bay, Mont Joli, Baie Comeau, Moncton, Gander, Saint John, Cranbrook, Whitehorse, Charlottetown and Val-d'Or). In addition, Air Canada Express is the only air carrier for 12 communities; seven in British Columbia (Castlegar, Nanaimo, Penticton, Prince Rupert, Sandspit, Smithers, Terrace); three in Quebec (Gaspé, Iles de la Madeleine, Rouyn-Noranda); and two in New Brunswick (Bathurst, Fredericton). A work stoppage could have left some passengers (especially those in remote communities) stranded. Third-party air carriers operating as Air Canada Express and other Star Alliance members could have been significantly affected since their aircraft are also serviced by Air Canada's IAM members.

272. With regard to the impact on air cargo, the Government indicates that air transportation is a key component of global supply chains, especially for perishable items and pharmaceutical products. The company is Canada's main air cargo carrier providing 22 per cent of domestic capacity, 4 per cent of trans-border capacity, and 49 per cent of international capacity. At Toronto (Pearson Airport), Canada's largest air cargo hub, the company provides approximately 68 per cent and 40 per cent of domestic and international air cargo lift, respectively. The company transports about \$466 million worth of freight each year. This provides a critical business service for many key industries, including the aerospace, pharmaceutical, and precious metal sectors. The efficient movement of air cargo is vital to a trading nation like Canada. A disruption of the company's service would have had an important impact on the supply chains and, thus, on Canadian manufacturers and retailers because there are limited options to substitute for air transportation when it comes to the movement of critical time-sensitive goods. In the event of a work stoppage, air cargo movements could have shifted to a very slow if not intolerable pace for shippers and customers. Cargo could have been left stranded which would have had negative financial implications for industries relying on just-in-time delivery or whose products are perishable. In a just-in-time world suppliers can ill afford an unnecessary tie-up of capital in inventory.

***Bill C-33: An Act to provide for the resumption and continuation of air services (Protecting Air Service Act)***

273. It is in this serious economic context that in March 2012, when it became evident that there was no reasonable prospect for the conclusion of a collective agreement in the labour dispute in question, the Government took action to ensure continued air services. To protect the Canadian economy and Canadian families the Minister of Labour introduced emergency legislation to provide for the resumption and continuation of air service operations and provide for the settlement of the labour dispute through binding arbitration. The Minister stressed that:

Economic recovery remains our government's top priority and grounded flights translate into lost opportunities for Canadian businesses and frustration for stranded travellers. A work stoppage at Air Canada will take a toll on our fragile economy and that we simply can't afford. Moving forward with legislation is always the last resort.

The legislation was also aimed at protecting other employees who would have been affected by the work stoppage. While the company employs 26,000 people, its operations have an indirect impact on an additional 250,000 employees and their families.

**274.** The Protecting Air Service Act provided for the continuation and resumption of air service operations for the technical, maintenance and operational support employees at the company. On the coming into force of the legislation both the employer and the unions were required to resume or continue their duties without delay. It further provided for the settlement of the dispute by binding arbitration (final offer selection) and contained guiding principles including the need for terms and conditions of employment that were consistent with other airlines and that would provide the necessary degree of flexibility to ensure the short and long-term economic viability and competitiveness of the company, as well as the sustainability of its pension plan, taking into account any short-term funding pressures on the employer. The arbitrator was to take into account the tentative agreement reached by the parties on 10 February 2012 and the report of the Conciliation Commissioner dated 22 February 2012.

**275.** The arbitration process was chosen as the preferred alternative as this process is commonly used for resolving impasses in collective bargaining and is a process that has proven successful in the past. The Act provided that the arbitration process would be based on final offer selection whereby the arbitrator would choose the proposal of either the employer or the union to resolve the dispute. Final offer selection encourages the parties to be reasonable in their submissions before an arbitrator and ensures a final and binding settlement of a dispute. As stated by Mr Douglas Stanley, a prominent labour arbitrator in Canada, in a 2012 decision involving the company and the Air Canada Pilots Association:

My understanding of the theory of final offer selection is that it compels both parties to compromise. It requires both parties to evaluate the others' position and to modify their own proposals in such a way as to incorporate the concerns and recognize the legitimate interests of the other party.

**276.** In the Act, the Government also provided the parties with a further opportunity to resume their collective bargaining and reach a mutually acceptable collective agreement. The Act provided that should the parties arrive at a negotiated agreement before the arbitrator renders a decision, the negotiated collective agreement would govern. The fines for non-compliance with the legislation set out in the Act have been provided for in federal private sector back-to-work legislation since 1991. They are significantly high to discourage contravention with the legislation. However, no term of imprisonment would be imposed should a person fail to pay a fine.

**277.** According to the Government, a process of free collective bargaining is the preferred manner for employers and bargaining agents to arrive at collective agreements. In Canada, this is supported by a comprehensive industrial relations framework underpinned by third-party dispute resolution mechanisms to assist federal private sector employers and unions to resolve their collective bargaining disputes. However, when the parties are unable to resolve their differences and engage in strike or lockout activities that have a very detrimental impact on the national economy or the public, it is sometimes necessary for the Government to intervene to protect the public interest.

**278.** In the dispute at case, the legislative intervention was necessary in view of the difficult economic situation and potential negative consequences for Canadians. The Protecting Air Service Act was introduced in Parliament only after all other avenues to resolve the dispute through third-party assistance were exhausted. To help to resolve the collective bargaining dispute, the parties had received the assistance of a Conciliation Commissioner appointed by the Minister of Labour as well as extensive assistance from the Government's mediators. Before taking the step of introducing emergency legislation, the Government carefully balanced the statutory right of the parties to engage in a legal work stoppage against the fragile economic state of the country and the impacts on the Canadian public. The legislative intervention by the Government was time limited to the 2011–12 round of collective bargaining and addressed the specific circumstances which led to an impasse.

279. As stated in the preamble to the Labour Code, “there is a long tradition in Canada of labour legislation and policy designed for the promotion of the common well-being through the encouragement of free collective bargaining and the constructive settlement of disputes”. Freedom of association and free collective bargaining are the bases for sound industrial relations. The Preamble to Part I of the Code confirms that “the Parliament desires to continue and extend its support to labour and management in their cooperative efforts to develop good relations and constructive collective bargaining practices.” It is for this reason that the introduction of emergency legislation is only rarely contemplated by the Government. The decision to introduce emergency legislation is not taken lightly and is only done in cases where a work stoppage would have had acute negative impacts, as was the situation in this case where the consequences would have extended far beyond the parties.
280. The Government concludes by stressing that, within the strong legislative framework of Part I of the Labour Code, it provided extensive dispute resolution assistance to the company and the union during negotiations to renew the collective agreement. This included the appointment by the Minister of Labour of a Conciliation Commissioner who worked intensively with the parties, support from officials of the FMCS and personal interventions of the Minister of Labour. The Government remains firmly committed to the process of free collective bargaining as the best method for employers and bargaining agents to arrive at a collective agreement. In 2011, 407 collective bargaining negotiations took place in the federal private sector and in the vast majority of these cases, the parties were able to reach an agreement without a work stoppage. Over the past five years, 94 per cent of labour disputes were settled without a work stoppage when the FMCS was involved. The Government strongly advocates that all parties involved in collective bargaining must and should take responsibility for and have the opportunity to settle their disputes in a consensual way. The Government underscores that it does not take the decision to introduce emergency legislation lightly. This is only done in exceptional circumstances when the public and economic interest is at stake. In the last 12 years, the Government has only enacted such legislation four times. Over the same time period (2000–12), 37 legal lockouts and 124 legal strikes occurred in the federal jurisdiction.
281. The Government has renewed its commitment to support strong employer–union relationships by providing, through Budget 2011, an additional \$1 million over two years to expand the delivery of non-statutory preventive mediation services. This is achieved by training workshops on moving from adversarial to collaborative relationships, collective bargaining and joint conflict resolution. All preventive mediation services are delivered jointly to employers and unions by mediators with extensive experience in both traditional and alternative approaches to labour relations. These services are free and can be customized to meet the specific needs of a particular workplace. This option is available to Air Canada and the IAM should both parties wish to participate in preventive mediation activities.

### C. The Committee’s conclusions

282. *The Committee notes that the allegations in this case relate to the adoption of the Protecting Air Service Act. It further notes that there is no disagreement as to the facts and events in this case, which can be summarized as follows. On 21 March 2011, the complainant trade union served the employer with notice to bargain for the purpose of renewing the collective agreement. The parties held direct negotiations from 6 April to 19 August 2011 and during the week of 31 October 2011. Key issues for the union were wages, paid lunch breaks, vacation and flexibility in scheduling, and hours of work; pension changes and wages were the key issues for the employer. After several months of direct negotiations, the parties reached an impasse. On 6 December 2011, a notice of dispute from the company was received by the FMCS. On 21 December 2011, the Minister*

of Labour appointed a Conciliation Commissioner to assist the parties in their negotiations. On 10 February 2012, the parties reached a tentative agreement with her assistance. The agreement was subject to a ratification vote by the union membership. On 22 February 2012, the union announced that its membership had voted 65.6 per cent to reject the tentative agreement and 78 per cent in favour of strike action. On 5 and 6 March 2012, negotiation meetings were held with the assistance of the FMCS. On 6 March 2012, the union served a strike notice indicating that its members would begin a legal strike on 12 March 2012 at 00.01. On 8 March 2012, the Minister of Labour referred the matter of the maintenance of activities agreement to the Industrial Relations Board for determination, to ensure that the safety and health of the public were protected in the event of a work stoppage. On 9 March 2012, the Minister of Labour placed Bill C-33 entitled "An Act to provide for continuation and resumption of air service operations" on the Parliamentary Order Paper. On 12 March 2012, the Bill was introduced in the House of Commons; was passed by the House of Commons on 14 March, by the Senate on 15 March and received Royal Assent the same day. The Protecting Air Service Act came into force on 16 March 2012 and provided for final offer selection as the dispute resolution mechanism. As part of the negotiation process and in anticipation of the appointment by the Minister of Labour of an arbitrator pursuant to Bill C-33, the parties concluded a Memorandum of Agreement dated 1 May 2012 which provided for ten days of negotiations after the appointment of an arbitrator. The Minister of Labour appointed an arbitrator under section 11 of the Act on 1 May 2012 and the parties negotiated from 8 to 22 May with his assistance acting as a mediator. On 22 May 2012, the parties announced that they were moving to arbitration after they had failed to reach an agreement. On 17 June 2012, the arbitrator rendered his final and binding decision by selecting the offer of the company. The collective agreement was extended for five years to expire on 31 March 2016.

- 283.** *The Committee notes that the IAM considers that the Act violates air transport workers' freedom of association and collective bargaining rights because the services performed by workers covered by the Act do not fall within any of the exceptions envisaged by the Committee's principles. In particular, the complainant considers that the workers concerned are not public servants exercising authority in the name of the State nor do they perform essential services in the strict sense of the term. It further considers that the work stoppage would not result in an acute national emergency. The Government, on the other hand, explains that the legislation constituted an exceptional measure and was adopted in the public interest in the context of a fragile domestic economy. The Committee notes very detailed information provided by the Government on the economic context and the impact of a work stoppage on the Canadian economy, for the company, on passengers and air cargo.*
- 284.** *At the outset, the Committee wishes to recall that the voluntary negotiation of collective agreements, and therefore the autonomy of the bargaining partners, is a fundamental aspect of the principles of freedom of association and that collective bargaining, if it is to be effective, must assume a voluntary character and not entail recourse to measures of compulsion which would alter the voluntary nature of such bargaining [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, paras 925 and 926]. Other than in cases involving essential services, the Committee recalls that compulsory arbitration to end a collective labour dispute and a strike is only acceptable if it is at the request of both parties involved in a dispute, or if the strike in question may be restricted, even banned, that is, in the case of disputes in the public service involving public servants exercising authority in the name of the State or in essential services in the strict sense of the term that is, services, the interruption of which, would endanger the life, personal safety or health of the whole or part of the population. It considers that a system of compulsory arbitration through the labour authorities, if a dispute is not settled by other means, can result in a considerable restriction of the right of workers' organizations to organize their activities and may even involve an absolute*

*prohibition of strikes, contrary to the principles of freedom of association. Moreover, the Committee stresses that provisions which establish that, failing agreement between the parties, the points at issue in collective bargaining must be settled by the arbitration of the authority are not in conformity with the principle of voluntary negotiation [see **Digest**, op. cit., paras 564, 568 and 993].*

- 285.** *The Committee notes that, in the present case, the complainant trade union represents two groups of employees under a single collective agreement: the mechanical maintenance services employees and the airport services employees in the company's operations across Canada. They include line and heavy maintenance mechanics, auto mechanics, millwrights, electricians, inspectors and technical writers, cabin groomers, aircraft cleaners, baggage and cargo handlers, baggage and cargo agents, weight and balance agents, instructors and planners. The Committee has consistently considered that these categories of workers do not constitute essential services in the strict sense of the term. While it appreciates the Government's concerns set out above, the Committee considers that by linking restrictions on strike action to interference with trade and commerce, a broad range of legitimate strike action could be impeded. While the economic impact of industrial action and its effect on trade and commerce may be regrettable, such consequences in and of themselves do not render a service "essential", and thus the right to strike should be maintained [see **Digest**, op. cit., para. 592]. Furthermore, the Committee has previously pointed out that economic considerations should not be invoked as a justification for restrictions on the right to strike; however, when a service that is not essential in the strict sense of the term but is part of a very important sector in the country is brought to a standstill, measures to guarantee a minimum service may be justified [see Case No. 2841, 362nd Report, para. 1041]. In light of the above, the Committee requests the Government to make every effort in the future to avoid having recourse to back-to-work legislation in a non-essential service and to limit its interventions to ensuring the observance of a minimum service, consistent with the principles of freedom of association.*
- 286.** *The Committee notes the complainants' allegation that section 11 of the Act, pursuant to which "the Minister must appoint as arbitrator for final offer selection a person that the Minister considers appropriate", prevents the parties from choosing an arbitrator. While noting the clear text of the provision and recalling that, in mediation and arbitration proceedings, it is essential that all the members of the bodies entrusted with such functions should not only be strictly impartial but, if the confidence of both sides, on which the successful outcome even of compulsory arbitration really depends, is to be gained and maintained, they should also appear to be impartial both to the employers and to the workers concerned [see **Digest**, op. cit., para. 598], the Committee understands from the award itself that in the present case, the arbitrator was appointed following consultation by the Ministry with the parties and by their mutual agreement:*

Following consultation by the Minister with the parties, on May 1, 2012, by mutual agreement I was appointed as Arbitrator pursuant to section 11 of An Act to provide for the continuation and resumption of air services operations, with the authority and the duty to decide the outstanding issues in dispute.

- 287.** *The Committee also notes that, according to the complainant, the criteria provided for in section 14(2) of the Act left the arbitrator "with little or no elbow room to come to any other decision" than to select the company's offer. Pursuant to this provision, in making the selection of a final offer, the arbitrator is to be guided by "the need for terms and conditions of employment that are consistent with those in other airlines and that will provide the necessary degree of flexibility to ensure: (a) the short-and long-term economic viability and competitiveness of the employer; and (b) the sustainability of the employer's pension plan, taking into account any short-term funding pressures on the employer". The Committee notes the following extracts from the arbitration award, which would appear to support the complainant's view:*

*It must be noted that the instant arbitration is unique, to the extent that it is governed by the terms of Bill C-33, a law which places certain clearly defined obligations on the Arbitrator. ... As a matter of general practice, Canadian arbitrators called upon to resolve interest arbitration disputes have effectively given little or no weight to “ability to pay” arguments submitted to them by employers. While I consider that approach to be valid and appropriate generally in interest arbitrations in both the public and private sectors, I am compelled to recognize that the legislation which defines this process, and my corresponding jurisdiction, is clearly more constraining. This is particularly so as relates to my obligation to take cognizance of the Company’s pension plan burden ...*

*And further:*

*In my view it is the Company’s final offer which best responds to the constraints which I am compelled to respect in accordance with section 14(2) of the Bill ... . By comparison, while made in the best of good faith, the Union’s final offer would place on the Company a burden in respect of employee compensation and productivity that in my view are beyond what is realistic and in keeping with the constraints enunciated in section 14(2) of the Act.*

*The Committee recalls, in this respect, that in order to gain and retain the parties’ confidence, any arbitration system should be truly independent and the outcomes of arbitration should not be predetermined by legislative criteria [see **Digest**, op. cit., para. 995].*

- 288.** *With regard to the penalties provided for non-compliance with the Act, the Committee notes that according to section 34 of the Act:*

*An individual who contravenes any provision of this Act is guilty of an offence punishable on summary conviction and is liable, for each day or part of a day during which the offence continues, to a fine of no more than \$50,000 if the individual was acting in the capacity of an officer or representative of the employer, the International Association of Machinists and Aerospace Workers or the Air Canada Pilots Association when the offence was committed in the legislation.*

*If the employer, the International Association of Machinists and Aerospace Workers or the Air Canada Pilots Association contravenes any provision of this Act, it is guilty of an offence punishable on summary conviction and is liable, for each day or part of a day during which the offence continues, to a fine of not more than \$100,000.*

*The Committee notes that while the Government acknowledges that these penalties are significantly high, it indicates that they discourage contravention with the legislation. The Committee recalls that although holders of trade union office do not, by virtue of their position, have the right to transgress legal provisions in force, these provisions should not infringe the basic guarantees of freedom of association, nor should they sanction activities which, in accordance with the principles of freedom of association, should be considered as legitimate trade union activities [see **Digest**, op. cit., para. 40]. The Committee expresses its concern over the high penalties provided for in the legislation, which could place a heavy financial burden on the unions and their representatives.*

- 289.** *While acknowledging the efforts made by the Government to support and assist the parties in the settlement of the dispute, including the appointment of a Conciliation Commissioner and through the FMCS, the Committee urges the Government, in the future, to give priority to collective bargaining for the regulation of employment conditions and in a non-essential service.*
- 290.** *Furthermore, noting the Government’s indication that on 2 April 2012, the union filed an application to the Ontario Superior Court of Justice to have Bill C-33 declared unconstitutional and that the matter is still pending before the court, the Committee requests the Government to keep it informed of the outcome.*

**291.** *More generally, the Committee welcomes the indication that the Government has renewed its commitment to support strong employer–union relationships by providing, through Budget 2011, an additional \$1 million over two years to expand the delivery of non-statutory preventive mediation services.*

### The Committee's recommendations

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

- (a) The Committee urges the Government, in the future, to give priority to collective bargaining for the regulation of employment conditions in a non-essential service.*
- (b) Noting the Government's indication that on 2 April 2012, the union filed an application to the Ontario Superior Court of Justice to have Bill C-33 declared unconstitutional and that the matter is still pending before the court, the Committee requests the Government to keep it informed of the outcome of the court proceedings.*

CASE NO. 2936

DEFINITIVE REPORT

### Complaints against the Government of Chile presented by

- **the Bolivarian Confederation of Transport Workers of Chile (CBT) and**
- **the National Federation of Transport Workers (FNTP)**

*Allegations: The complainant organizations allege acts of anti-union discrimination (dismissals and proceedings to lift trade union immunity) against trade union officials and members in various enterprises in the transport sector*

**293.** The complaints in the present case are contained in communications from the Bolivarian Confederation of Transport Workers of Chile (CBT), dated 1 and 13 March 2012, and from the National Federation of Transport Workers (FNTP), dated 2 March 2012.

**294.** The Government sent its observations in a communication dated 24 May 2013.

**295.** 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 complainants' allegations

**296.** In its communication of 1 March 2012, the CBT alleges that, in view of the lack of adequate maintenance carried out on the buses used by the Alsacia enterprise, the trade

union officials were obliged to carry out a maintenance check on the buses to ensure they were in good working order for both workers and passengers. When the trade union officials performed the maintenance check, numerous irregularities were found, resulting from a lack of maintenance, which resulted in a collective complaint and demands for the enterprise to find immediate solutions. The CBT adds that the extreme lack of maintenance on the buses was also observed by the Chilean police who, on the request of the trade union organization, came to check the level of wear and tear on a number of buses.

- 297.** The CBT adds that the severity of the issues found during the maintenance check obliged the trade union officials to initiate collective action in which only the buses that complied with the applicable safety standards were permitted to depart. The enterprise responded with intimidation and arrogance, and despite the trade union officials showing it the irregularities found in the buses that would require maintenance work before they could be approved for departure to ensure the safety of both passengers and drivers, the enterprise response was to initiate proceedings to lift the trade union immunity of the 25 trade union officials who took part in the collective action.
- 298.** In its communication dated 13 March 2012, the CBT states that since the establishment of the Inter-enterprise Trade Union of the Tur Bus Holding (SITHOTUR) the enterprise has tried to prevent its creation. Two days after the establishment of the trade union in September 2007, two trade union officials were dismissed from the enterprises Tur Bus Ltd and Cónдор Bus Ltd respectively (both enterprises belong to the same commercial firm). The trade union officials in question were later reinstated.
- 299.** The CBT adds that on a number of occasions the trade union organization requested that an inspection be carried out of the enterprise Tur Bus Ltd, particularly in respect of health and safety, in its various workplaces at the national level and, specifically, in the localities of Santiago, Arica, Iquique, San Carlos, Antofagasta (in this particular locality temporary closure was requested owing to the repeated transgression of labour rights noted by the Provincial Labour Inspectorate). The complainant organization also states that a working group met on 8 and 17 September 2008, and asked that the trade union organization be legitimized in accordance with ILO Conventions Nos 98 and 135, and requested elements of personal protection for workers in keeping with the activities they performed and authorization to give information talks on occupational safety, health and hygiene and on labour law, in the cities of Santiago and Antofagasta.
- 300.** The CBT alleges that in this context the enterprise initiated proceedings for the lifting of trade union immunity against the officials of the SITHOTUR trade union organization. The complainants consider it strange that despite it being a matter of the same things happening on the same dates, the courts of law rejected the application to lift the trade union immunity of Mr Carlos Chamblas, yet allowed the lifting of the trade union immunity of Mr Marcelo Ortega Salazar, Vice-President of the CBT, who was performing trade union activities.
- 301.** In its communication of 2 March 2012, the FNTP said that following the bankruptcy of the urban passenger transport enterprise Buses Gran Santiago, the Government, following a series of meetings between the various parties, including the workers represented by their trade union officials, gave the tender for its services to two new enterprises, one of which was Car Bus Urbano, belonging to the multinational group Veolia, which absorbed a large number of the workers who had lost their jobs as a result of the bankruptcy and a very small number of trade union officials.
- 302.** The complainant organization states that officials from the Buses Gran Santiago and Express Santiago Uno Inter-enterprise Trade Union participated in the job application process and signed their respective contracts. It adds that the representatives of the



enterprise administration, who were from the bankrupt enterprise, were perfectly aware that a number of workers were trade union officials. The organization alleges that, on 11 November 2012, a number of trade union officials were dismissed (including the President, the Secretary and the Treasurer) with the enterprise citing the reason as the expiration of their employment contracts, but the complainant organization maintains that the reason for the dismissals was that they were trade union officials. The organization indicates that following this incident the matter was brought to the attention of the labour inspectorate. The President of the Confederation of Transport intervened and the reinstatement of the trade union officials was ordered, but this did not occur owing to the systematic refusal of the Car Bus Urbano enterprise.

## **B. The Government's reply**

- 303.** In its communication of 24 May 2013, the Government states that the Alsacia enterprise says in respect of the complaint by the CBT that, on 13 May 2011, on the premises of the enterprise, a group of trade union officials, including some allegedly representing the CBT, participated in an act described as sabotage and illegal. This act allegedly consisted of obstructing the departure of numerous buses at rush hour, which disrupted the public transportation of passengers in the city of Santiago. The enterprise says that it suffered economic harm and it indicates that it initiated proceedings for the lifting of trade union immunity against 25 trade union officials. In one of the cases an agreement was reached that resulted in the dismissal of the trade union official by mutual accord and in the others the courts considered that the facts had been sufficiently serious to warrant the lifting of the officials' trade union immunity. Annulment proceedings were brought against the judgments stipulating the lifting of trade union immunity before the Santiago Court of Appeals, which dismissed them, upholding the enterprise's request.
- 304.** The enterprise also indicates that in a letter sent to the CBT it stated, inter alia, that it was not in agreement with the maintenance check that the workers and trade union officials carried out on the enterprise's buses. It told them that neither the internal regulations nor the individual employment contracts authorized conduct of that sort by the bus operators, as a specific procedure was in place that operators must use to report any faults or damage to the buses. Lastly, the enterprise says that up until 18 October 2012, there were 197 trade unions and 421 trade union officials. Moreover, a collective bargaining process had been completed which resulted in the establishment of criteria to improve service to bus users, where workers had the opportunity to air their legitimate interests.
- 305.** With regard to the allegations relating to the Tur Bus Ltd, the Government states that according to the enterprise the General Manager of the enterprise sent a letter explaining the situation of the trade union official, Mr Marcelo Ortega Salazar. The letter indicated that his actions contravened the law, prompting the initiation of proceedings for the lifting of trade union immunity. The court, on the basis of the evidence provided and the arguments presented by the parties, concluded that the actions taken by Mr Marcelo Ortega Salazar were illegal and constituted grounds for the lifting of trade union immunity. The enterprise adds that the trade union official lodged an appeal against the first-instance ruling, which was refused, with the lifting of trade union immunity consequently being upheld. That judgment was appealed in cassation proceedings regarding its substance before the Supreme Court of Chile, which declared the appeal inadmissible. Lastly, there are ten trade union organizations at the enterprise, six of which have signed collective agreements, and the trade union membership rate is 52 per cent of a total of more than 5,000 workers.
- 306.** With regard to the complaint concerning workers at the Car Bus Urbano SA enterprise, the Government states that the Labour Directorate of Chile has indicated that in view of reports of violations of fundamental rights, it conducted inquiries into the cases of Miguel

Ángel Álvarez Godoy, Héctor Lara Fernández, Alfredo Fuentes Meneses and Marcelo Jerez Rubilar, and violations were found to have occurred in all of them, with conciliation agreements being reached in court and the workers receiving compensation.

- 307.** The Government indicates that on the basis of the facts provided by the complainant organizations and the employers it conducted an assessment to analyse the possible existence of acts of anti-union discrimination by the Government of Chile from the perspective of ILO Conventions Nos 87 and 98. In respect of the Alsacia enterprise, the Government refers to the judgment handed down by the Second Labour Court of the Municipality of Santiago in the action initiated by the enterprise, which states: (1) “it has been established that the defendants prevented the departure of approximately 90 per cent of the fleet at the Maipú depot, without a valid reason, which disrupted the normal running of the enterprise”; (2) “the elements established by law that justify the grounds being invoked have been met, as it is clear that the defendants engaged in an action preventing the buses from leaving the depot in an unjustified manner, resulting in the plaintiff enterprise not being able to operate in the normal manner, which consists of the public transportation of passengers during the rush hour”; (3) “the defendants participated directly in actions that they are neither authorized nor justified to undertake, obstructing the departure of the enterprise’s buses and not completing the tasks they were employed to perform by the enterprise”; and (4) “in the view of this judge, this lack of compliance is serious, if account is taken of the way the events unfolded, the time chosen to carry out the action, which is entirely unfounded, the fact that the enterprise was not even informed about it, the delay in the departure of the buses, affecting part of the population, preventing without any justification the departure of the buses, facts that lead to the conclusion that the defendants seriously breached their contractual obligations”. The Santiago Court of Appeals dismissed an appeal against this judgment.
- 308.** The Government also refers to judgment No. 995-2008, “*Tur Bus Ltd v. Ortega Salazar*”, handed down by the Seventh Labour Court of Santiago, and to the judgments handed down by the Court of Appeals of Santiago and the Supreme Court of Chile relating to the case. The judgments refer to article 160(7) of the Labour Code, namely “serious failure to fulfil the obligations stipulated in the employment contract”. The Government indicates that the Court of First Instance considered, once it had analysed the case using all legal procedures for gathering and examining evidence, that Mr Marcelo Ortega Salazar violated provisions relating to workers’ rest and the internal regulations of the enterprise (paragraph 6), and also refused to be monitored by the route inspectors on a number of occasions, and therefore found that “the serious failure to fulfil the obligations stipulated in the employment contract ... not only requires the worker to have failed to fulfil some of the obligations stipulated in the contract, which occurred in the case in question, but also that the failure to fulfil the obligations is of a nature and magnitude that affects the essence of the fulfilment of the contractual obligations, and as such goes beyond minor infringements accepted by the parties or the law”. The higher bodies rejected the appeals lodged.
- 309.** The Government states that it should be recalled in this case relating to proceedings for the lifting of the trade union immunity of trade union officials at the Alsacia and Tur Bus Ltd enterprises, that legislation, at both the constitutional and legal levels, upholds the principles of equality, non-discrimination and due process. The Government stresses that Convention No. 87 establishes, in Article 8, that “workers and employers and their respective organisations, like other persons or organised collectivities, shall respect the law of the land”, which, according to the judgments handed down by the abovementioned national courts, has not been respected by the complainants. In turn, they have had procedural opportunities and have exercised their constitutional rights without any form of obstruction by Chilean state bodies. Trade union immunity is not absolute and, for serious and well-founded reasons, it can be cancelled and the decision taken to dismiss the trade union official should the circumstances require it. The Government indicates that in Chile

it is the courts of law that are called on to determine the relevance of this by way of legal proceedings for the lifting of trade union immunity. It is to be noted that these proceedings are conducted in strict compliance with the rules of due process. Lastly, the Government states that the Labour Directorate of Chile has fulfilled its supervisory role and that the courts of justice have concluded the proceedings in accordance with the law and have resolved the cases in full compliance with legislation.

### C. The Committee's conclusions

- 310.** *The Committee observes that the CBT and the FNTP allege acts of anti-union discrimination (dismissals and proceedings to lift trade union immunity) against trade union officials and members in various enterprises in the transport sector.*

#### *Alsacia transport enterprise*

- 311.** *The Committee observes that the CBT alleges that the enterprise initiated proceedings for the lifting of trade union immunity against 25 trade union officials who took part in an activity that prevented the departure of buses that did not comply with prevailing safety standards, to ensure they were in good working order for both workers and passengers. In this respect, the Committee notes the Government's indication that the enterprise said that: (1) on 13 May 2011, on the premises of the enterprise, a group of trade union officials, including some allegedly representing the CBT, participated in an act described as sabotage and illegal: obstructing the departure of numerous buses at rush hour, which disrupted the public transportation of passengers in the city of Santiago; (2) it suffered economic harm and it indicates that it initiated proceedings for the lifting of trade union immunity against 25 trade union officials, obtaining favourable rulings, and in one of the cases an agreement was reached at the judicial level that resulted in the dismissal of the trade union official by mutual accord; (3) the courts considered that the facts had been sufficiently serious to authorize the lifting of the officials' trade union immunity; (4) annulment proceedings were brought against the judgments stipulating the lifting of trade union immunity before the Santiago Court of Appeals, which dismissed them, upholding the enterprise's request; (5) in a letter sent to the CBT it stated, inter alia, that it was not in agreement with the maintenance check that the workers and trade union officials carried out on the enterprise's buses and it told them that neither the internal regulations nor the individual employment contracts authorized conduct of that sort by the bus operators, as a specific procedure was in place that operators must use to report any faults or damage to the buses; and (6) up until 18 October 2012, there were 197 trade unions and 421 trade union officials and a collective bargaining process had been completed which resulted in the establishment of criteria to improve service to bus users, where workers had the opportunity to air their legitimate interests.*
- 312.** *The Committee notes that, according to the Government, the preamble to the judgment of the Second Labour Court of the Municipality of Santiago in the action initiated by the enterprise states: (1) "it has been established that the defendants prevented the departure of approximately 90 per cent of the fleet at the Maipú depot, without a valid reason, which disrupted the normal running of the enterprise"; (2) "the elements established by law that justify the grounds being invoked have been met, as it is clear that the defendants engaged in an action preventing the buses from leaving the depot in an unjustified manner, resulting in the plaintiff enterprise not being able to operate in the normal manner, which consists of the public transportation of passengers during the rush hour"; (3) "the defendants participated directly in actions that they are neither authorized nor justified to undertake, obstructing the departure of the enterprise's buses and not completing the tasks they were employed to perform by the enterprise"; and (4) "in the view of this judge, this lack of compliance is serious, if account is taken of the way the events unfolded, the time chosen to carry out the action, which is entirely unfounded, the fact that the enterprise was*

*not even informed about it, the delay in the departure of the buses, affecting part of the population, preventing without any justification the departure of the buses, facts that lead to the conclusion that the defendants seriously breached their contractual obligations". The Committee further notes that, according to the Government, the Santiago Court of Appeals dismissed an appeal against this judgment.*

- 313.** *The Committee takes note of this information, and particularly the fact that the judicial authorities examined the alleged cases and granted the requests for the lifting of trade union immunity lodged by the enterprise. In these circumstances, and in the absence of other information, the Committee will not proceed with the examination of these allegations.*

#### **Tur Bus Ltd transport enterprise**

- 314.** *The Committee notes the allegation by the complainant organization CBT that the Tur Bus Ltd transport enterprise did not respect an agreement reached in the working group, did not allow a meeting of trade union officials to be held on the premises of the enterprise in the city of Antofagasta and initiated proceedings for the lifting of trade union immunity against two trade union officials (while the judicial authority dismissed one of the requests, it approved the lifting of the trade union immunity of the Vice-President of the CBT, Mr Marcelo Ortega Salazar). In this regard, the Committee notes that, according to the Government, the enterprise provided the following information: (1) the General Manager of the enterprise sent a letter explaining the situation of the trade union official, Mr Marcelo Ortega Salazar; (2) the letter states that his actions contravened the law, prompting the initiation of proceedings for the lifting of trade union immunity; (3) the court, on the basis of the evidence provided and the arguments presented by the parties, reached the conclusion that the actions taken by Mr Marcelo Ortega Salazar were illegal and constituted grounds for the lifting of trade union immunity; (4) the trade union official lodged an appeal against the first-instance ruling which was refused, with the lifting of trade union immunity consequently being confirmed; (5) that judgment was appealed in cassation proceedings regarding its substance before the Supreme Court of Chile, which declared the appeal inadmissible; and (6) there are ten trade union organizations at the enterprise, six of which have signed collective agreements and the trade union membership rate is 52 per cent of a total of more than 5,000 workers.*
- 315.** *The Government draws attention to judgment No. 995-2008, "Tur Bus Ltd v. Ortega Salazar", handed down by the Seventh Labour Court of Santiago, and to the judgments handed down by the Court of Appeals of Santiago and the Supreme Court of Chile relating to the case. The judgments refer to article 160(7) of the Labour Code, namely "serious failure to fulfil the obligations stipulated in the employment contract". The Government indicates that the Court of First Instance considered, once it had analysed the case using all legal procedures for gathering and examining evidence, that Mr Marcelo Ortega Salazar violated provisions relating to workers' rest and the internal regulations of the enterprise, and also refused to be monitored by the route inspectors on a number of occasions, and therefore found that the "serious failure to fulfil the obligations stipulated in the employment contract ... not only requires the worker to have failed to fulfil some of the obligations stipulated in the contract, which occurred in the case in question, but also that the failure to fulfil the obligations is of a nature and magnitude that affects the essence of the fulfilment of the contractual obligations, and as such goes beyond minor infringements accepted by the parties or the law". The higher bodies rejected the appeals lodged by the trade unionist mentioned.*
- 316.** *The Committee notes this information and will not pursue its examination of these allegations.*

*Car Bus Urbano enterprise*

**317.** *The Committee observes that the FNTF alleges the anti-union dismissal from the Car Bus Urbano enterprise of a number of trade union officials (including the President, the Secretary and the Treasurer) belonging to the Buses Gran Santiago and Express Santiago Uno Inter-enterprise Trade Union and that although the labour inspectorate ordered the reinstatement of the trade union officials, the enterprise has refused to comply. In this regard, the Committee notes that the Government indicates that the Labour Directorate of Chile has stated that in view of reports of violations of fundamental rights, it conducted inquiries into the cases of Miguel Ángel Álvarez Godoy, Héctor Lara Fernández, Alfredo Fuentes Meneses and Marcelo Jerez Rubilar, and violations were found to have occurred in all of them, with conciliation agreements being reached in court and the workers receiving compensation. The Committee recalls that, in cases of the dismissal of trade unionists on the grounds of their trade union membership or activities, it has requested the Government to take the necessary measures to enable trade union leaders and members who had been dismissed due to their legitimate trade union activities to secure reinstatement in their jobs and to ensure the application against the enterprises concerned of the corresponding legal sanctions [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 839]. In the light of the results achieved in this specific case, the Committee will not pursue its examination of these allegations.*

**The Committee's recommendation**

**318.** *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. 2950

DEFINITIVE REPORT

**Complaint against the Government of Colombia  
presented by  
the Single Confederation of Workers (CUT)**

***Allegations: the complainant organization alleges that trade union members employed by the Girón-Santander township were dismissed in violation of the provisions of a collective agreement***

**319.** The complaint is contained in a communication of March 2012 submitted by the Single Confederation of Workers (CUT).

**320.** The Government sent its observations in a communication dated 30 January 2013.

**321.** 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**

- 322.** The complainant organization alleges that 12 employees of the township of Girón-Santander, namely Marcos Fidel Báez Celis, Ambrosio Díaz Rodríguez, Carlos José Martínez Ramírez, Víctor Manuel Vargas Galvis, Luis Hernando Viviescas Parra, Jorge Pérez, Reinaldo Vega Serrano, Luis José Ortiz Carreño, Jorge Enrique Vargas González, Gustavo Mantilla Mendoza, Hernán Rueda García and Ernesto Parra Mantilla, all being members of the Union of Public Service Employees for the township of Girón-Santander, an affiliate of the CUT, were dismissed on 15 February 2001 in violation of the collective agreement in force and of the principles of freedom of association and collective bargaining.
- 323.** The complainant organization states that all the workers dismissed by the municipal authority were trade union members, and for that reason they ought to have enjoyed enhanced protection. It adds that the collective agreement in force stipulated that the Substantive Labour Code (Código Sustantivo de Trabajo) applied to employees of the township and accordingly, under the provisions of the Code, the dismissal of the 12 workers should have been authorized by the Ministry of Labour. In the absence of such authorization, the workers were entitled to be re-employed.
- 324.** The complainant organization adds that the trade union filed a complaint with the labour inspectorate, and on 26 April 2001, the Ministry of Labour and Social Security awarded a penalty against the township for violating the collective agreement. The dismissed workers also applied to the courts for reinstatement, but their application was rejected by the various judicial authorities, and the protection proceedings initiated subsequently also failed.

**B. Reply from the Government**

- 325.** In a communication dated 30 January 2013, the Government states that the dismissals which are the subject of the complaint had taken place in the context of a restructuring process prompted for financial and administrative reasons by the territorial authority, and that the individuals mentioned in the complaint had been properly compensated. It insists that the termination of the employment contracts had not been intended to undermine freedom of association, and states that the complainant organization nowhere argues that the dismissals had been an anti-trade union measure, and moreover, that the Union of Public Service Employees of the township of Girón-Santander had decided not to take part in the complaint. On that basis, and in accordance with paragraph 1079 of the *Digest of decisions and principles of the Freedom of Association Committee, fifth (revised) edition, 2006* the Government considers that, in the absence of anti-union discrimination, the Committee is not competent to make a decision on this case of administrative restructuring.
- 326.** As for the attitude of the Ministry of Labour towards this case, the Government states that the coordinator of the Inspection and Monitoring Team had decided to revoke the sanction initially imposed on the municipal authority of Girón-Santander for violating the applicable collective agreement. The Government adds that the Colombian courts have considered the complainants' claims, ruling against them at every level of jurisdiction.

**C. The Committee's conclusions**

- 327.** *The Committee notes that this case relates to the dismissal in 2001 of 12 employees of the township of Girón-Santander who were members of the Union of Public Service Employees of the township, in the context of a process of administrative restructuring. The*

*Committee notes the allegations of the complainant organization that there had been a failure to observe the enhanced protection due by reason of the trade union membership of the dismissed workers, and a violation of the collective agreement in force, providing that the rules of the Substantive Labour Code applied to employees of the township, which in turn would have required the prior administrative authorization of the Ministry of Labour for the collective dismissal of the 12 workers. No such authorization was sought.*

- 328.** *The Committee notes the Government's observations that the dismissals of the 12 workers occurred for financial and organizational reasons in the context of an administrative restructuring, and that at no time did the complainant organization allege that the severing of the employment contracts was an anti-union act. The Government considers that in the absence of any anti-union discrimination, this case of administrative restructuring falls outside the competence of the Committee. Finally, the Committee notes the Government's statements concerning the rejection of the claims of the dismissed workers by the Colombian courts at every level.*
- 329.** *With regard to the alleged lack of protection of the freedom of association of the dismissed workers by the municipal authority of Girón-Santander in the context of a restructuring process, the Committee recalls that it is not called upon to pronounce upon the question of the breaking of a contract of employment by dismissal, except in cases in which the provisions on dismissal imply anti-union discrimination [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, paragraph 779] and similarly, that it can examine allegations concerning restructuring processes, whether or not they imply redundancies or the transfer from the public to the private sector, only in so far as they might have given rise to acts of discrimination or interference against trade unions [see **Digest**, *op. cit.*, paragraph 1079].*
- 330.** *In the present case, the Committee notes that although the complainant organization briefly remarks that the only workers dismissed were trade union members, the complaint does not allege that the dismissals were of an anti-union character, nor does it offer any specific evidence in this regard. The Committee notes that neither was there any allegation that the dismissals were of an anti-union character in the various court actions initiated by the dismissed workers, who according to the documents available did not hold leadership positions in their trade union. On that basis, the Committee considers that the allegation that the freedom of association of the dismissed workers was insufficiently protected does not require further examination.*
- 331.** *As regards the alleged violation of the collective agreement in force, which according to the complainant organization stipulated that the Substantive Labour Code should apply in its entirety, including in the matter of dismissal, to the employees of the township, the Committee notes that both the first and second instance courts and the Employment Appeals Chamber (Sala de Casación Laboral) of the Supreme Court rejected the claims of the dismissed workers, the Appeals Chamber stating in its judgment that "even if it is established that public employees may in certain specific areas be governed by statutory provisions adopted for private employees, public employees cannot decide via agreement with their employers to apply such a legal regime to themselves in its entirety, since that would be tantamount to denying the legal character ineluctably conferred on them by law". In these circumstances, the Committee considers that this case does not call for further examination.*

### **The Committee's recommendation**

- 332.** *In the light of its foregoing conclusions, the Committee invites the Governing Body to decide that this case does not require further examination.*

CASE NO. 2974

DEFINITIVE REPORT

**Complaint against the Government of Colombia  
presented by  
the National Union of Public Servants, Officials and  
Service Contractors of the Territorial, District and  
Metropolitan Authorities of Colombia (SINALSERPUB)**

*Allegations: The complainant organization alleges the dismissal of three workers of the San Juan de Dios Hospital, in contravention of the collective agreement establishing that no worker shall be dismissed without proven just cause*

**333.** The complaint is set forth in communications from the National Union of Public Servants, Officials and Service Contractors of the Territorial, District and Metropolitan Authorities of Colombia (SINALSERPUB) dated 31 August 2010 and 26 June 2012 (received by the Office on 9 July 2012).

**334.** The Government sent its observations in a communication dated 15 July 2013.

**335.** Colombia 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**

**336.** In its communications of 31 August 2010 and 26 June 2012, the SINALSERPUB made submissions in support of a complaint by the former workers of the San Juan de Dios Hospital (municipality of Rionegro, Antioquia). The complainant organization refers to the dismissal of three hospital workers who were covered by the collective agreement in force, article 2 of which provides that no worker shall be dismissed without proven just cause. The complainant adds that the dismissed individuals exhausted the administrative remedies before bringing their case before the judicial authorities (at first and second instance), where their application for reinstatement and compensation failed. They subsequently filed an application for protection of constitutional rights before the Penal Chamber of the Supreme Court of Justice, which declared the application inadmissible.

**B. The Government's reply**

**337.** In its communication of 15 July 2013, the Government states that the San Juan de Dios Hospital informed it that as part of the due process of restructuring the hospital with a view to ensuring self-sustainability, a retirement with compensation scheme was implemented for all civil servants. The individuals to whom the complainants refer accepted the retirement scheme and received compensation. The hospital adds that despite this, they launched legal proceedings for unfair dismissal which were rejected, and that the Supreme Court of Justice considered their application for protection of constitutional rights to be inadmissible.



338. The Government itself submits that the complaint fails to meet the admissibility requirements under the ILO's procedures since, as the complainant states, it is submitted by former workers of the San Juan de Dios Hospital who are not union members nor affiliated to a federation or confederation. The Government states that there is no evidence in the present case of restrictions on freedom of association and that the case instead pertains to individual situations of non-union workers. The Government adds that the individuals concerned took legal action but the courts found against them.

### **C. The Committee's conclusions**

339. *The Committee observes that in the present case, the complainant organization alleges that it is supporting a complaint submitted by employees of the San Juan de Dios Hospital (municipality of Rionegro, Antioquia) concerning the dismissal of three workers (two female and one male) who were purportedly covered by the collective agreement in force, article 2 of which provides that no worker shall be dismissed without proven just cause.*

340. *The Committee notes that the Government states that the hospital informs it that: (1) in accordance with the agreement approving the hospital's restructuring process, a retirement with compensation scheme was implemented for all civil servants; (2) the three individuals to which the complainants refer accepted the retirement scheme and received compensation; and (3) despite this, they launched legal proceedings for unfair dismissal which were rejected and the Supreme Court of Justice considered the application for protection of constitutional rights to be inadmissible. Furthermore, the Committee notes that the Government submits that: (i) the complaint fails to meet the admissibility requirements under the ILO's procedures since, as the complainant states, it is submitted by former workers who are not union members and not affiliated or confederated with the San Juan de Dios Hospital; (ii) there is no evidence in the present case of restrictions on freedom of association and the case instead pertains to individual situations of non-union workers; and (iii) the individuals concerned took legal action but the courts found against them.*

341. *The Committee notes all of this information and considers that there have been no violations of trade union rights; and for this reason, it will not pursue the examination of the allegations submitted in this case.*

### **The Committee's recommendation**

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

**Complaint against the Government of Colombia  
presented by  
the Single Confederation of Workers (CUT)**

***Allegations: The complainant alleges acts of anti-union discrimination and violation of the provisions of a collective agreement in the context of a dismissal on disciplinary grounds***

- 343.** The complaint is contained in communications dated 15 August and 16 October 2012 presented by the Single Confederation of Workers (CUT).
- 344.** The Government sent its observations in a communication dated 14 June 2013.
- 345.** 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**

- 346.** The complainant alleges that, on 19 February 2001, Mr Antonio Ricaurte Fernández Albán, a Bancolombia worker since 1987 (“the worker”) and member of the SINTRABANCOL union since that year, was the subject of a dismissal which was in violation of the collective agreement in force and which constituted an act of anti-union discrimination. The dismissal resulted from an incident which occurred on 5 December 2000 at the cash desk of a branch of the bank, when an individual who had taken possession of the identity documents and savings book of a bank client and had forged the client’s withdrawal authorization managed to withdraw a substantial sum of money via the worker. Following a complaint from the account holder, the bank commenced disciplinary proceedings against the worker on 26 January 2001, stating that he could choose to be accompanied by two union officials if he deemed it appropriate. On 7 February 2001, the worker submitted a written response, explaining that he had followed the applicable procedure under the rules for the withdrawal of cash by a third party. On 19 February 2001, the worker was notified in writing of his dismissal; he lodged an appeal against that decision in accordance with the terms of the collective agreement governing dismissals on disciplinary grounds. The complainant indicates that the bank responded by stating that the dismissal was an autonomous decision by the enterprise and not a disciplinary measure, and that the procedure in the collective agreement therefore did not apply. The complainant alleges that the disciplinary proceedings governed by the collective agreement, which began on 26 January 2001 and for which the worker was granted the opportunity to be assisted by union representatives throughout, were never concluded and that the worker’s dismissal therefore violated the provisions of the collective agreement, preventing the trade union from fulfilling its role of defending workers, as agreed with the employer. The complainant considers that, in view of the foregoing, the worker’s dismissal constitutes anti-union discrimination.
- 347.** The complainant adds that the Third Labour Court of the Popayán Circuit, the Labour Chamber of the High Court of Popayán and the Labour Chamber of the Supreme Court of

Justice all rejected the worker's claims, and in turn violated ILO Convention Nos 87 and 98 by failing to take into account the provisions of the collective agreement in force.

## B. The Government's reply

- 348.** By a communication dated 14 June 2013, the Government transmits Bancolombia's response to the complainant's allegations. The enterprise indicates that the worker was dismissed for having violated the bank's procedures concerning cash withdrawals, that the worker had an opportunity to present his defence and that he was reminded that he could be accompanied by two union representatives, thereby complying with the disciplinary procedure set out in the enterprise's collective agreement. It states that both the courts of first and second instance and the Labour Chamber of the Supreme Court of Justice rejected the worker's claims and found his dismissal to be justified. The enterprise adds that the worker's applications for protection of his constitutional rights also failed, and that both the Criminal Cassation and the Civil Cassation Chambers of the Supreme Court of Justice and the Jurisdictional Disciplinary Chamber of the Supreme Council of the Judiciary rejected the application. The enterprise concludes that the dismissal to which the present complaint pertains is founded in objective facts wholly unrelated to the worker's union membership and hence in no way constitutes a case of anti-union discrimination.
- 349.** In the same communication, the Government of Colombia endorses the information presented by the enterprise. It states that the alleged facts do not constitute acts of anti-union discrimination and that, as confirmed by the various judicial rulings, the dismissal complied with the standards in law and in the collective agreement.

## C. The Committee's conclusions

- 350.** *The Committee observes that the present case concerns the dismissal of a Bancolombia worker who is a member of the SINTRABANCOL trade union. The complainant alleges that, after initiating disciplinary proceedings against the worker as a result of alleged misconduct, the enterprise dismissed him directly, without complying with all of the stages in the collective agreement, which, in particular, provided that the worker has an opportunity to appeal and to receive assistance from union representatives throughout the proceedings. Consequently, the complainant considers that the dismissal violated the collective agreement in force and that it constitutes anti-union discrimination, and that the courts which heard the case committed the same violations by failing to take account of the collective agreement in their respective rulings.*
- 351.** *The Committee takes note of the coincident observations of the Government and the enterprise, in which they state that:*
- *the dismissal results from the worker's violation of the procedures governing cash withdrawals and is unrelated to his union membership;*
  - *the enterprise complied with the applicable provisions of the law and of the collective agreement, thereby safeguarding the worker's right to defend himself; and*
  - *the courts at all stages of the proceedings found that the enterprise had complied fully with the provisions in law and the collective agreement.*
- 352.** *The Committee observes that at issue in this case is, first, whether the dismissal was anti-union in nature and, second, whether the enterprise and the courts hearing the case violated the collective agreement in force. Concerning the grounds for the dismissal, the Committee recalls that it is not called upon to pronounce upon the question of the breaking*

of a contract of employment by dismissal except in cases in which the provisions on dismissal imply anti-union discrimination [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, para. 779]. The Committee observes that there is no evidence of anti-union discrimination in the present complaint and that, similarly, the various judicial proceedings initiated by the worker did not argue that there had been anti-union discrimination. Accordingly, the Committee will not pursue its examination of this allegation.

**353.** *With regard to the alleged violation of the provisions of the collective agreement pertaining to disciplinary proceedings, the Committee observes that the various judicial rulings issued on the matter rejected the worker's claims and found in particular that the provisions of the collective agreement governing disciplinary proceedings do not cover cases of dismissal and that they are therefore inapplicable in the present case. Under these circumstances, the Committee considers that this case does not call for further examination.*

### **The Committee's recommendation**

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

CASE NO. 2975

DEFINITIVE REPORT

### **Complaint against the Government of Costa Rica presented by the National Union of Professional Traffic Technicians (UNATEPROT)**

***Allegations: Arrest and criminal prosecution of  
a traffic police officer and trade union official***

**355.** The complaint is contained in a communication from the National Union of Professional Traffic Technicians (UNATEPROT) dated 20 July 2011.

**356.** The Government sent its observations in a communication dated 12 June 2013.

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

#### **A. The complainant's allegations**

**358.** In its communication dated 20 July 2011, the UNATEPROT alleges that, in the context of negotiation of a collective agreement for traffic police, on 25 May 2011 two officials of the Traffic Unit of the Judicial Investigation Department illegally detained Mr Joselito Ureña Vargas, General Secretary of UNATEPROT, in his office, without showing an arrest warrant or informing him of the charges against him, following a complaint filed against him for allegedly threatening a young person. The complainant states that the union official had already gone to the Public Prosecutor's Office to give an account of the facts, and that the judicial authority had issued a restraining order to stay away from the Canton of Desamparados. He was detained in the presence of press and television reporters, who

reported on the following day that the union official had been detained for threatening a witness and tampering with the scene of an accident in which a 19-year-old man died.

## **B. The Government's reply**

**359.** In its communication dated 12 June 2013, the Government cites the report from the Office of the Prosecutor General of the Attorney-General's Office on the events referred to in the complaint, from which it appears that: (1) the charges against the traffic officer and trade union official Mr Joselito Ureña Vargas stem from a complaint filed by individuals accusing him of the offences of tampering with evidence, abuse of authority and dereliction of duty in responding to a traffic accident in his capacity as a public servant (following manslaughter committed by another person); (2) Mr Joselito Ureña Vargas's trade union office has no bearing whatsoever on the criminal investigation under way; (3) the fact that Mr Joselito Ureña Vargas threatened several witnesses (including minors), and even drove his car up to one of them in order to intimidate him, was corroborated; (4) Mr Joselito Ureña Vargas's detention on the order of the Attorney-General's Office was based on the urgent need to bring him before the competent judge in order to safeguard the outcome of the investigation. This necessary intervention was not in violation of the union's property; and (5) the judicial authority rejected the prosecutor's request for preventive custody, but ordered precautionary measures (barring him from the Canton of Desamparados, following evidence that the accused had committed the offence under investigation and that there was a risk of obstruction of justice).

## **C. The Committee's conclusions**

**360.** *The Committee notes that, in this complaint, the complainant alleges the illegal detention, without showing an arrest warrant, of a union official and traffic police officer, in his office at the trade union headquarters, as well as criminal prosecution against him, in the context of an ongoing collective bargaining process.*

**361.** *The Committee notes that the Government denies the anti-union nature of the union official's arrest and states that it took place following a complaint filed by individuals and at the request of the Attorney-General's Office, and the arrest was not upheld by the judicial authority, which, however, instituted criminal proceedings and ordered provisional measures against him. The Committee observes that the report from the Attorney-General's Office forwarded by the Government (and provided by the complainant) clearly indicates that the allegations refer to possible criminal misconduct by a traffic officer in his capacity as a public servant (tampering with a crime scene, threats, etc., following manslaughter committed by another person, who was driving a motorcycle).*

**362.** *In these circumstances, the Committee concludes that this case does not raise the issues of freedom of association and considers that it does not call for further examination.*

## **The Committee's recommendation**

**363.** *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. 2926

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

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

- **the United Workers’ Front (FUT)**
- **the Ecuadorian Confederation of United Workers’ Organizations (CEDOCUT)**
- **the Confederation of Workers of Ecuador (CTE)**
- **the Ecuadorian Confederation of Free Trade Union Organizations (CEOSL)**
- **the General Union of Workers of Ecuador (UGTE)**
- **the Federation of Public Sector Workers (FEDESEP)**
- **the Ecuadorian Medical Federation (FME) and**
- **the Works Council for Workers of the Ecuador Inc. Electricity Supply Company**

*Allegations: Anti-union dismissals in the public sector resulting from the adoption of a decree enabling the contracts of public sector employees to be terminated unilaterally*

- 364.** The complaint is contained in a communication dated 26 January 2012, submitted jointly by the United Workers’ Front (FUT), the Ecuadorian Confederation of United Workers’ Organizations (CEDOCUT), the Confederation of Workers of Ecuador (CTE), the Ecuadorian Confederation of Free Trade Unions (CEOSL), the General Union of Workers of Ecuador (UGTE) and the Federation of Public Sector Workers (FEDESEP); in a communication dated 27 June 2012 from the Ecuadorian Medical Federation (FME), and in a communication dated 10 July 2012 from the Works Council for Workers of the Ecuador Inc. Electricity Supply Company.
- 365.** The Government sent its observations in communications dated 19 June 2012 and 11 March and 18 July 2013.
- 366.** Ecuador has ratified the Convention on 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**

- 367.** In their communication dated 26 January 2012, the complainant organizations allege that the Government of Ecuador is attempting to weaken the trade unions through mass dismissals of public sector employees and workers. It is stated in the complaint that Executive Decree No. 813, issued on 12 July 2011, which brings about a reform of the rules under the Organic Law on the Civil Service (LOSEP), introduced a procedure known as the “compulsory purchase of redundancy”, enabling the Government to dismiss public sector employees simply by paying them compensation.
- 368.** Termination of employment through the compulsory purchase of redundancy is provided for in article 8 of the Executive Decree, which stipulates that “State institutions may draw

up plans for the compulsory purchase of redundancy with compensation, on a properly budgeted basis, in accordance with article 47(k) of LOSEP, when undergoing a process of restructuring, optimization or rationalization.” ... “Public employees have a duty to comply with processes of this nature that are set by the administration.” The complainant organizations argue that the Executive Decree runs counter to the LOSEP, adopted in 2010, which makes provision for the continuity of employment of public employees.

- 369.** The complainant organizations state that, on the basis of the compulsory redundancy purchase procedure, on 28 October 2011, the Government dismissed 2,700 public sector employees and workers, and in the three months that followed made a further 1,300 public sector workers redundant. These redundancies were brought about through administrative acts which do not specify the reason for the termination of employment, and without any prior procedure or provision for challenging them through the courts. The redundancies were accompanied by public statements made by the President of the Republic himself, and by other government spokespersons, making reference to the supposed incompetence and corruption of the workers and employees whose employment had been terminated.
- 370.** The complainant organizations allege that the compulsory purchase of redundancies has been used by the Government as a fig leaf for unfair dismissals and in order to get rid of trade union activists in a discriminatory manner, and especially those holding leadership positions in the trade unions. Given that the LOSEP does not recognize either the right to organize or collective bargaining rights, they argue that these dismissals are part of a government strategy to weaken the trade unions that began with the transfer to the LOSEP system of workers who were previously protected by the Labour Code, so that they would no longer enjoy the protection of collective agreements and the guarantees of the right to organize contained in the Code, the Government’s ultimate purpose being to create organizations tailored to its own interests.
- 371.** In support of its allegations, the complaint refers to the mass dismissal of leaders of the following trade unions and works councils: the works council of Guapán Industries, the executive committee of FETSAE, the executive committee (governing body) of the Single Health Union of Sucumbios, the executive committee of the Government of Loja, leaders of the National Federation of Public Works Employees, and the Works Council for Employees of the National Enterprise Bank. The complaint also gives the names of a series of trade union leaders said to have been dismissed through the purchase of compulsory redundancy: Gladys Illiescas of the trade union at the Hospital Teófilo Dávila de Machala, General Secretary of the Union of Nursing Auxiliaries at the Baca Ortiz Hospital; Martha Noboa, Nilo Neiger, Gloria León and Carmen Herrera of the works council of Guapán Industries; Paúl Sacoto, José Montesdeoca, Miguel León, Carlos García, Jorge Gualpa, Patricio Ortega, Patricio Merchan, Manuel Sacoto, Carlos Monzón, Carlos Villareal, Manuel Siguenza and 147 other workers in the works council at the National Enterprise Bank, and Monica Noboa, Luis Rosero, Héctor Paredes, Sibori Arreaga, Narcisa Peralta and Guillermo Parra. The following members of the Ecuadorian Federation of Nurses: Eda Correa Tinoco, President of the College of Nurses of Loja, and Yolanda Nuñez, Vice-President of the College of Nurses of Tungurahua. The following members of the Ecuadorian Medical Federation: Eduardo Zea, spokesperson of the Medical College of Pichincha, Nelson Vásquez, President of the Doctors’ Association at the Ministry of Public Health, Marco Robles, President of the Medical College of Zamora Chinchipe, Pedro Velasco, former President of the Association of Employees of the Ministry of Public Health. Members of the Ecuadorian Federation of Public Sector Workers: Héctor Dávila, Treasurer, Mónica Pugas, first Chief spokesperson, Emilio Chérrez, second Chief spokesperson, Braulio Bermúdez, trustee of the Association of Employees of the Customs Service, Carlos Baldeón, President of the Association of Municipal Employees of Pichincha, Jaime Coronel, National President of the Public Employees’ Association at the Ministry of Agriculture, Stockbreeding and Fisheries and a member of the National

Confederation of Public Sector Workers of Ecuador, Eduardo Zea Edison Delgado Falconí, General Secretary of the Works Council for Workers of the Ecuador Inc. Electricity Supply Company, and Wilson Vergara Mosquera, President of the Association of Engineers at the same company.

- 372.** The complainant organizations also allege that the unilateral dismissals brought about through the compulsory purchase of redundancy violated the terms of collective agreements, and especially the provisions concerning continuity of employment and those on retirement pensions.
- 373.** The trade union organizations have instituted proceedings before the Constitutional Court claiming that Decree No. 813 is unconstitutional, and have also brought contentious proceedings in the administrative courts concerning the dismissals that have already taken place. In this regard, the Ecuadorian Medical Federation alleges that in the present situation in Ecuador, there are neither any guarantees nor any positive expectation that administrative, judicial or constitutional proceedings for violations of human rights and non-compliance with the international Conventions that protect them will be effective, be heard in a timely manner or result in a favourable outcome for the workers. The complainant organizations consider that, in addition to violating internal law, article 8 of Executive Decree No. 813 violates ILO Conventions Nos 87 and 98, which have been ratified by Ecuador, and they are seeking from the Committee abrogation of the Executive Decree and the elimination of the anti-union practices surrounding its application.

## **B. The Government's reply**

- 374.** In its reply of 19 June 2012, the Government of Ecuador denies that there is any intention to weaken the trade unions. It expresses its full support for the strengthening of the trade union movement in Ecuador and, by way of proof, points out that during the years 2010 and 2011 approval was given for the constitution and formation of approximately 100 trade bodies or trade unions, considerably more than the average of 20 trade unions which had customarily been set up each year. It adds that it has signed 17 agreements with trade unions, which again demonstrates its support for the trade union movement.
- 375.** As for collective bargaining, the Government recalls that, in accordance with Constituent Resolution No. 008, the Ministry of Labour and Employment at the time had undertaken, with the participation of employers and workers, to revise collective labour agreements by eliminating the excesses and privileges found in their provisions. Furthermore, through a process of social dialogue and in reliance on Decree No. 225 of 18 January 2010, the criteria governing collective bargaining in the public sector had been reformed, in full agreement with the trade unions.
- 376.** The Government states that this same Decree No. 225, sets the parameters for classifying both public sector employees covered by the LOSEP, and workers covered by the Labour Code. It denies that the transfer to the LOSEP system of workers formerly covered by the Labour Code was done for the purpose of facilitating their dismissal and weakening the trade union movement. It emphasizes that the classification was carried out for the purpose of tidying up the muddle that had come about in the state system relating to public officials, employees and workers.
- 377.** As for the dismissals caused by the compulsory purchase of redundancy, the Government explains that they are in conformity with the provisions of the LOSEP and are justified by the need to restructure state services to make them more efficient. It refers to various aspects of the LOSEP which are designed to make entry to public service careers more transparent, in line with the meritocratic principle. It explains that all the public sector employees affected by the compulsory purchase of redundancy have been fully



compensated. It denies that there have been mass dismissals of workers from the public sector, in so far as the 4,624 workers terminated through compulsory redundancy and the 4,063 public employees terminated on retirement account for only 1.32 per cent of the total of Ecuador's public sector employees.

- 378.** Concerning the claims of unconstitutionality raised against Executive Decree No. 813, providing for the compulsory purchase of redundancy, the Government states that the Constitutional Court is the only competent forum to decide on the constitutionality of the Decree.
- 379.** In its communications of 11 March and 18 July 2013, the Government points out that the procedure for purchasing compulsory redundancy applies only to public sector employees covered by the LOSEP. Although article 23 of this law recognizes the right of association of public sector employees, this concept of association is distinct from the right to organize, by virtue of article 232 of the Constitution of Ecuador. It states that accordingly, it is not possible to use the compulsory purchase of redundancy to harm the trade union movement, given that public sector employees whose employment comes to an end through this procedure are not trade union members. There cannot therefore have been any violation of the right to organize of the public sector employees mentioned by name in the complaint because, being governed by the LOSEP and not by the Labour Code, they could not become trade union members.
- 380.** As for the dismissals of the trade union leaders mentioned in the complaint, who are not governed by the LOSEP but by the Labour Code, the Government points out that termination of an employment relationship may occur through unfair dismissal, a matter governed by the Labour Code. It states that the rules applying to unfair dismissal do not provide for any special privileges for trade union members or leaders, but that unfair dismissal is not being used to harm the trade union movement. In this connection, it mentions that the present Government has increased the number of approved trade union organizations by 300 per cent.

### **C. The Committee's conclusions**

- 381.** *The Committee notes that this case deals with the termination of the contracts of public sector employees and workers, especially through the application of article 8 of Executive Decree No. 813, which introduced the procedure of compulsory purchase of redundancy. The complainant organizations allege that this Decree, enabling the Government to dismiss public sector workers arbitrarily, was used to dismiss a number of trade union activists and leaders in a discriminatory manner, and that these terminations violated the provisions of a number of collective agreements. It also notes that the complainant organizations contend that these dismissals were prepared and brought about through the transfer to the public service regime of workers previously covered by the Labour Code, so that they would cease to enjoy the guarantees provided by the Code concerning the right to organize and collective bargaining.*
- 382.** *The Committee takes note of the Government's statements to the effect that the sole purpose of the terminations resulting from the application of Executive Decree No. 813 is to restructure state services in order to make them more efficient, and that the adoption of new parameters for classifying public sector employees, following a process of social dialogue, was solely intended to clear up a muddle at state level. The Committee also notes the Government's statement that the compulsory purchase of redundancy cannot be used for anti-union purposes, since the public sector employees to whom this procedure applies enjoy freedom of association but not the right to organize, and as regards trade union leaders in the public sector who are covered by the Labour Code, although the rules governing unfair dismissal do not provide for any special protection for trade union*

members and leaders, this procedure is not being used against the trade union movement. Finally, the Committee notes the Government's statements relating to the revision of collective agreements, which has taken place under Constituent Resolution No. 008 in order to eliminate certain excesses and privileges, and the reform of the criteria governing collective bargaining in the public sector, the content of which had been agreed with the trade unions.

- 383.** *The Committee notes that article 8 of Executive Decree No. 813 empowers the public administration, through the payment of compensation, to terminate the employment of public sector employees unilaterally, without having to state the reasons for the termination. According to the figures supplied by the Government in its first reply, this procedure was used to terminate the contracts of 4,624 employees between 28 October 2011 and 19 June 2012. The Committee notes that legal claims of unconstitutionality, as well as contentious proceedings in the administrative courts, have been raised in connection with this Decree.*
- 384.** *The Committee points out that it can examine allegations concerning economic rationalization programmes and restructuring processes, whether or not they imply redundancies or the transfer of enterprises or services from the public to the private sector, only in so far as they might have given rise to acts of discrimination or interference against trade unions. In any case, the Committee can only regret that in the rationalization or staff reduction process, the Government did not consult or try to reach an agreement with the trade union organizations [see **Digest of decisions and principles of the Committee on Freedom of Association**, fifth (revised) edition, 2006, para. 1079]. Here the Committee notes that, in the context of this complaint, the complainant organizations are alleging that the restructuring that was carried out by applying Executive Decree No. 813 was used to dismiss, in a discriminatory manner, a significant number of trade union activists and leaders.*
- 385.** *Concerning the Government's statement that the compulsory purchase of redundancy cannot be used for anti-trade union purposes, since the public sector employees to whom it applies enjoy freedom of association but not the right to organize, the Committee wishes to emphasize, first, that the rules contained in ILO Convention No. 87 apply to all workers "without distinction whatsoever" and therefore are applicable to employees of the State. It was indeed considered inequitable to draw any distinction in trade union matters between workers in the private sector and public servants, since workers in both categories should have the right to organize for the defence of their interests [see **Digest**, op. cit., para. 218]. In this respect, the Committee expects that enjoyment of all the rights upheld in Convention No. 87 will be fully secured for organizations of public servants. The Committee also recalls that anti-union discrimination is one of the most serious violations of freedom of association, as it may jeopardize the very existence of trade unions [see **Digest**, op. cit., para. 769]. Finally, the Committee has already had occasion repeatedly to state that where public servants are employed under conditions of free appointment and removal from service, the exercise of the right to freely remove public employees from their posts should, in no instance, be motivated by the trade union functions or activities of the persons who could be affected by such measures [see **Digest**, op. cit., para. 792]. The Committee draws these legislative aspects to the attention of the Committee of Experts on the Application of Conventions and Recommendations.*
- 386.** *In the light of the foregoing, the Committee calls the Government's attention to the fact that the principle of adequate protection from acts of anti-union discrimination is fully applicable to workers in the public sector in general, and that it applies in practice to the compulsory purchase of redundancy and especially to unfair dismissal, whatever the name given to organizations that may be set up by public servants and workers under the national law in force. In this respect, the Committee notes with concern that the*

*Government, although it was specifically asked about this matter, has not supplied any specific information about the numerous individual cases in which the complainant organizations allege that anti-union dismissals and terminations have taken place, or about the allegations that there are no guarantees against the possible discriminatory use of the compulsory purchase of redundancy.*

- 387.** *The Committee, emphasizing that the principle of adequate protection against acts of anti-union discrimination is fully applicable to public employees and workers, therefore requests the Government to carry out, without delay, an independent investigation into the alleged anti-union character of the various dismissals and terminations specified in the complaint and, if these allegations are substantiated, to take the necessary measures to rectify the anti-union discrimination and to re-employ the affected individuals. The Committee requests the Government to keep it informed of the measures taken in this respect, and of their outcome.*
- 388.** *As regards the allegations that clauses in collective agreements have been violated, the Committee takes note of the Government's observations relating to the revision of clauses in collective agreements which allow for excesses and privileges. In this respect, the Committee wishes to recall its conclusions and recommendations in Case No. 2684, in which it emphasized that control of allegedly abusive clauses of collective agreements should not be up to the administrative authority (which in the public sector is both judge and party), but rather to the judicial authority, and then only in extremely serious cases [see 363rd Report, Case No. 2684, March 2012].*
- 389.** *Recalling that the Committee has repeatedly emphasized that it is important that governments consult with trade union organizations to discuss the consequences of restructuring programmes for the employment and working conditions of employees [see **Digest**, op. cit., para. 1081], the Committee requests the Government to ensure that the trade unions and associations representing public employees are consulted on the implementation of Executive Decree No. 813 for the purpose, inter alia, of avoiding possible non-compliance with clauses in collective agreements and preventing any occurrence of anti-union discrimination. In this respect, the Committee requests the Government to ensure that such consultations provide, where necessary, for measures to be taken, including legislative and regulatory measures if needed, to introduce effective sanctions in the event of anti-union dismissals and terminations in the public sector.*
- 390.** *As regards the various judicial proceedings initiated against the adoption and implementation of Executive Decree No. 813, the Committee requests the Government to keep it informed of their outcome, and expects that the courts will pay due heed to the principle of protection against anti-union discrimination.*

## **The Committee's recommendations**

- 391.** *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) *Emphasizing that the principle of adequate protection against acts of anti-union discrimination is fully applicable to public employees and workers, the Committee requests the Government to carry out an independent investigation, without delay, into the alleged anti-union character of the various dismissals and terminations specified in the complaint. If these allegations are found to be accurate, the Committee requests the Government to take the necessary steps to rectify the anti-union discrimination and to re-employ the victims. The Committee requests the*

*Government to keep it informed of the measures taken in this respect, and of their outcome.*

- (b) *The Committee requests the Government to ensure that the trade unions are consulted on the implementation of Executive Decree No. 813 with the view, inter alia, of avoiding any non-compliance with provisions of collective agreements and preventing any occurrence of anti-union discrimination. In this respect, the Committee requests the Government to ensure that such consultations provide for the need to take measures, including legislative and regulatory measures if necessary, to introduce effective sanctions in the event of anti-union terminations and dismissals in the public sector.*
- (c) *As regards the various judicial proceedings initiated against the adoption and implementation of Executive Decree No. 813, the Committee requests the Government to keep it informed of their outcome, and expects that the courts will pay due heed to the principle of protection against anti-union discrimination.*
- (d) *The Committee draws the legislative aspects of this case to the attention of the Committee of Experts on the Application of Conventions and Recommendations.*

CASE NO. 2932

DEFINITIVE REPORT

**Complaint against the Government of El Salvador  
presented by  
the Union of Judiciary Workers (SITTOJ)**

*Allegations: The complainant organization alleges restrictions on trade union leave for union officers in the courts sector*

**392.** The complaint in the present case is contained in a communication from the Union of Judiciary Workers (SITTOJ) dated 12 December 2011, which was received in the Office on 12 March 2012. The Government sent its observations in communications dated 17 October and 13 November 2012.

**393.** 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**

**394.** In a communication dated 12 December 2011, which was received in the Office on 12 March 2012, SITTOJ alleges that Agreement No. 5-P issued by the Supreme Court of Justice on 21 July 2011 constitutes a restriction on the trade union leave granted to all officers of the trade union organizations of the judiciary, by limiting it to three officers and to one day per 40-hour working week. The complainant organization explains that it was

customary at the Supreme Court of Justice for all union officers of the complainant organization to be granted full-time leave, since the Ministry of Labour recognized SITTOJ's legal personality and provided for its registration in August 2008. However, the complainant organization also explains that the Supreme Court of Justice issued Agreement No. 5-P on 21 July 2011, which grants applicant organizations only one day of union leave per 40-hour working week, and that only three union officers designated by each organization are entitled to this union leave.

**395.** The complainant organization states that it lodged an appeal against the decision on 10 August 2011. Following a complaint by various trade unions and associations in the sector, on 30 August 2011 the Office of the Human Rights Ombudsperson established interim measures under which the Supreme Court of Justice was to: (a) refrain from applying the measures contained in Agreement No. 5-P of 21 July 2011, pending the outcome of the appeal; and (b) establish a dialogue involving representatives of the various labour organizations and trade unions working in the judiciary in order to address the issue. Notwithstanding the foregoing, on 18 October 2011, the plenary of the Supreme Court of Justice ruled on the aforementioned appeal and upheld all provisions of Agreement No. 5-P of 21 July 2011 (decision) of the Supreme Court of Justice, thus maintaining the restrictions on trade union leave.

## **B. The Government's reply**

**396.** In its communications dated 17 October and 13 November 2012, the Government states that the representatives of SITTOJ and another trade union lodged an application against the rulings of the Supreme Court of Justice before its Administrative Disputes Chamber; the Government does not however specify the content of this application. On 6 February 2012, the judges of the aforementioned chamber excused themselves from the case; on 3 May 2012, it was remanded to the plenary of the Supreme Court of Justice, where it is still pending.

## **C. The Committee's conclusions**

**397.** *The Committee notes that the present case refers to allegations of a significant restriction of the union leave granted to all officers of the trade union organizations of the judiciary.*

**398.** *The Committee notes that, according to the allegations, there was a unilateral change in the granting of trade union leave for the complainant organization as a result of the issuance by the Supreme Court of Justice of Agreement No. 5-P on 21 July 2011 (decision issued by the Court upon a first appeal), which provides that applicant organizations [of judiciary employees] may be granted one day within the 40-hour working week; and that leave may be granted for three union officers, who shall be designated by each organization (trade union leave previously covered all union officers and was full time). The Committee further observes that, according to the allegations, on 30 August 2011, the Office of the Human Rights Ombudsperson requested the establishment of a dialogue on the issue of trade union leave. The Committee notes the Government's indication that a new application lodged by the complainant organization and another trade union before the Administrative Disputes Chamber of the Supreme Court of Justice (submitted to the plenary of the Court in May 2012) is still pending, but observes that the Government does not specify the content of this application. The Committee regrets the unilateral change in practice for trade union leave and the fact that, contrary to the request by the Office of the Human Rights Ombudsperson in 2011, no dialogue has been established.*

**399.** *The Committee reminds the Government that Convention No. 151, which El Salvador has ratified, provides that such facilities shall be afforded to the representatives of recognized*

*public employees' organizations as may be appropriate in order to enable them to carry out their functions promptly and efficiently, both during and outside their hours of work (Article 6(1)), but that the granting of such facilities shall not impair the efficient operation of the administration or service concerned (Article 6(2)). The Committee stresses the importance of agreed rules concerning trade union leave and emphasizes that the parties should resume dialogue, as recommended by the Office of the Human Rights Ombudsperson. The Committee underscores that the dialogue should take into account the aforementioned criteria of Convention No. 151. The Committee requests the Government to take steps to promote dialogue between the parties concerned in order to find an appropriate solution to the union leave issue.*

### **The Committee's recommendation**

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

*The Committee requests the Government to take steps with a view to promoting dialogue between the parties concerned in order to find an appropriate solution to the issue of trade union leave.*

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 alleges detention of trade union members and anti-union acts in the context of a dispute concerning collective bargaining in the Ministry of Finance***

- 401.** The complaint in the present case is contained in a communication from the Union of Workers of the Ministry of Finance (SITRAMHA) dated 23 May 2012.
- 402.** In the absence of a reply from the Government, the Committee was obliged to postpone its examination of the case. At its May–June 2013 meeting [see 368th Report, para. 5], 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.
- 403.** 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

404. In a communication dated 23 May 2012, the SITRAMHA explains that, on 18 November 2010, it presented a list of demands to the Civil Service Tribunal, and that the delay in the commencement of bargaining gave rise to a collective labour dispute. The direct negotiation phase of the dispute began on 2 February and ended in April 2011; in the conciliation phase, which began on 15 June 2011 and ended on 26 July 2011, only 22 of the 128 clauses in the draft collective agreement were approved. The complainant adds that members at an extraordinary general meeting held on 25 July 2011 agreed to take direct action in the form of a nationwide work stoppage (to obtain a financial bonus, payment of incapacity benefit, etc. through bargaining). On 12 August 2011, the Civil Service Tribunal issued an order initiating arbitration procedures. However, the complainant states that the arbitration was also delayed as a result of the resignation on 27 September 2011 of the arbitrators appointed by the Ministry of Finance, one hour before they were due to be sworn in. The work stoppage agreed on at the 25 July 2011 extraordinary general meeting went ahead on 28, 29 and 30 November 2011.
405. The complainant alleges that, on 30 November 2011, the National Civil Police arrested the General Secretary, Ms Krissia Meny Guadalupe Flores, and the Secretary for Women's Issues, Ms Odilia Dolores Marroquín Cornejo. Both officers of the complainant organization were in the El Amatillo customs offices, where they were handcuffed and taken into police custody at different times, without being informed of the charges against them. The complainant adds that in the case of Ms Krissia Meny Guadalupe Flores, the intimidation was of a sexual nature, since she was taken in a patrol car with eight male police officers via back roads, without knowing where they were going.
406. The complainant also alleges that the National Civil Police denied police protection to three trade union members, including the National and International Relations Secretary, Mr Jorge Augusto Hernández Velásquez, who had been threatened by international road transport workers with being burned alive.

## B. The Committee's conclusions

407. *The Committee regrets that, despite the time that has elapsed since the complaint was presented, the Government has not responded to the complainant's allegations, although it has been invited on several occasions, including by means of an urgent appeal, to send its observations or information on this case. The Committee urges the Government to be more cooperative in the future.*
408. *Under these circumstances, and in accordance with the applicable rules of procedure [see 127th Report, para. 17, approved by the Governing Body at its 184th Session (1971)], the Committee is obliged to present a report on the substance of the case without being able to take account of the information which it had hoped to receive from the Government.*
409. *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 employers' and workers' freedom of association 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].*
410. *The Committee notes that this case concerns allegations of excessive delay in the collective bargaining process initiated in November 2010, of measures taken by the authorities after*

*a work stoppage from 28 to 30 November 2011 (when the arbitrators appointed by the authorities in the lengthy collective bargaining process resigned); according to the allegations, these measures consist of: (a) the arrest of two union officers (Ms Krissia Meny Guadalupe Flores and Ms Odilia Dolores Marroquín Cornejo) without being informed of the charges against them; the General Secretary, Ms Krissia Meny Guadalupe Flores, also suffered intimidation of a sexual nature; (b) refusal to provide protection to two union members and one union officer who had received death threats from road transport workers.*

- 411.** *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, as well as on the administrative or judicial proceedings initiated in this regard. The Committee recalls that the detention of trade union leaders or members for trade union activities or membership is contrary to the principles of freedom of association. It further recalls that the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and it is for governments to ensure that this principle is respected [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, paras 61 and 44]. With regard to the allegation that there are no provisions in law granting public servants in the customs service the right to strike, the Committee draws this aspect of the case to the attention of the Committee of Experts on the Application of Conventions and Recommendations. Lastly, the Committee requests the complainant and the Government to send information about the current status of the collective bargaining process.*

### **The Committee's recommendations**

- 412.** *In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) The Committee regrets that, despite the time that has elapsed since the complaint was presented, the Government has not replied to any of the complainant's allegations, although it has been invited on several occasions, including by means of an urgent appeal, to send its observations or information on the case. The Committee urges the Government to be more cooperative in the future.*
  - (b) 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.*
  - (c) The Committee draws to the attention of the Committee of Experts on the Application of Conventions and Recommendations the allegation according to which there are no provisions in law granting public servants in the customs service the right to strike.*
  - (d) The Committee requests the complainant and the Government to send information about the current status of the collective bargaining process.*



CASE NO. 2985

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

**Complaint against the Government of El Salvador  
presented by**

- **the General Trade Union of Transport Workers  
and Affiliated Industries of El Salvador (SGTITAS) and**
- **the Autonomous Confederation of Salvadorian Workers (CATS)**

***Allegations: The complainant organizations  
allege the dismissal of a trade union officer and  
coercion of workers of the TRUME SA de CV  
enterprise to withdraw their union membership***

- 413.** The complaint in this case is contained in a communication from the General Trade Union of Transport Workers and Affiliated Industries of El Salvador (SGTITAS) and the Autonomous Confederation of Salvadorian Workers (CATS) dated 13 August 2012.
- 414.** In the absence of a reply from the Government, the Committee was obliged to postpone its examination of this case. At its May–June 2013 meeting [see 368th Report, para. 5], 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.
- 415.** El Salvador 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**

- 416.** In their communication dated 13 August 2012, the SGTITAS and the CATS allege that, on 8 May 2012, the United Mexican Transport Enterprise (TRUME SA de CV) verbally dismissed without just cause the General Secretary of the SGTITAS branch, Mr Porfirio Andrés Marroquín Serrano. The complainants state that the Ministry of Labour and Social Security, through the Special Unit on Prevention of Discriminatory Labour Practices of the General Labour Inspection Directorate, conducted an initial inspection on 30 May 2012, during which it noted that the company's legal representative had violated sections 248 and 29(2) of the Labour Code governing, respectively, trade union immunity and the obligation to pay compensation for any stoppage for which the employer bears responsibility; on that occasion, the enterprise claimed to be unaware of the union's existence and of the dismissed employee's status as union officer; the inspection report recommended that Mr Porfirio Andrés Marroquín Serrano be reinstated and that he be paid compensation in the amount of US\$136, and set a time limit of three working days to remedy the reported violations. The Special Unit on Prevention of Discriminatory Labour Practices conducted a second inspection on 4 June 2012 and found that the violations noted during the first inspection had not been remedied.
- 417.** The complainant organizations state that in order to exert pressure on the enterprise to reinstate Mr Marroquín Serrano, they stopped work on 70 transport units on enterprise

premises for approximately 12 hours on 18 June 2012. On that occasion, the Special Unit on Prevention of Discriminatory Labour Practices carried out a third inspection, during which it noted that the observed violations had still not been remedied and set a time limit of three working days to do so. On 25 June 2012, a meeting was held on enterprise premises which was attended by the General Secretary of the Autonomous Trade Union Federation of Salvadorian Workers; the General Secretary of the Trade Union Federation of Independent Workers; Mr Porfirio Andrés Marroquín Serrano; and the enterprise's President and legal representative. The complainants state that, in the course of that meeting, the enterprise representative informed those present that it had been agreed in a meeting with the company partners not to reinstate Mr Marroquín Serrano. On 25 June 2012, the Special Unit on Prevention of Discriminatory Labour Practices carried out a fourth inspection, during which it noted that the observed violations had still not been remedied. The complainant organizations add that a complaint has been filed with the Fourth Labour Court of San Salvador and that the proceedings are in the evidence-gathering phase.

418. The complainant organizations also allege that the enterprise, through its legal representative, had coerced the workers to revoke their membership of the SGTITAS branch, including the members of the branch's executive committee. The branch members submitted their membership cancellations to the General Secretary of the SGTITAS.

## **B. The Committee's conclusions**

419. *The Committee regrets that, despite the time that has passed since the complaint was presented, the Government has not replied to any of the allegations made by the complainant, although it has been invited several times, including by urgent appeal, to send its observations or information on this case. The Committee urges the Government to be more cooperative in the future.*
420. *Under these circumstances, and in accordance with the applicable rules of procedure [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.*
421. *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 the freedom of association rights of workers and employers, both in fact and in law. 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].*
422. *The Committee notes that this case concerns allegations of dismissal of a trade union officer by TRUME SA de CV and allegations of coercion of workers to revoke their trade union membership.*
423. *Concerning the first allegation, the Committee notes that the Special Unit on Prevention of Discriminatory Labour Practices of the General Labour Inspection Directorate carried out four inspections, on 30 May and 4, 18 and 25 June 2012, in which it found that Mr Porfirio Andrés Marroquín Serrano's dismissal on 8 May 2012 violated articles 248 and 29(2) of the Labour Code, relating respectively to trade union immunity (prohibiting the dismissal of trade union officers during their term of office) and to payment of compensation for any stoppage (of work) for which the employer bears responsibility; and that the enterprise had hitherto (at the time of the fourth inspection) failed to remedy those*

violations. The Committee also notes that a complaint has been filed with the Fourth Labour Court of San Salvador and that the legal proceedings are in the evidence-gathering phase. The Committee requests the Government to send its observations, obtain the enterprise's comments through the relevant employers' organization, and keep the Committee informed of the progress of the ongoing judicial proceedings. The Committee recalls in general terms that no person should be dismissed or prejudiced in employment by reason of trade union membership or legitimate trade union activities, and it is important to forbid and penalize in practice all acts of anti-union discrimination in respect of employment [see *Digest of decisions and principles of the Freedom of Association Committee*, fifth (revised) edition, 2006, para. 771]. The Committee requests the Government to ensure that, if the court rules that the union officer's dismissal was anti-union in nature, steps will be taken to reinstate him immediately.

424. As regards the allegations that the enterprise coerced workers to revoke their union membership, the Committee notes that according to the allegations, the enterprise coerced all of its workers, including the members of the branch's executive committee, to revoke their membership of the SGTITAS branch, resulting in the branch members submitting their membership cancellations to the General Secretary of the organization. The Committee requests the Government to send its observations in this regard and to obtain the enterprise's comments on the allegations through the relevant employers' organization. The Committee requests the Government and the complainant organizations to state whether any official complaints have been lodged with the authorities in relation to these allegations. In general terms, the Committee notes that any coercion of workers or trade union officers to revoke their union membership constitutes a violation of the principle of freedom of association, in violation of Convention No. 87.

### The Committee's recommendations

425. In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:
- (a) The Committee regrets that, despite the time that has passed since the complaint was presented, the Government has not replied to any of the allegations made by the complainant organizations, although it has been invited several times, including by urgent appeal, to send its observations or information on this case. The Committee urges the Government to be more cooperative in the future.
  - (b) As regards the dismissal of the trade union officer, Mr Porfirio Andrés Marroquín Serrano, the Committee requests the Government to send its observations, obtain the enterprise's comments through the relevant employers' organization, and keep the Committee informed of the progress of the ongoing judicial proceedings. The Committee requests the Government to ensure that, if the court rules that the union officer's dismissal was anti-union in nature, steps will be taken to reinstate him immediately.
  - (c) Concerning the allegations that the enterprise pressured workers to revoke their union membership, the Committee requests the Government to send its observations in this regard. It requests the Government and the complainant organizations to state whether any formal complaints have been lodged with the authorities in relation to these allegations.

CASE NO. 2723

INTERIM REPORT

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

- **the Fiji Trades Union Congress (FTUC)**
- **the Fiji Islands Council of Trade Unions (FICTU)**
- **the Fijian Teachers' Association (FTA)**
- **Education International (EI) and**
- **the International Trade Union Confederation (ITUC)**

*Allegations: Acts of assault, harassment, intimidation and arrest and detention of trade union leaders and members, ongoing interference with internal trade union affairs, the dismissal of a trade union leader in the public service education sector, undue restrictions on trade union meetings, and the issuance of several decrees curtailing trade union rights*

- 426.** The Committee last examined this case at its November 2012 meeting, when it presented an interim report to the Governing Body [365th Report, paras 693–783 approved by the Governing Body at its 316th Session (November 2012)].
- 427.** The complainants submitted new allegations in communications dated 18 and 22 February and 6 September 2013. The Fiji Bank and Finance Sector Employees Union (FBFSEU) has associated itself with the complaint by a communication dated 25 February 2013.
- 428.** Since there has been no reply from the Government, the Committee has been obliged to postpone its examination of the case on two occasions. At its meeting in May–June 2013 [see 368th Report, para. 5], the Committee issued an urgent appeal to the Government indicating that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body, it could present a report on the substance of the case 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.
- 429.** Fiji 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**

- 430.** In its previous examination of the case in November 2012, the Committee made the following recommendations [see 365th Report, para. 783]:
- (a) Expressing its grave concern that, while the Government had accepted a direct contacts mission to the country in line with its previous recommendation, the ILO Direct Contacts Mission that visited Fiji in September 2012 was not allowed to continue its work and was advised to depart expeditiously so that the Government could welcome a visit under the new terms of reference presented by it, the Committee firmly expects that

the Government will rapidly re-establish dialogue in this regard so that the Direct Contacts Mission may return to the country without delay within the framework of the mandate bestowed upon it and report back to the Governing Body.

- (b) While it understands that Mr Koroi has left the country, the Committee expects that this case will be deliberated by the ERAB without further delay, and that, in the framework of this exercise, the conclusions that the Committee made in this regard when examining this case at its meeting in November 2010 [see 358th Report, paras 550–553] will be duly taken into account, with a view to rehabilitating Mr Koroi and considering his reinstatement should he return to Fiji.
- (c) Reiterating its deep concern at the numerous acts of assault, harassment and intimidation of trade union leaders and members for their exercise of the right to freedom of association previously alleged by the complainants, the Committee urges the Government, even if the victims have lodged a complaint in the meantime, to conduct ex officio an independent investigation without delay into the alleged acts of assault, harassment and intimidation against: Mr Felix Anthony, National Secretary of the FTUC and General Secretary of the Fiji Sugar Workers; Mr Mohammed Khalil, President of the Fiji Sugar and General Workers Union – Ba Branch; Mr Attar Singh, General Secretary of the FICTU; Mr Taniela Tabu, General Secretary of the Viti National Union of Taukei Workers; and Mr Anand Singh, lawyer. The Committee requests the Government to transmit detailed information with regard to the outcome of such inquiry and the action taken as a result. With particular regard to the allegation that an act of assault against a trade union leader was perpetrated in retaliation for statements made by the FTUC National Secretary at the ILC, the Committee urges the Government to ensure that no trade unionist suffers retaliation for the exercise of freedom of expression. The Committee generally urges the Government to take full account of the relevant principles enounced in its conclusions in the future.
- (d) The Committee urges the Government to take the necessary measures to ensure that all criminal charges of unlawful assembly brought against Mr Daniel Urai, the FTUC President and NUHCTIE General Secretary, and Mr Nitendra Goundar, a NUHCTIE member, on the grounds of failure to observe the terms of the Public Emergency Regulations are immediately dropped, and to keep it informed of any developments in this regard without delay, including the outcome of the case hearing that the Committee understands was deferred.
- (e) While welcoming the lifting of the emergency legislation in the form of the PER on 7 January 2012, the Committee, further welcoming the decision to temporarily suspend the application of section 8 of the Public Order Act as amended by the POAD, which placed important restrictions on freedom of assembly, requests the Government to consider abrogation or amendment of the POAD. Stressing that freedom of assembly and freedom of opinion and expression are a sine qua non for the exercise of freedom of association, the Committee once again urges the Government to take full account of the principles enounced in its conclusions in the future and refrain from unduly impeding the lawful exercise of trade union rights in practice. It also requests the Government to reinstate Mr Rajeshwar Singh, FTUC Assistant National Secretary, in his position representing workers' interests on the ATS Board without delay.
- (f) Recalling its previous conclusion that the Essential National Industries Decree No. 35 of 2011 and its implementing regulations give rise to serious violations of Conventions Nos 87 and 98 and the principles on freedom of association and collective bargaining, and taking due note of its alleged disastrous effects on the unions concerned, the Committee notes the review by the tripartite ERAB subcommittee of all existing government decrees relating to labour in terms of their conformity with the ILO fundamental Conventions, as well as the subcommittee's agreement, as reported by the complainant, to delete most of the provisions of the Essential National Industries Decree that were considered as offending. The Committee firmly expects that the measures agreed by the tripartite ERAB subcommittee will be actively pursued and given effect without delay, so as to bring the legislation into conformity with freedom of association and collective bargaining principles, and requests the Government to keep it informed of the progress made in this regard without delay.

- (g) Noting with interest the adoption of the Public Service (Amendment) Decree No. 36 of 2011 and welcoming the decision recently rendered by the High Court of Fiji and the new internal grievance policy implemented by the PSC, the Committee requests the Government to supply a copy of the High Court decision. It also requests the Government to provide information on the relevant mechanisms currently available to public servants to address individual and collective grievances, and to indicate the results of the review by the tripartite ERAB subcommittee of all existing government decrees relating to the public service in terms of their conformity with the ILO fundamental Conventions.
- (h) The Committee requests the Government to take the necessary measures to ensure that arrangements are made between the parties to ensure the full reactivation of the check-off facility in the public sector and the relevant sectors considered as “essential national industries”.
- (i) The Committee draws the legislative aspects of this case to the attention of the Committee of Experts on the Application of Conventions and Recommendations.
- (j) The Committee draws the special attention of the Governing Body to this case because of the extreme seriousness and urgency of the matters dealt with therein.

## **B. The complainants’ new allegations**

**431.** In communications dated 18 and 22 February 2013, the complainants denounce the issuance on 15 January 2013 of the Political Parties (Registration, Conduct, Funding and Disclosures) Decree (No. 4) as well as its Amendment Decree of 18 February 2013 (No. 11). According to its section 14(1), public officers shall not be eligible to be an applicant or a member of a proposed or registered political party nor to hold office in such political party, shall not engage in political activity that may compromise or be seen to compromise the political neutrality of that person’s office, and shall not publicly indicate support for, or opposition to, any proposed or registered political party. Section 14(2) of the Political Parties Decree defines the term “public officer” as including any person who is holding any office (whether elected or appointed and including any remunerated position or arrangement) in any trade union registered under the Employment Relations Promulgation 2007 or any federation, congress, council or affiliation of trade unions or of employers. Section 14(4) and (5) provides that any public officer who intends to be an applicant or a member of, or hold office in, a proposed or registered political party, must resign from the respective public office or will be deemed to have resigned.

**432.** In the Fiji Trades Union Congress’ (FTUC) view, the Political Parties Decree, which was issued three days after the FTUC had decided at a special delegates conference to form a political movement, denies trade unionists any political rights (right to be a member of a political party, right to hold office in a political party, right to engage in any political activity and even the right to indicate support or opposition to any political party) and seeks to ensure that trade union representatives are not able to involve themselves in any political activity.

**433.** In a communication dated 6 September 2013, the International Trade Union Confederation (ITUC) indicates that in July, the Fiji Sugar and General Workers’ Union (FSGWU) filed a legal notice to hold a secret ballot for strike action, as sugar mill workers had not received a pay rise in seven years. Although the Fiji Sugar Corporation (FSC) had refused and continued to refuse to bargain with the union, it announced a unilateral 5.3 per cent wage increase after the strike notice. However, in the complainants’ view, this measure does not begin to address the over 40 per cent decline in real wages for sugar workers over the last seven years. The complainant further alleges that FSC management subsequently held meetings in all work stations to intimidate union members not to vote for a strike and threatened that they would inform the Government as to who had voted despite the threats. As of 23 July 2013, when balloting started, police and military officers were present at

polling sites to threaten and intimidate workers. The Attorney-General also issued threats to the union via the press, the latest of which said that the Government would intervene to keep the mills open and running in the case of a strike. By 26 July 2013, balloting had concluded. Despite the intense intimidation, 67.5 per cent of members voted, of which 90 per cent voted in favour of strike action. These results exceed the required 50 per cent of eligible members to vote in favour of strike action. After some delay, the Ministry of Labour registered the results of the vote.

- 434.** The complainant also states that, throughout August 2013, there has been continual intimidation of mill workers by military and/or management (e.g. threats with termination of employment or military camp if the strike was going to take place, distribution of forms to fill in as to intention to go on strike). Furthermore, at the end of August 2013, Felix Anthony was asked by workers to address a lunch break meeting outside the Lautoka Mill but on his arrival, management dispatched security guards (former and current military officers) and disallowed any meeting on the grounds around the mill, although the law allows union officials to enter the workplace so long as work is not disrupted. According to the complainant, management has put substantial pressure on workers by signing up retired workers and casual workers including temporary tradesmen to serve as replacement workers in the case of a strike and by advising that the FSC will recruit workers from other countries to operate the mills when the strike happens. Management continues to refuse to talk to the union despite the legal requirement to negotiate in good faith.
- 435.** Lastly, the complainant alleges that, on 6 September 2013, police arrested over 30 protestors, including political party and trade union leaders, who had assembled outside of the Government House in Suva to denounce the entry into force of the new Constitution. In arresting the peaceful protestors, the Government explained that they did not have the permission of the authorities. This part of the repressive Public Order Amendment Decree was suspended during the constitutional reform process but is apparently once again in force.

### **C. The Committee's conclusions**

- 436.** *The Committee deeply regrets that, despite the time that has elapsed since the last examination of the complaint, the Government has once again not replied to the complainants' allegations even though it has been requested several times, including through an urgent appeal.*
- 437.** *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.*
- 438.** *The Committee reminds the Government that the purpose of the whole procedure established by the International Labour Organization for the examination of allegations of violations of freedom of association is to promote respect for this freedom in law and in fact. The Committee remains confident that, if the procedure protects governments from unreasonable accusations, governments, in turn, will recognize the importance of presenting, for objective examination, detailed replies concerning allegations made against them [see First Report, para. 31].*
- 439.** *Under these circumstances, recalling that this complaint concerns allegations of several acts of assault, harassment, intimidation and arrest and detention of trade union leaders and members, ongoing interference with internal trade union affairs, the dismissal of a trade union leader in the public service education sector, undue restrictions on trade union meetings and the issuance of several decrees curtailing trade union rights, the Committee*

*finds itself obliged to reiterate the conclusions it made when it examined this case at its meeting in November 2012 [see 365th Report, paras 767–778 and 782]. As regards the Essential National Industries Decree (ENID) in particular, recalling its conclusion that numerous provisions give rise to serious violations of the principles on freedom of association and collective bargaining, the Committee urges the Government to take the necessary steps without delay, in full consultation with the social partners and in accordance with the measures agreed by the tripartite subcommittee of the Employment Relations Advisory Board (ERAB) in 2012, to amend or delete the specific provisions of the ENID previously identified by the Committee as giving rise to serious violations of the principles on freedom of association and collective bargaining, so as to bring the Decree into conformity with Conventions Nos 87 and 98, ratified by Fiji. It requests the Government to keep it informed of the progress made in this regard without delay.*

**440.** *As to the decrees relating to the public sector eliminating the access of public service workers to judicial or administrative review, the Committee notes from the information and documentation supplied by the Government that public servants can appeal administrative decisions affecting them individually through the internal grievance procedures available for the public service. While noting that, according to article 164 of the Constitution, the State Services Decree 2009 and the Administration of Justice Decree 2009 are repealed, the Committee notes with regret that sections 23 to 23D of the latter decree, which precisely eliminate the remedy of judicial review for public servants, shall continue to be in force (article 174): The Committee further notes from the High Court judgments supplied by the Government at the request of the Committee that: (i) as regards jurisdiction, it was held on 23 March 2012 that section 23B of the Administration of Justice Decree did not preclude public servants from bringing to court a government decision to terminate their employment (State v. Permanent Secretary for Works, Transport and Public Utilities ex parte Rusiate Tubunaruaria & Ors HBJ01 of 2012); and (ii) the case was dismissed on 22 April 2013 because alternative remedies (for example, internal grievance procedure) had not been used, because the employment was governed by the Terms and Conditions of Employment for Government Wage Earners and remedies therefore pertained to private law, and because the appointing authority was a public body and the case was thus not susceptible to judicial review (HBJ02 of 2012). The Committee requests the Government to take all necessary measures to ensure that public servants have genuine and effective recourse to judicial review of any decisions or actions of government entities, and again requests the Government to provide information on the mechanisms available to public servants to address collective grievances. The Committee also requests the Government to provide practical information on the recourse had by public servants to administrative and judicial review (for example, use, length and outcome of proceedings). Moreover, the Committee once again requests the Government to indicate the results of the review by the ERAB subcommittee of all government decrees relating to the public service in terms of their conformity with the ILO fundamental Conventions.*

**441.** *The Committee also notes with deep concern the complainants' new allegations, in particular that: (i) under the Political Parties Decree, persons holding an office in any workers' or employers' organization are banned from membership or office in any political party and any political activity, including merely expressing support; (ii) members of the FSGWU have been threatened and intimidated by the military and management of the government-owned FSC before and during the holding of the strike ballot at the end of July and continue to be intimidated following the successful strike vote; (iii) the management dispatched former military officers and prohibited a union meeting at the end of August upon arrival of Felix Anthony, although the meeting was scheduled during lunch hour and outside the premises of the mill; and (iv) on 6 September 2013, over 30 protestors, including political party and trade union leaders, who had assembled to denounce the entry into force of the new Constitution, were arrested. The Committee urges*



*the Government to provide its observations to these serious allegations without delay. It wishes to generally recall in this regard that a general prohibition on trade unions from engaging in any political activities would not only be incompatible with the principles of freedom of association, but also unrealistic in practice (for example, trade union organizations may wish to express publicly their opinion regarding the Government's economic and social policy). The Committee also generally reiterates that the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and it is for governments to ensure that this principle is respected (see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, paras 503 and 44).*

- 442.** *Taking note of the letter dated 15 October 2013 submitted by the Prime Minister of Fiji in reply to a communication of 3 July 2013 from the ILO Director-General, the Committee strongly regrets that it is still obliged to observe that the ILO direct contacts mission that visited Fiji in September 2012 has still not been allowed to return to the country in line with its previous recommendation and the decisions adopted by the Governing Body. The Committee firmly urges the Government to accept the return of the direct contacts mission without further delay within the framework of the mandate bestowed upon it by the Governing Body based on the Committee's conclusions and recommendations.*
- 443.** *Lastly, the Committee observes that a number of Workers' delegates at the Conference submitted a complaint under article 26 of the ILO Constitution concerning alleged violation by Fiji of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), which is pending for consideration by the Governing Body at its current session.*

### **The Committee's recommendations**

- 444.** *In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) *Reiterating its deep concern at the numerous acts of assault, harassment and intimidation of trade union leaders and members for their exercise of the right to freedom of association previously alleged by the complainants, the Committee once again urges the Government, even if the victims have lodged a complaint in the meantime, to conduct ex officio an independent investigation without delay into the alleged acts of assault, harassment and intimidation against: Mr Felix Anthony, National Secretary of the FTUC and General Secretary of the FSGWU; Mr Mohammed Khalil, President of the FGSWU – Ba Branch; Mr Attar Singh, General Secretary of the FICTU; Mr Taniela Tabu, General Secretary of the Viti National Union of Taukei Workers; and Mr Anand Singh, lawyer. The Committee requests the Government to transmit detailed information with regard to the outcome of such inquiry and the action taken as a result. With particular regard to the allegation that an act of assault against a trade union leader was perpetrated in retaliation for statements made by the FTUC National Secretary at the ILC, the Committee urges the Government to ensure that no trade unionist suffers retaliation for the exercise of freedom of expression. The Committee generally urges the Government to take full account in the future of the relevant principles enounced in its previous conclusions.*

- (b) *The Committee once again urges the Government to take the necessary measures to ensure that all criminal charges of unlawful assembly brought against Mr Daniel Urai, the FTUC President and General Secretary of the National Union of Hospitality, Catering and Tourism Industries Employees (NUHCTIE), and Mr Nitendra Goundar, a NUHCTIE member, on the grounds of failure to observe the terms of the Public Emergency Regulations (PER), are immediately dropped, and to keep it informed of any developments in this regard without delay, including the outcome of the case hearing that the Committee understands was deferred.*
- (c) *While noting the lifting of the emergency legislation in the form of the PER on 7 January 2012, and the decision to temporarily suspend the application of section 8 of the Public Order Act as amended by the Public Order (Amendment) Decree No. 1 of 2012 (POAD) that placed important restrictions on freedom of assembly, the Committee again requests the Government to consider abrogation or amendment of the POAD. Stressing that freedom of assembly and freedom of opinion and expression are a sine qua non for the exercise of freedom of association, the Committee once again urges the Government to ensure full respect for these principles. It also requests the Government to reinstate Mr Rajeshwar Singh, FTUC Assistant National Secretary, in his position representing workers' interests on the Air Terminal Services (ATS) Board without delay.*
- (d) *As regards the ENID, the Committee urges the Government to take the necessary steps without delay, in full consultation with the social partners and in accordance with the measures agreed by the tripartite ERAB subcommittee in 2012, to amend or delete the specific provisions of the ENID previously identified by the Committee as giving rise to serious violations of the principles on freedom of association and collective bargaining, so as to bring the Decree into conformity with Conventions Nos 87 and 98, ratified by Fiji, and requests the Government to keep it informed of the progress made in this regard without delay.*
- (e) *The Committee requests the Government to take all necessary measures to ensure that public servants have genuine and effective recourse to judicial review of any decisions or actions of government entities, and to provide practical information on the recourse had by public servants to administrative and judicial review (for example, use, length and outcome of proceedings). Moreover, the Committee once again requests the Government to provide information on the mechanisms available to public servants to address collective grievances, and to indicate the results of the review by the ERAB subcommittee of all government decrees relating to the public service in terms of their conformity with the ILO fundamental Conventions.*
- (f) *The Committee urges the Government to take the necessary measures to ensure that arrangements are made between the parties to ensure the full reactivation of the check-off facility in the public sector and the relevant sectors considered as "essential national industries".*
- (g) *While it understands that Mr Koroï has left the country, the Committee expects that this case will be deliberated by the ERAB without further delay,*

*and that, in the framework of this exercise, the conclusions that the Committee made in this regard when examining this case at its meeting in November 2010 [see 358th Report, paras 550–553] will be duly taken into account, with a view to rehabilitating Mr Koroi and considering his reinstatement should he return to Fiji.*

- (h) The Committee urges the Government to provide its observations to the complainants' new allegations without delay.*
- (i) Strongly regretting that it is still obliged to observe that the ILO direct contacts mission that visited Fiji in September 2012 has still not been allowed to return to the country in line with the previous recommendation of the Committee and the decisions adopted by the Governing Body, the Committee firmly urges the Government to accept the return of the direct contacts mission without further delay, within the framework of the mandate bestowed upon it by the Governing Body based on the Committee's conclusions and recommendations.*
- (j) The Committee draws the legislative aspects of this case to the attention of the Committee of Experts on the Application of Conventions and Recommendations.*
- (k) The Committee draws the special attention of the Governing Body to the extreme seriousness and urgent nature of the matters dealt with in this case.*

CASE No. 2768

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

**Complaints against the Government of Guatemala  
presented by  
the Guatemalan Trade Union, Indigenous and Campesino  
Movement (MSICG) acting through their Political Council  
made up of:**

- the Central Confederation of Workers of Guatemala (CGTG),
- the Trade Union Confederation of Guatemala (CUSG),
- the Altiplano Campesino Committee (CCDA),
- the National Indigenous, Campesino and People's Council (CNAICP),
- the National Front for the Defence of Public Services and Natural Resources (FNL) and
- the Trade Union of Workers of Guatemala (UNSITRAGUA)

*Allegations: Unilateral amendment by the authorities of the statutes of two trade unions, anti-union discrimination in hiring, impediments to the right to organize through the signature of civil contracts for professional services, and an anti-union dismissal*

445. The Committee last examined this complaint at its March 2012 meeting when it presented an interim report to the Governing Body [see 363rd Report, approved by the Governing Body at its 313th Session (March 2012), paras 620–644].
446. The complainant organization sent additional information in relation to the complaint in communications dated 10 May 2012, and 21 February and 6 March 2013.
447. The Government sent its observations in communications dated 18 April, 6 June, 31 October and 23 November 2012, and on 21 March 2013.
448. 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**

449. At its March 2012 meeting, the Committee made the following recommendations [see 363rd Report, para. 644]:
- (a) Regarding the unilateral amendment by the authorities of the statutes of two trade unions, the Committee requests the Government to take the necessary measures to ensure that the statutes of the two trade unions mentioned above include the reference to their affiliation with (the new or original) UNSITRAGUA, to consult them in order to determine which of the two federations is the one with which they wish to be affiliated, and to keep it informed in this respect.
  - (b) Regarding the alleged instances of discrimination in hiring, and while expressing its deep concern at the seriousness of the allegations concerning issues that affect people's private lives, the Committee expresses its fear that the use of polygraph tests during hiring interviews may lead to anti-union discriminations, and therefore requests the Government to indicate the conclusions reached and actions taken by the authorities as a result of the reports of the use of polygraphs for anti-union purposes.
  - (c) Regarding the failure to recognize trade union rights as a result of the signature of civil contracts, the Committee urges the Government to fully respect Conventions Nos 87 and 98, and in particular to guarantee the trade union rights of the many workers contracted under "State budget line 029".
  - (d) Regarding the dismissal of Ms Lesbia Guadalupe Amézquita Garnica, the Committee requests the Government to send without delay its observations on this matter, including the comments of concerned parties including the FES, and to indicate whether Ms Amézquita Garnica has lodged a complaint in relation with these events. The Committee also requests the Government to provide information concerning the criminal proceedings allegedly requested by the FES.

#### **B. Additional information from the complainant organization**

450. In its communication of 10 May 2012, the complainant organization provides additional information regarding the actions taken by Ms Lesbia Guadalupe Amézquita Garnica following her dismissal. On 24 June 2010, the worker filed a written complaint before the General Labour Inspectorate to denounce the anti-union nature of her dismissal and filed a judicial action before the labour court against the foundation Friedrich Ebert Stiftung (FES) in August 2010, requesting the annulment of her dismissal and her reinstatement.
451. In communications of 21 February and 6 March 2013, the complainant organization indicates that, in a ruling dated 25 October 2012, the First Labour and Social Security Court upheld the worker's claim, ordering her reinstatement and the back payment of the

wages and other benefits owed to her for the period following her dismissal. The worker also indicates that she was reinstated on 5 March 2013 and that she received the payment of all the benefits mentioned in the court ruling under an out-of-court agreement with the FES. The complainant organization considers that the violation denounced before the Committee on Freedom of Association has been remedied and that it is no longer necessary to continue with the examination of this allegation.

### C. The Government's reply

452. The observations sent by the Government deal with issues different to those pending in this case.

### D. The Committee's conclusions

453. *As regards the dismissal of Ms Lesbia Guadalupe Amézquita Garnica, the Committee notes the information provided by the complainant organization indicating that, following a ruling of the First Labour and Social Security Court and an out-of-court agreement with the FES, the worker was reinstated and received the back payment of the wages and benefits owed to her. The Committee also notes that the complainant organization considers that the violation denounced has been remedied and that it is no longer necessary to continue with the examination of this allegation. Taking into account this information, the Committee will not pursue its examination of this allegation.*

454. *As regards the other pending issues, the Committee regrets that, despite the time that has elapsed since its last examination of the case, the Government has not sent the requested information and requests the Government to be more cooperative in the future. The Committee therefore reiterates its previous recommendations:*

- Regarding the unilateral amendment by the authorities of the statutes of the Union of Independent Traders of the Cahabón Municipal Market and the Trade Union of Workers of the National Institute of Forensic Sciences, the Committee yet again requests the Government to take the necessary measures to ensure that the statutes of the two trade unions mentioned above include the reference to their affiliation with (the new or original) UNSITRAGUA, to consult them in order to determine which of the two federations is the one with which they wish to be affiliated, and to keep it informed in this respect.
- Regarding the alleged instances of discrimination in hiring, and while expressing its deep concern at the seriousness of the allegations concerning issues that affect people's private lives, the Committee expresses its fear that the use of polygraph tests during hiring interviews may lead to anti-union discriminations, and therefore once again requests the Government to indicate the conclusions reached and actions taken by the authorities as a result of the reports of the use of polygraphs for anti-union purposes.

### The Committee's recommendation

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

*While it regrets the lack of information from the Government on the issues pending, the Committee yet again reiterates its previous recommendations:*

- *Regarding the unilateral amendment by the authorities of the statutes of the Union of Independent Traders of the Cahabón Municipal Market and the Trade Union of Workers of the National Institute of Forensic Sciences, the Committee yet again requests the Government to take the necessary measures to ensure that*

*the statutes of the two trade unions include the reference to their affiliation with (the new or original) UNSITRAGUA, to consult them in order to determine which of the two federations is the one with which they wish to be affiliated, and to keep it informed in this respect.*

- *Regarding the alleged instances of discrimination in hiring, and while expressing its deep concern at the seriousness of the allegations concerning issues that affect people’s private lives, the Committee expresses its fear that the use of polygraph tests during hiring interviews may lead to anti-union discriminations, and therefore once again requests the Government to indicate the conclusions reached and actions taken by the authorities as a result of the reports of the use of polygraphs for anti-union purposes.*

CASE No. 2794

INTERIM REPORT

**Complaint against the Government of Kiribati  
presented by  
the Kiribati Trade Union Congress (KTUC)**

***Allegations: The complainant organization  
alleges the infringement of the right to strike in  
the education sector***

- 456.** The Committee last examined this case at its November 2012 meeting, when it presented an interim report to the Governing Body [365th Report, paras 1101–1109 approved by the Governing Body at its 316th Session (November 2012)].
- 457.** Since there has been no reply from the Government, the Committee has been obliged to postpone its examination of the case on two occasions. At its meeting in May–June 2013 [see 368th Report, para. 5], the Committee issued an urgent appeal to the Government, indicating that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body, it could present a report on the substance of the case 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.
- 458.** Kiribati 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**

- 459.** In its previous examination of the case in November 2012, the Committee made the following recommendations [see 365th Report, para. 1109]:
- (a) The Committee deeply regrets that, despite the time that has elapsed since the presentation of the complaint, the Government has once again not replied to the complainant’s allegations, even though it has been requested several times, including through an urgent appeal. The Committee urges the Government to be more cooperative in this case and invites the Government to seek technical assistance from the Office.
  - (b) The Committee urges the Government to provide detailed information in reply to the allegations that the Minister of Labour declared the strike illegal even though the KUT complied with all the prerequisites to declare a strike under the applicable laws.

- (c) The Committee further urges the Government to provide detailed information without delay in relation to the allegations of threats and intimidation by the Ministry of Education during the strike, to the effect that failure to return to work would lead to the dismissal of the strikers, as well as the allegations concerning sanctions and the dismissal of members of the KUT for the strike action. It urges the Government to take the necessary measures to ensure that any worker who has been dismissed for the exercise of legitimate strike action is immediately reinstated in his or her post, with payment for lost wages and that any sanctions taken against them are lifted.
- (d) The Committee requests the Government and the complainant to indicate the status of the negotiations between the Ministry of Education, the Public Service Office and the KUT and to indicate whether a new collective bargaining agreement has since been signed.

## **B. The Committee's conclusions**

- 460.** *The Committee deeply regrets that, despite the time that has elapsed since the presentation of the complaint, the Government has once again not replied to the complainant's allegations even though it has been requested several times, including through an urgent appeal.*
- 461.** *Hence, in accordance with the applicable procedural rules [see 127th Report, para. 17, approved by the Governing Body at its 184th Session (1971)], the Committee is obliged to present a report on the substance of the case without being able to take account of the information which it had hoped to receive from the Government.*
- 462.** *The Committee reminds the Government that the purpose of the whole procedure established by the International Labour Organization for the examination of allegations of violations of freedom of association is to promote respect for this freedom in law and in fact. The Committee remains confident that, if the procedure protects governments from unreasonable accusations, governments, in turn, will recognize the importance of presenting, for objective examination, detailed replies concerning allegations made against them [see First Report, para. 31].*
- 463.** *Under these circumstances, recalling that this complaint concerns allegations of infringement of the right to strike of the Kiribati Union of Teachers (KUT) by the Government and acts of anti-union discrimination in connection with the strike which took place from 4 to 7 December 2009, the Committee finds itself obliged to reiterate the conclusions and recommendations it made when it examined this case at its meeting in November 2012 [see 365th Report, paras 1101–1109].*

## **The Committee's recommendations**

- 464.** *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 the time that has elapsed since the presentation of the complaint, the Government has once again not replied to the complainant's allegations, even though it has been requested several times, including through an urgent appeal. The Committee urges the Government to be more cooperative in this case and strongly encourages the Government to seek technical assistance from the Office.*
  - (b) *The Committee urges the Government to provide detailed information in reply to the allegations that the Minister of Labour declared the strike illegal*

*even though the KUT complied with all the prerequisites to declare a strike under the applicable laws.*

- (c) *The Committee further urges the Government to provide detailed information without delay in relation to the allegations of threats and intimidation by the Ministry of Education during the strike, to the effect that failure to return to work would lead to the dismissal of the strikers, as well as the allegations concerning sanctions and the dismissal of members of the KUT for the strike action. It urges the Government to take the necessary measures to ensure that any worker who has been dismissed for the exercise of legitimate strike action is immediately reinstated in his or her post, with payment for lost wages and that any sanctions taken against them are lifted.*
- (d) *The Committee requests the Government and the complainant to indicate the status of the negotiations between the Ministry of Education, the Public Service Office and the KUT and to indicate whether a new collective bargaining agreement has since been signed.*

CASE NO. 2961

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

**Complaint against the Government of Lebanon  
presented by  
the League of Teachers of Public Secondary Education  
in Lebanon (LPESPL)  
supported by  
Educational International (EI)**

***Allegations: The complainant organization  
alleges the denial of trade union rights in the  
public sector, notably in the education sector***

- 465.** The complaint is contained in a communication from the League of Teachers of Public Secondary Education in Lebanon (LPESPL) dated 5 June 2012. Education International (EI) associated itself with the complaint on 6 March 2013.
- 466.** The Government forwarded its response to the allegations in a communication dated 11 October 2012.
- 467.** Lebanon has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), but has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

#### **A. The complainants' allegations**

- 468.** In a communication dated 5 June 2012, the complainant organization alleges the denial of trade union rights in the public sector, notably in the education sector. It denounces the Government's violation of international labour standards, including Convention No. 87 as



regards the right conferred to public sector employees, such as civil servants, teachers and professors, of all categories, to establish independent trade unions, to transform their current associations into independent unions and to commence negotiations on their working conditions and the defence of their legitimate interests.

- 469.** The complainant indicates that the increasing socio-economic hardship facing workers and employees in Lebanon, coupled with the Government's insistence on excluding an important category of wage workers (public servants, including teachers) from the protection for trade unions, and the continuing legal restrictions on other categories (workers in the private sector, as well as workers excluded from the labour law) has led to a severe distortion of the representativeness and structure of the Lebanese trade union movement as well as its ability to defend the interests of workers and public sector employees in Lebanon. This has significantly weakened the trade union movement as a social partner, to engage in effective and constructive social dialogue and to achieve its goal to strengthen and defend the interests of its members.
- 470.** In view of the importance of legislation in the consecration of rights set out in international covenants and conventions on human rights (a part of which are the international labour standards), and given that the Lebanese laws governing employment relations in the private and public sector violate international labour standards in many ways, that Lebanon is among the member States that approved the ILO Constitution and principles, and that the subject of the complaint falls within the ILO's jurisdiction, the complainant states that it is filing this complaint with the Committee for examination and requests the active intervention of the ILO with the Government in order to put an end to these violations and achieve full compliance with the fundamental rights and principles at work.
- 471.** The complainant indicates that the Lebanese Constitution is headed by a Preamble that was added to it through Constitutional Act No. 18 on 21 September 1991. In section C of the Preamble, it is declared that "Lebanon is a democratic parliamentary republic based on the respect of public freedoms, especially the right of expression and belief, and on social justice and equality of rights and responsibilities between all citizens without discrimination or preference". This founding principle highlights the democratic nature of the Lebanese system, which entails working on providing opportunities guaranteeing that citizens enjoy the rights associated to this democratic system, especially those explicitly "guaranteed within the frame of law" by the Constitution, including the right to expression in speech and writing, the right to association and the right to form associations.
- 472.** The complainant adds that the law on associations was issued in 1909 under the Ottoman rule, prior to the issuance of the Lebanese Constitution in 1926, and is still valid in Lebanon. Despite the fact that it was issued a century ago, this law is still considered among the most democratic laws that allow the exercise of one of the most basic freedoms without any restriction, except commitment to the highest societal principles and observation of the requirements of national security, general order and public morals. Its section 2 provides that forming an association does not require authorization, and that it is sufficient to deposit a formation instrument and its annexes with the Government in order to obtain from it an "apprise and notification". After long-lasting debates as to how to implement this mechanism despite its simple character, the State Council settled the issue through an initial decision stressing the freedom to form associations according to what is set out in the associations' own rules. The Government embarked on this course and laid it down in one of its ministerial statements.
- 473.** The complainant further states that the Labour Act grants employers and workers alike the right to form a union specific to each category of their professions, specifies the reason behind forming unions, bans them from "working in politics and participating in meetings

and demonstrations of political character”, and tackles the modality of formation, membership and management (sections 83–106).

**474.** As for the Public Servants Code (Legislative Decree No. 112/1959), it explicitly bans public servants from joining professional unions and organizations (section 15(2)), from going on strike or inciting to strike (section 15(3)), and from organizing collective petitions relating to the job or participating in organizing them for whatever reasons (section 15(9)). In the complainant’s view, this is a blatant violation of Convention No. 87. While the Public Servants Code was significantly modified via Act No. 144 of 6 May 1992 by providing greater political rights to public servants, no modifications have been made to provide trade union rights.

**475.** The complainant also refers to the following instruments in support of its position:

- (i) the Lebanese Constitution as amended, which stipulates: that “Lebanon is a founding member and active in the United Nations organization and committed to its covenants and the Universal Declaration of Human Rights, and the State embodies all these principles in all rights and domains without exception” (Preamble, section B); that “All Lebanese are equal before the law and enjoy equally civil and political rights and they bear public responsibilities and obligations without discrimination between them” (article 7); and that “the freedom of expression in speech and writing, and the freedom to publish and the freedom of association and the freedom to form associations are all guaranteed within the frame of the law” (article 13);
- (ii) the Universal Declaration of Human Rights, which enshrines the rights and freedoms of the individual, including the right to form and join trade unions (Article 23(4));
- (iii) the UN International Covenant on Civil and Political Rights, ratified by Lebanon in 1972, which contains similar provisions in Article 22 and prohibits restrictions to be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others”;
- (iv) the UN International Covenant on Economic and Social Rights, also ratified by Lebanon in 1972, which similarly guarantees the right to form or join trade unions to promote economic and social interests, along with the right to strike according to law (Article 8);
- (v) the ILO Declaration on Fundamental Principles and Rights at Work of 1998, according to which all Members, even if they have not ratified the fundamental Conventions, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely, inter alia, freedom of association and the effective recognition of the right to collective bargaining;
- (vi) the ILO Labour Relations (Public Service) Convention, 1978 (No. 151), which provides public servants with complete independence from authorities; and
- (vii) the ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), to which member States – among them Lebanon – are committed as a logical consequence to the 1998 Declaration, enshrining the principle of non-discrimination and the right to establish trade unions without previous authorization.

- 476.** In the complainant's view, the Government's insistence on not amending the Public Servants Code and the Labour Act, especially the section on trade unions, in accordance with international labour standards constitutes a blatant infringement of trade union rights considering that the law on associations of 1909 liberated the formation of associations from the previous restrictions imposed on the establishment of trade unions. According to the complainant, Lebanon has refused to ratify Convention No. 87 on the basis that it grants workers the right to establish trade unions without discrimination and prior authorization from the Minister of Labour. The complainant alleges that the practice of previous authorization has led to the arbitrary distribution of authorizations and flooded the trade union movement with fake trade unions affiliated with the authorities. The consequences of this situation, which were confirmed by the reports of the Committee of Experts, were lately witnessed during the bargaining on wage adjustment and minimum wage settings where the most important category of public servants were absent, despite the fact that they are the most affected, their voices need to be heard and their work conditions need to be enhanced.
- 477.** The complainant believes that authorizing trade unions both in the public and in the private sector would enhance social stability and contribute to achieving social justice because trade unionism is related to civil freedoms and closely connected to the concept of civil society. In light of the constitutional, legal, historical, logical and factual reasons exposed above, and in order to put an end to the injustice suffered by public servants in Lebanon and fulfil the principle of equality between all citizens, the complainant requests the ILO to refer this complaint to the Committee and to make efforts to ensure that the Government respects international labour Conventions, especially Conventions Nos 87 and 98, creates the necessary conditions for the participation of the actual representatives of Lebanese workers in the tripartite committee and nullifies all decisions resulting from violations of ratified Conventions.

## **B. The Government's reply**

- 478.** In a communication dated 11 October 2012, the Government takes cognizance of the complaint filed by the LPESPL concerning "the violation of international labour standards by the Lebanese Government, including Convention No. 87 as regards the right conferred to public sector employees, such as civil servants, teachers and professors of all categories, to establish independent trade unions, to transform their current associations into independent unions and to commence negotiations on their working conditions and the defence of their legitimate interests".
- 479.** The Government reaffirms its commitment to international labour standards, as evidenced by Lebanon's ratification of 50 international labour Conventions, including seven of the eight fundamental Conventions. The eighth fundamental Convention is Convention No. 87, on which a bill has been introduced so as to allow the Government to ratify it.
- 480.** The Government states that the substance of this complaint does not correspond to the reality, and if the LPESPL was aware of the laws and decrees issued, it would have realized that the tripartite partners are well represented on the relevant boards and committees. Numerous examples illustrate the participation of representatives of workers and employers, be it in the labour arbitration councils (labour justice), the Arbitration Committee that issues decisions on collective labour disputes, the Cost of Living Index Commission or many other committees with tripartite features.
- 481.** According to the Government, the complaint also proves that the LPESPL is not aware of the Bill to authorize the Government to ratify Convention No. 87. In this regard, the Government attaches to its reply a copy of the correspondence exchanged on this subject, the Bill to authorize the Government to ratify Convention No. 87 and its rationale, as well

as the decision of the Council of Ministers No. 81 of 12 June 2012 to approve the Bill and issue the draft Decree concerning its submission to Parliament.

- 482.** The Government concludes that the arguments put forward by the LPESPL in its complaint concerning the text of the Constitution and national laws relating to rights and freedoms, only confirm that Lebanon remains a country with freedom of association that guarantees the free exercise of trade union rights, the proof being the practice of the civil servants' associations in the public administration.
- 483.** The Government therefore requests the Committee to dismiss the complaint for non-conformity with reality, as evidenced by the legislative measures taken to promote trade union rights in Lebanon.

### **C. The Committee's conclusions**

- 484.** *The Committee notes that, in the present case, the complainant organization alleges the denial of trade union rights in the public sector, notably in the education sector.*
- 485.** *The Committee notes that the complainant alleges: (i) the denial of the right of public sector employees, such as civil servants, teachers and professors, of all categories, to establish independent trade unions, to transform their current associations into independent unions and to commence negotiations on their working conditions and the defence of their legitimate interests; (ii) that the exclusion of important categories of wage workers (e.g. public servants, including teachers) from the protection of trade unions has led to a severe distortion of the representativeness and structure of the Lebanese trade union movement and has weakened its ability to defend the interests of workers and public sector employees in Lebanon; (iii) that, in violation of the right to association enshrined in the Constitution of Lebanon, the Public Servants Code explicitly bans public servants from joining professional unions and organizations (section 15(2)), from going on strike or inciting to strike (section 15(3)), and from organizing collective petitions relating to the workplace or participating in organizing them for whatever reasons (section 15(9)); (iv) that, in violation of the law on associations which provides that forming an association does not require authorization, the establishment of trade unions under the Labour Act requires previous authorization from the Ministry of Labour; (v) that this practice has led to the arbitrary distribution of authorizations and has flooded the trade union movement with fake trade unions affiliated with the authorities; and (vi) that Lebanon has refused to ratify Convention No. 87 on the basis that Article 2 grants workers the right to establish trade unions without discrimination or prior authorization from the Minister of Labour.*
- 486.** *The Committee notes that the Government indicates that: (i) the tripartite partners are well represented on the relevant boards and committees, as illustrated by the participation of representatives of workers and employers in the labour arbitration councils (labour justice), the Arbitration Committee that issues decisions on collective labour disputes, the Cost of Living Index Commission and many other committees with tripartite features; (ii) on 12 June 2012, the Council of Ministers decided to approve the Bill to authorize the Government to ratify Convention No. 87 and issue the draft Decree concerning its submission to Parliament; and (iii) in its view, the complaint should be dismissed as it does not correspond to reality, as proven by the legislative measures taken to promote trade union rights in Lebanon and the practice of the civil servants' associations in the public administration.*
- 487.** *The Committee observes that it has recently examined similar allegations submitted by another complainant (see 367th Report, Case No. 2952 (Lebanon), paras 863–880). While welcoming the information provided by the Government that the Bill to authorize the Government to ratify Convention No.87 (submitted by the Ministry of Labour) has recently*

been approved by the Council of Ministers, along with the Decree concerning its submission to Parliament, the Committee notes that, according to the relevant Council of Ministers Decision, the Bill has been approved with a reservation in view of Article 2 of Convention No. 87 (Decision No. 81 of 12 June 2012). The Committee recalls that, due to the tripartite nature of the process of elaboration of international labour Conventions, any limitations on the obligations assumed on ratification other than those specifically provided for in the Convention (i.e. reservations) would make it impossible to register the instrument of ratification. It requests the Government to keep it informed of any further progress in the ratification process.

488. Firstly, with respect to the denial of trade union rights to public sector employees including teachers, the Committee recalls that the standards contained in Convention No. 87 apply to all workers “without distinction whatsoever”, and are therefore applicable to employees of the State. It was indeed considered inequitable to draw any distinction in trade union matters between workers in the private sector and public servants, since workers in both categories should have the right to organize for the defence of their interests [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 218]. The Committee therefore urges the Government to take the necessary measures without delay to lift the prohibition placed on public sector employees, including teachers, to establish and join organizations of their own choosing, and to allow them to exercise their trade union rights to the full. It requests the Government to keep it informed of any developments in this regard.
489. Secondly, as regards the alleged law and practice of previous authorization from the Ministry of Labour for the establishment of a trade union, the Committee recalls that the principle of freedom of association would often remain a dead letter if workers and employers were required to obtain any kind of previous authorization to enable them to establish an organization. Such authorization could concern the formation of the trade union organization itself, the need to obtain discretionary approval of the constitution or rules of the organization, or, again, authorization for taking steps prior to the establishment of the organization. This does not mean that the founders of an organization are freed from the duty of observing formalities concerning publicity or other similar formalities which may be prescribed by law. However, such requirements must not be such as to be equivalent in practice to previous authorization, or as to constitute such an obstacle to the establishment of an organization that they amount in practice to outright prohibition [see **Digest**, op. cit., para. 272]. The Committee therefore urges the Government to take the necessary steps to amend the relevant provisions of the Labour Act concerning the establishment of trade unions, in order to secure respect for the principle, in both law and practice, that workers have the right, without previous authorization, to establish organizations of their own choosing, and to join such organizations. It requests the Government to keep it informed of developments in this regard.
490. Thirdly, the Committee expresses concern over the allegation that the above practice has led to the arbitrary distribution of authorizations and flooded the trade union movement with fake trade unions affiliated with the authorities, and observes that the Government has neither contested nor elaborated upon this allegation. The Committee must recall that, by according favourable or unfavourable treatment to a given organization as compared with others, a government may be able to influence the choice of workers as to the organization which they intend to join. In addition, a government which deliberately acts in this manner violates the principle laid down in Convention No. 87 that the public authorities shall refrain from any interference which would restrict the rights provided for in the Convention or impede their lawful exercise; more indirectly, it would also violate the principle that the law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in the Convention. In previous cases, the Committee has also emphasized the importance it attaches to the resolution of 1952

concerning the independence of the trade union movement and has urged governments to refrain from showing favouritism towards, or discriminating against, any given trade union, and requested them to adopt a neutral attitude [see *Digest*, op. cit., paras 340 and 341]. The Committee therefore firmly expects the Government to maintain an attitude of complete neutrality in its dealings with all workers' organizations and ensure that the recognition and formal administrative authorization of all trade unions is carried out in an impartial manner.

**491.** *Lastly, the Committee emphasizes the importance of bringing the national legislation and practice into conformity with the principles of freedom of association, and the provisions of Convention No. 87 in view of the Government's intention to ratify, and reminds the Government that it may, if it so wishes, avail itself of the technical assistance of the Office in this regard.*

### **The Committee's recommendations**

**492.** *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 keep it informed of any further progress in the process of ratification of Convention No. 87.*
- (b) With respect to the denial of trade union rights to public sector employees including teachers, the Committee urges the Government to take the necessary measures without delay to lift the prohibition placed on public sector employees, including teachers, to establish and join organizations of their own choosing, and to allow them to exercise their trade union rights to the full. It requests the Government to keep it informed of any developments in this regard.*
- (c) As regards the allegations concerning the law and practice in respect of the previous authorization necessary from the Ministry of Labour for the establishment of a trade union, the Committee urges the Government to take the necessary steps to amend the relevant provisions of the Labour Act concerning the establishment of trade unions, in order to secure respect for the principles set out in its conclusions. It requests the Government to keep it informed of developments in this regard.*
- (d) Expressing concern over the allegation that the trade union authorizations are arbitrarily distributed and have flooded the trade union movement with fake trade unions affiliated with the authorities, and observing that the Government has neither contested nor elaborated upon this allegation, the Committee firmly expects the Government to maintain an attitude of complete neutrality in its dealings with all workers' organizations and ensure that the recognition and formal administrative authorization of all trade unions is carried out in an impartial manner.*
- (e) Emphasizing the importance of bringing the national legislation and practice into conformity with the principles of freedom of association, and the provisions of Convention No. 87 in view of the Government's intention to ratify, the Committee reminds the Government that it may, if it so wishes, avail itself of the technical assistance of the Office in this regard.*

CASE NO. 2969

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

**Complaint against the Government of Mauritius  
presented by  
the Federation of United Workers (FTU)**

*Allegations: The complainant organization alleges: (1) the dismissal of the General Secretary and of four members of the Organisation of Hotel, Private Club and Catering Workers' Unity by the Blue Lagoon Beach Hotel as well as the interdiction of all trade union meetings within the premises and interdiction of all workplace representatives to communicate at the seat of the trade union during working hours; and (2) the recognition by Ireland Blyth Ltd of a new trade union (Ireland Blyth Ltd Staff Union) for collective bargaining purposes, in violation of the Procedural Agreement signed between the company and Ireland Blyth Ltd Staff Association and the applicable legislation*

493. The complaint is contained in communications from the Federation of United Workers (FTU) dated 28 May and 1 June 2012, as well as 16 July 2012.
494. The Government forwarded its response to the allegations in a communication dated 21 March 2013.
495. Mauritius 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**

496. In communications dated 28 May and 1 June 2012, as well as 16 July 2012, the complainant organization, a duly registered trade union federation of Mauritius, denounces violations of Conventions Nos 87 and 98 in the Blue Lagoon Beach Hotel and Ireland Blyth Ltd.

***Blue Lagoon Beach Hotel***

497. The complainant indicates that the hotel belongs to a group owned by a well-known family in Mauritius. The Organisation of Hotel, Private Club and Catering Workers' Unity, a trade union affiliated to the FTU, is legally recognized by the hotel since 1999 (recognition certificate granted by the Industrial Relation Commission (IRC) in 1999 enclosed with the complaint).

**498.** According to the complainant, as from the day the board of directors appointed a new General Manager in 2011, industrial relations started to deteriorate after the following unilateral decisions of the management:

- When absenting on ground of sickness, a worker is compelled to notify the employer for every consecutive absence, which is not in compliance with section 10 of the Catering and Tourism Industries Remuneration Order Regulations 2004. Moreover, the management refused to give permission to a female worker to go and seek police assistance as she was victim of a criminal case.
- The payment of wages is not in compliance with section 5(1)(a) of the Catering and Tourism Industries Remuneration Order Regulations 2004. For instance, September wages were paid on 3 October 2011.
- Workers wishing to meet the management to voice out their problems cannot do so in the absence of a formal appointment and need to be accompanied by the relevant head of department.
- The company has introduced several cameras within the hotel aiming to control every second and minute of a worker.
- In April 2012, the General Secretary and four members of the Organisation of Hotel, Private Club and Catering Workers' Unity have been charged with unlawfully removing foodstuff from the hotel and have subsequently been dismissed by the company (charge and dismissal letters of trade union members enclosed with the complaint).
- According to the police report (copy enclosed with the complaint), the management filed false criminal charges against all of them. The trade union members framed by the General Manager are as follows: (i) Deepak Dasso (General Secretary); (ii) Denis Manikion (member); (iii) Rakesh Judah (member); (iv) Ramjeeatoo Jootoo (member); and (v) Suresh Goomany (member).
- The company has unilaterally prohibited all trade union meetings within its premises. They used to take place during rest time in the workers' mess room. This right existed since the recognition of the trade union in 1999.
- The company has prohibited all workplace representatives to communicate at the seat of the trade union during working hours. This right existed since 1999.

**499.** The complainant believes that the acts and doings of the hotel clearly infringe ILO Conventions Nos 87 and 98.

### ***Ireland Blyth Ltd***

**500.** This important private company is among the first five companies in Mauritius and was incorporated in 1972. Workers of the said company are members of the Ireland Blyth Ltd Staff Association (IBLSA), which is affiliated to the FTU.

**501.** The IBLSA is legally recognized by the company since 21 May 2007, when the parties signed a Procedural Agreement (copy enclosed with the complaint). Under section 3(2) of the Procedural Agreement, the company undertakes not to grant recognition to another union unless it is asked to do so by the IRC. The complainant informs the Committee that the IRC has now been replaced by the Commission for Conciliation and Mediation (CCM) under the Employment Relations Act 2008 (EReA).



- 502.** In 2010, the IBLSA submitted its claims with respect to conditions of employment and wage increase to the company for negotiations. At the beginning of 2011, two meetings were held between the parties at the seat of the company. The third meeting, scheduled in advance between the parties, was unilaterally cancelled by the company.
- 503.** A new trade union, the Ireland Blyth Ltd Staff Union (IBLSU) was immediately recognized by the company and a joint negotiating panel was imposed without consent or any discussion. The IBLSA rejected the company's decision on the following grounds:
- On 21 March 2011, when the IBLSU filed the request for recognition, it was not a registered union with the Registrar of Associations and therefore had no legal status (document enclosed with the complaint).
  - The recognition of the IBLSU is in clear violation of the Procedural Agreement signed between the company and the IBLSA.
  - Moreover, the recognition of the IBLSU violates section 36 of the EReA (copy enclosed with the complaint).
- 504.** At present, the company has ceased all negotiations with the IBLSA, which filed a case with the Employment Relations Tribunal (ERT) against the company for unfair labour practices (section 54 of the EReA). During the course of the hearing, on 19 December 2011, an agreement was reached in good faith that the company shall resume negotiation with the IBLSA "on ongoing negotiations". Thus, the IBLSA withdrew the case (copy enclosed with the complaint). Instead of complying with the said agreement reached before the ERT, the company unilaterally decided to cancel the existing Procedural Agreement (copy enclosed with the complaint). Furthermore, during the same proceedings the ERT stated "Yes for us the issue is clear. This is Human Resources Management, if at your level you cannot deal with these issues; these are not matters which ought to be brought before the Tribunal. The law is clear, it would be best to have a joint negotiating panel. But if you cannot have a joint negotiating panel, you cannot impose. Is the word 'imposition' the problem?"
- 505.** Due to the persistent refusal of the employer, the IBLSA filed another case before the CCM of the Ministry of Labour and Industrial Relations (report enclosed with the complaint), but the management denied the agreement reached before the ERT.
- 506.** In addition, the IBLSA is also recognized by Logidis Ltd (within the company) since 2007, which, on 15 March 2012, granted recognition to the IBLSU without any discussion/consent and ceased all negotiations with IBLSA (copy enclosed with complaint). This recognition also is in clear violation of the existing Procedural Agreement and in addition violates section 38 of the EReA. In other words, the employer has deliberately derecognized the IBLSA.
- 507.** Lastly, the complainant informs that the President of the IBLSU previously occupied the same post when he was a member of the IBLSA but was dismissed by the union due to his close collaboration with the company. Furthermore, the IBLSA is struggling very hard for the employer to resume negotiations, whereas the IBLSU keeps silent. This strategy of the employer has been clearly planned by the President of the IBLSU and the company.
- 508.** In view of the above, the FTU has good reasons to believe that the acts and doings of the company clearly infringe ILO Conventions Nos 87 and 98.

**B. The Government's reply**

509. In a communication dated 21 March 2013, the Government submits the following information concerning the two complaints.

***Blue Lagoon Beach Hotel***

510. Following representations made to the Ministry of Labour, Industrial Relations and Employment by the Organisation of Hotel, Private Club and Catering Workers' Unity affiliated to the FTU, on 7 May 2012 and 23 November 2012, as well as issues raised by the FTU in its complaint to the ILO, action was taken at the level of the Conciliation and Mediation Section (CMS) and the Inspection and Enforcement Section (IES) of the Ministry with the employer. The outcome of the Ministry's inquiry and intervention is as follows:

- *Alleged compulsory notification on ground of illness for every consecutive day of absence:* Inquiry revealed that the complaint was not founded and that notification was required on the first day of absence or at the latest on the second day in accordance with the Catering and Tourism Industries (Remuneration Order) Regulations 2004 (GN No. 178 of 2004, as amended).
- *Refusal of management to allow a female worker alleging to be victim of a criminal case from seeking police assistance:* The general manager denied this allegation.
- *Late payment of wages:* According to management, late payment of wages occurred only in the month of September 2011, due to a technical problem which cropped up at the level of the bank whereby the workers could not withdraw their money. No such problem has occurred ever since.
- *No open-door policy by management to listen to the grievances of the workers:* Inquiry revealed that this was not the case as management practised an open-door policy. Workers wishing to voice out their problems could contact the General Manager informally through the Secretary who would then fix a meeting.
- *Introduction of cameras within the hotel with a view to scrutinizing the workers:* According to management, the aim of camera installations was not to control the workers' movements but rather for security reasons concerning clients. It was also one of the requirements of the tourism authority falling under the jurisdiction of the Ministry of Tourism and Leisure.
- *Dismissal of five members of the Organisation of Hotel, Private Club and Catering Workers' Unity in April 2012:* Five workers who were involved in the theft of foodstuff were suspended and appeared before a disciplinary committee to answer the charges levelled against them. Subsequently, they were dismissed on 25 April 2012 on grounds of serious misconduct. The workers registered a complaint at the IES in September 2012, and their case was referred to the Industrial Court on 28 February 2013 for a claim of compensation for unjustified termination of employment.
- *Interdiction of trade union meetings within the premises of the hotel during rest time at 3 p.m.:* Management informed that trade union meetings were still possible within the company's premises during lunch time as well as at 3 p.m. or 4 p.m. Workers as well as workplace representatives met on the site of work confirmed the employer's version.

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**Ireland Blyth Ltd**

- 511.** The Government indicates that, on 6 April 2012, the IBLSA reported a labour dispute to the CCM against the company on the grounds that the company was not complying with the agreement reached on 19 December 2011 before the ERT. The dispute was not resolved, as the company insisted that ongoing negotiations with the IBLSA would only continue after the signature of a new Procedural Agreement with the IBLSA, while the IBLSA maintained that negotiations regarding ongoing issues on terms and conditions of employment should continue until such an agreement was reached.
- 512.** The Government further indicates that, on 11 April 2012, the IBLSA reported another dispute to the CCM as to whether the company should schedule meetings to discuss conditions of employment as and when requested by the trade union. At a conciliation meeting held at the level of the CCM in October 2012, the company agreed to open negotiations on the Procedural Agreement in the first instance, and then to proceed with normal negotiations regarding conditions of employment of the employees. The CCM, thereupon, reported that the matter in dispute had been resolved to the satisfaction of both parties.
- 513.** As regards IBLSU's application for registration, the Government observes that, according to information obtained from the Registrar of Associations, it was submitted on 24 March 2011 and the IBLSU was registered on 25 April 2011. Under the EReA, a trade union is being defined as an association of persons, whether registered or not, having as one of its objects the regulation of employment relations between workers and employers. Section 4 of the EReA provides that any trade union shall, not later than 30 days after the date of its formation, apply to the Registrar of Associations for registration. In the Government's view, in spite of the fact that IBLSU only applied for its registration on 24 March 2011, it already had a legal status on 23 March 2011 contrary to the averment of the complainant.
- 514.** The Government states, however, that the recognition of the IBLSU appears to be in violation of the Procedural Agreement signed between the company and the IBLSA, which was still in force as at March 2011. Its section 3(2) provided that "the company undertakes not to grant recognition to another union, unless it is asked to do so by the IRC in accordance with the provisions laid down in the Industrial Relations Act 1973".
- 515.** Moreover, the Government indicates that section 36 of the EReA provides for the procedure to be followed by a trade union and the documents to be submitted when applying for recognition, including a copy of the certificate of registration. The IBLSU could not have produced a copy of its certificate of registration, which was only issued on 25 April 2011 by the Registrar of Associations. Hence, the application of the IBLSU for recognition was not in order.
- 516.** The Government also points out that the recognition of the IBLSU by the company goes against the spirit of section 37(5) of the EReA, which provides that an employer may recognize a trade union having less than 30 per cent membership only where there exists no recognized trade union. The Act is, however, silent as to whether an employer can give such recognition even where a trade union having less than 30 per cent membership had been given voluntary recognition.
- 517.** Furthermore, the Government informs that, according to the employer: (i) the Procedural Agreement was signed between the parties on 16 May 2007, following the recognition of the IBLSA (affiliated to the FTU); (ii) upon a request made on 23 March 2011, the IBLSU was granted recognition by the company to represent the same category of employees as the members of the IBLSA, in view of the fact that the request clearly indicated the wish of a number of workers of the same category to form a new trade union; (iii) it was in

pursuance of the spirit of good industrial relations and the principles enunciated in the EReA that the company granted recognition to the IBLSU, despite the fact that the trade union had not been registered and that it had less than 30 per cent membership in the undertaking; (iv) at the time of the application for recognition by the IBLSU, the IBLSA also had less than 30 per cent membership in the undertaking; (v) following the decision of the company to recognize the IBLSU and to invite the two unions to joint negotiations, the IBLSA filed a case with the ERT; (vi) on 19 December 2011, an agreement was reached between the parties before the ERT whereby there would be no other parties present during the ongoing negotiations between the IBLSA and the company, without negating the possibility of the company to negotiate with other unions on other matters; (vii) on 27 January 2012, pursuant to Article 13 of the Procedural Agreement, the company gave three months' notice to the IBLSA for termination of the Procedural Agreement with effect from 28 April 2012, in view of the fact that it was made under the Industrial Relations Act (repealed and replaced by the EReA as from February 2009) and had become obsolete; (viii) the IBLSA refusal to join negotiation with the IBLSU is in breach of paragraphs 98, 112, 113, 125 and 126 of the Code of Practice of the Fourth Schedule to the EReA; (ix) by seeking to prevent the recognition of another union, the IBLSA is acting in breach of Article 2 of ILO Convention No. 87, which guarantees the freedom of workers to join associations of their own choice; and (x) the complaint is unfounded and in breach of local legislation and international treaties.

**518.** In addition, according to the information submitted by the company through the Government, the recognition of the IBLSU and the Procedural Agreement are two concurrent but distinguishable matters involving the IBLSA which need to be dealt with separately.

**519.** As regards the recognition of the IBLSU, the company indicates that: (i) a copy of its request for recognition was duly sent to the IBLSA whose only comment was that the IBLSU was not a registered union; (ii) upon being forwarded the registration documents by the IBLSU, the company granted recognition to the IBLSU and invited the two unions to joint negotiations; (iii) the employer terminated the obsolete Procedural Agreement and has since invited the IBLSA to start negotiations with a view to drafting a new procedural agreement under the revised legislation; (iv) however, in bad faith and in breach of the EReA, the IBLSA has since refused categorically to constitute a joint negotiating panel with the IBLSU, although its position is detrimental to the workers; (v) consequently, the employer has not been able to conduct negotiations in a meaningful manner and is currently obliged to consult each union individually for any issue which concerns the workers; (vi) the complaint and the previous conduct of the IBLSA is an obvious attempt to force the employer not to recognize a trade union in breach of sections 29 and 30 of the EReA; (vii) the IBLSA is motivated by the desire to be the sole recognized trade union in the company which may be equated to a closed shop agreement which is specifically prohibited under section 34 of the EReA, especially in the face of the clear wish of workers to form another union; (viii) the refusal of the IBLSA to recognize or join negotiations with the IBLSU is tainted with bad faith and equivalent to an "unfair labour practice" as it undermines the bargaining process within the company; (ix) the extremely serious allegations that the IBLSU is controlled by and/or affiliated directly or indirectly with management are baseless and strongly refuted; and (x) the IBLSA has not submitted any evidence of illicit links between the IBLSU and the employer, other than making a derogatory comment on the IBLSU President.

**520.** As regards the Procedural Agreement, the company indicates that: (i) the Procedural Agreement was signed in 2007 for a minimum duration of three years, renewable thereafter until termination notice of three months is given by either party; (ii) in 2008, new labour legislations were passed in Mauritius, which rendered the Procedural Agreement made under the repealed legislation obsolete; (iii) consequently, on 27 January

2012, pursuant to its section 13, the employer gave notice of termination of the Procedural Agreement for termination on 28 April 2012; (iv) on 13 August 2012, the IBLSA sent a letter to the company requesting the parties to start discussions on a Procedural Agreement with the IBLSA; (v) the stand of the company that negotiations must be done with the individual company instead of IBLSU as a group, has been accepted by the IBLSA; (vi) the company has always been eager, is still keen and in fact has started negotiations on the establishment of a new Procedural Agreement; (vii) the IBLSA has lodged the present complaint based on a breach of a Procedural Agreement, which the IBLSA has itself accepted as being terminated, since negotiations have started for the drafting of a new Procedural Agreement; (viii) the cases before the ERT referred to by the IBLSA deal with the negotiations between the parties with regard to the Procedural Agreement and/or conditions of employment and are in no manner connected with the present complaint which concerns the recognition of another union; (ix) the IBLSA has chosen to take the adversarial route by constantly challenging the company before the legal forums (on 4 May 2011, dispute submitted to the ERT and withdrawn following agreement reached on 19 December 2011 that the ongoing negotiations between the company and IBLSA should prevail without negating the possibility of the company to negotiate with the other union on other matters; on 6 April 2012, dispute declared to the CCM on the details of the agreement reached before the ERT but not resolved; on 11 April 2012, dispute declared to the CCM requesting for meetings to be scheduled to discuss conditions of employment and resolved following agreement of the parties that negotiations on the Procedural Agreement should start in the first instance, prior to discussing other conditions of employment; on 26 June 2012, the IBLSA applied to the ERT under section 73 of the EReA for interpretation of award but withdrew its application after its attention was drawn to the fact that the agreement of December 2011 did not constitute an award; and on 16 July 2012, complaint filed with the Committee); (x) in the company's view, the IBLSA seems more eager to publicize the matter than to engage in meaningful and healthy negotiations with the company on the Procedural Agreement.

### C. The Committee's conclusions

**521.** *The Committee notes that, in the present case, the complainant alleges: (1) the dismissal of the General Secretary and of four members of the Organisation of Hotel, Private Club and Catering Workers' Unity by the Blue Lagoon Beach Hotel as well as the interdiction of all trade union meetings within the premises and interdiction of all workplace representatives to communicate at the seat of the trade union during working hours; and (2) the recognition by Ireland Blyth Ltd of a new trade union (IBLSU) for collective bargaining purposes, in violation of the Procedural Agreement signed between the company and IBLSA and the applicable legislation.*

#### **Blue Lagoon Beach Hotel**

**522.** *The Committee notes that the complainant indicates that the Organisation of Hotel, Private Club and Catering Workers' Unity, a trade union affiliated to the FTU, has been legally recognised by the hotel since 1999. According to the complainant, after the appointment of a new general manager in 2011, industrial relations started to deteriorate following several unilateral measures. The Committee observes that certain measures alleged by the complainant concern general terms and conditions of work and employment, and recalls that the mandate of the Committee consists in determining whether any given legislation or practice complies with the principles of freedom of association and collective bargaining laid down in the relevant Conventions [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth edition (revised), 2006, para. 6]. The Committee thus considers that certain issues, such as the late payment of wages, notification of subsequent sick leave, the general matter of installation of*

cameras in the hotel, and no open-door policy of management towards the workers, are outside the Committee's specific mandate, which is confined to violations of trade union rights. The Committee will thus only examine those violations alleged by the complainant that it considers within its mandate.

- 523.** *In this regard, the Committee notes the complainant's allegation that: (i) in April 2012, the management filed false criminal charges for unlawful removal of foodstuff from the hotel against the General Secretary and four members of the Organisation of Hotel, Private Club and Catering Workers' Unity (Deepak Dassoo, Denis Manikion, Rakesh Judah, Ramjeeatoo Jootoo and Suresh Goomany) and has subsequently dismissed all of them; and (ii) the company has unilaterally prohibited all trade union meetings within its premises during rest time in the workers' mess room, and all workplace representatives to communicate at the seat of the trade union during working hours (these rights existed since 1999). The complainant believes that the acts and doings of the hotel clearly infringe Conventions Nos 87 and 98.*
- 524.** *The Committee notes that the Government indicates that, following representations made to the Ministry of Labour, Industrial Relations and Employment by the Organisation of Hotel, Private Club and Catering Workers' Unity, on 7 May and 23 November 2012, as well as the complaint presented to the ILO, action was taken at the level of the CMS and the IES of the Ministry with the employer. The Committee notes the Government's statement that the outcome of the Ministry's inquiry and intervention was as follows: (i) as regards the dismissal of one union leader and four union members in April 2012, five workers who were involved in the theft of foodstuff were suspended, appeared before a disciplinary committee to answer the charges levelled against them and were subsequently dismissed on 25 April 2012 on grounds of serious misconduct. The workers registered a complaint at the IES in September 2012, and their case was referred to the Industrial Court on 28 February 2013 for a claim of compensation for unjustified termination of employment; and (ii) as regards the interdiction of trade union meetings within the premises of the hotel during rest hours, the management informed that trade union meetings were still possible within the company's premises during lunch time as well as at 3 p.m. or 4 p.m. Workers as well as workplace representatives met on the worksite confirmed the employer's version.*
- 525.** *As regards the dismissal of five trade unionists in April 2012 due to serious misconduct in the form of theft of foodstuff, the Committee notes that the Government does not provide any direct observations on the serious allegation of the complainant that the criminal charges filed were false and that the trade union leader and four union members have been "framed" by management. The Committee cannot but express deep concern at the indication in the police report, supplied by the complainant as evidence in relation to this matter, according to which one of the three security officers who was stated to have received foodstuff from the five kitchen staff and trade unionists, had subsequently made a declaration that the above statement was made under duress and threats from the General Manager. The Committee recalls that one of the fundamental principles of freedom of association is that workers should enjoy adequate protection against all acts of anti-union discrimination in respect of their employment, such as dismissal, demotion, transfer or other prejudicial measures. This protection is particularly desirable in the case of trade union officials because, in order to be able to perform their trade union duties in full independence, they should have a guarantee that they will not be prejudiced on account of the mandate which they hold from their trade unions. The Committee has considered that the guarantee of such protection in the case of trade union officials is also necessary in order to ensure that effect is given to the fundamental principle that workers' organizations shall have the right to elect their representatives in full freedom. One way of ensuring the protection of trade union officials is to provide that these officials may not be dismissed, either during their period of office or for a certain time thereafter except, of*

course, for serious misconduct. In this regard, the Committee has always pointed out that the principle that a worker or trade union official should not suffer prejudice by reason of his or her trade union activities does not necessarily imply that the fact that a person holds a trade union office confers immunity against dismissal irrespective of the circumstances [see *Digest*, op. cit., paras 799, 804, 801].

526. In view of the serious nature of the complainant's allegations, the Committee requests the Government to institute an independent investigation into the alleged acts of anti-union discrimination suffered by the above trade unionists so as to ascertain their veracity, and to provide detailed information on its outcome. Should it be found in the course of the inquiry that the five dismissals were based on false charges and thus anti-union in nature, the Committee requests the Government to take the necessary steps to ensure that the union leader and the union members are fully reinstated without loss of pay. If reinstatement is not possible for objective and compelling reasons, the Government should ensure that the workers concerned are paid adequate compensation which would represent a sufficiently dissuasive sanction for anti-union dismissals. The Committee requests to be kept informed of any developments in this respect. Noting also that the case is currently before the Industrial Court for a claim of compensation for unjustified termination of employment, the Committee requests the Government to keep it informed of any progress made in this regard and transmit a copy of the judgment as soon as it has been handed down.
527. Regarding the possibility of holding trade union meetings within the premises of the hotel during rest hours, the Committee observes the contradictory versions of the parties, as the complainant organization alleges that they have been prohibited by management, whereas the Government (after inquiry at the worksite) informs that, according to the management and as confirmed by some workers and workplace representatives, trade union meetings were still possible within the company's premises during lunch time as well as at 3 p.m. or 4 p.m. While the Committee has insufficient information available to it to draw any conclusion in this regard, it wishes nevertheless to express its concern that, according to the written documents supplied by the complainant in relation to this matter, three subsequent requests submitted by the union (in the period from 11 April to 7 May 2012) for the holding of trade union meetings at 3 p.m. or 3.30 p.m. in the workers mess room were refused by management due to inconvenient date and time. The Committee generally recalls that the right of occupational organizations to hold meetings to discuss occupational questions is an essential element of freedom of association. Observing that the company has authorized the use of its premises for the holding of trade union meetings for more than ten years, the Committee emphasizes that the change of a longstanding policy without imperative reasons involving the withdrawal of previously granted facilities would not be conducive to harmonious labour relations. The Committee requests the Government to intercede with the parties with a view to finding a mutually acceptable solution and to keep it informed of any developments in this regard.
528. As regards the allegation that the company has prohibited all workplace representatives to communicate with workers at the trade union office during working hours, the Committee, observing that the Government does not respond to this allegation, recalls that, for the right to organize to be meaningful, the relevant workers' organizations should be able to further and defend the interests of their members, by enjoying such facilities as may be necessary for the proper exercise of their functions as workers' representatives [see *Digest*, op. cit., para. 1106]. The Committee further reiterates 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, 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 [see *Digest*, op. cit., para. 1110]. The Committee expects the

*Government to take the necessary measures to ensure respect for the principles enunciated above in the future.*

### **Ireland Blyth Ltd**

**529.** *The Committee notes the complainant's allegations that:*

- (i) the IBLSA, affiliated to the complainant, has been legally recognized by the company since 21 May 2007, when the parties signed the Procedural Agreement, pursuant to which the company undertakes not to grant recognition to another union unless it is asked to do so by the IRC (now CCM);*
- (ii) after the submission in 2010 by the IBLSA of its list of claims to the company for negotiation, two meetings were held at the beginning of 2011 but the third meeting, scheduled in advance, was unilaterally cancelled by the company;*
- (iii) a new trade union, the IBLSU was recognized by the company and a joint negotiating panel was imposed without consent or any discussions;*
- (iv) the company's decision to recognize the IBLSU is in clear violation of the Procedural Agreement signed between the company and the IBLSA, infringes section 36 of the EReA, and is flawed, because, when the IBLSU applied for recognition on 21 March 2011, it was not a registered union and therefore had no legal status;*
- (v) at present, the company has ceased all negotiations with the IBLSA;*
- (vi) the IBLSA filed a case with the ERT which, according to the minutes of the hearings supplied by the complainant, held that in the current situation it would be best to have a joint negotiating panel; but that a joint negotiating panel should not be imposed;*
- (vii) following an agreement reached in good faith on 19 December 2011 before the ERT that the company shall resume negotiation with the IBLSA "on ongoing negotiations"; the IBLSA withdrew the case;*
- (viii) instead of complying with this agreement, the company unilaterally decided to cancel the existing Procedural Agreement;*
- (ix) due to the persistent refusal of the employer, the IBLSA filed another case before the CCM but the management denied the agreement reached before the ERT;*
- (x) similarly, Logidis Ltd (within the company), which had also recognized the IBLSA since 2007, granted recognition to the IBLSU on 15 March 2012 without any discussions and ceased all negotiations with the IBLSA;*
- (xi) the President of the IBLSU previously occupied the same position in the IBLSA but was dismissed by the union due to his close collaboration with the company;*
- (xii) while the IBLSA is struggling very hard for the employer to resume negotiations, the IBLSU keeps silent;*
- (xiii) the IBLSU recognition is a common strategy of the former IBLSA President and the company; and*



- (xiv) *in the complainant's view, the acts and doings of the company clearly infringe ILO Conventions Nos 87 and 98.*

**530.** *The Committee notes from the Government's reply that, according to the employer:*

- (i) *the recognition of the IBLSU and the Procedural Agreement are two concurrent but distinguishable matters involving the IBLSA which need to be dealt with separately;*
- (ii) *upon a request for recognition made by the IBLSU on 23 March 2011, a copy was duly sent to the IBLSA whose only comment was that the IBLSU was not a registered union;*
- (iii) *upon being forwarded the registration documents, the company granted recognition to the IBLSU to represent the same category of employees as the IBLSA, in view of the clear wish of a number of workers of the same category to form a new union;*
- (iv) *it was in pursuance of the spirit of good industrial relations and the principles of the EReA that the company granted recognition to the IBLSU, although the union had not been registered and had less than 30 per cent membership in the undertaking;*
- (v) *at the time of the application for recognition by the IBLSU, the IBLSA also had less than 30 per cent membership in the undertaking;*
- (vi) *since the company invited the two unions to joint negotiations, the IBLSA has chosen to take the adversarial route by constantly challenging it before legal forums;*
- (vii) *on 4 May 2011, the IBLSA submitted a dispute to the ERT and withdrew it following agreement reached between the parties on 19 December 2011 that there would be no other parties present during the ongoing negotiations between the IBLSA and the company, without negating the possibility of the company to negotiate with the other union on other matters;*
- (viii) *on 27 January 2012, the company gave three months' notice to the IBLSA for termination of the Procedural Agreement with effect from 28 April 2012, in view of the fact that it was made under the Industrial Relations Act (repealed and replaced by the EReA as from February 2009) and had become obsolete;*
- (ix) *on 6 April 2012, the IBLSA submitted a labour dispute to the CCM on the grounds that the company was not complying with the agreement before the ERT, which remained unresolved, as the company insisted that ongoing negotiations with the IBLSA would only continue after the signature of a new agreement with the IBLSA, while the IBLSA maintained that negotiations regarding terms and conditions of employment should continue until such a new procedural agreement was concluded;*
- (x) *on 11 April 2012, the IBLSA submitted a dispute to the CCM requesting for meetings to be scheduled to discuss conditions of employment, which was resolved following agreement of the parties in October 2012 to open negotiations on the Procedural Agreement in the first instance, and then to proceed with normal negotiations of conditions of employment;*
- (xi) *on 26 June 2012, the IBLSA applied to the ERT for award interpretation but withdrew its application after it was informed that the December 2011 agreement is not an award;*

- (xii) *on 13 August 2012, the IBLSA sent a letter to the company requesting to start discussions with a view to drafting a new Procedural Agreement under the revised legislation; and the company has started negotiations on the subject matter;*
- (xiii) *in the company's view, the IBLSA seems more eager to publicize the matter than to engage in meaningful and healthy negotiations with the company;*
- (xiv) *the extremely serious allegations that the IBLSU is controlled by and/or affiliated directly or indirectly with management are baseless and strongly refuted; the IBLSA has not submitted any evidence of illicit links between the IBLSU and the employer, other than making a derogatory comment on the IBLSU President;*
- (xv) *by refusing to constitute a joint negotiating panel with the IBLSU, the IBLSA undermines the bargaining process within the company to the detriment of the workers, since the employer has not been able to conduct negotiations in a meaningful manner and is currently obliged to consult each union individually; and*
- (xvi) *by seeking to prevent the recognition of another union, the IBLSA is acting in breach of Article 2 of ILO Convention No. 87.*

**531.** *In addition, the Committee notes the Government's view that:*

- (i) *according to the definition of "trade union" and section 4 of the EReA, although the IBLSU only applied for its registration on 24 March 2011, it already had a legal status on 23 March 2011, contrary to the averment of the complainant;*
- (ii) *the recognition of the IBLSU appears to be in violation of the Procedural Agreement between the company and the IBLSA, which was still in force as at March 2011;*
- (iii) *the application of the IBLSU for recognition was not in order, because the IBLSU could not have produced a copy of its certificate of registration (only issued on 25 April 2011), pursuant to the procedure stipulated in section 36 of the EReA; and*
- (iv) *the recognition of the IBLSU by the company also goes against the spirit of section 37(5) of the EReA, which provides that an employer may recognize a trade union having less than 30 per cent membership only where there exists no recognized trade union (the Act is, however, silent as to whether an employer can give such recognition even where a trade union having less than 30 per cent membership had been given voluntary recognition).*

**532.** *The Committee notes that, according to section 3(2) of the Procedural Agreement, the company has undertaken not to grant recognition to another union unless it is asked to do so by the IRC. It also observes that the Procedural Agreement was signed in 2007 for a minimum duration of three years, renewable thereafter until termination notice of three months is given by either party (section 13), was only terminated by the company on 27 January 2012, effective from 28 April 2012. While noting the reference by the company to the adoption of the EReA in 2008, the Committee duly observes the Government's assessment that the Procedural Agreement was still valid as at March 2011. The Committee further observes the Government's consideration that the recognition of the IBLSU was contrary to the Procedural Agreement concluded between the company and the IBLSA. In these circumstances, the Committee regrets the infringement of the Procedural Agreement by the company and recalls that agreements should be binding on the parties. It reiterates that collective bargaining implies both a give-and-take process and a reasonable certainty that negotiated commitments will be honoured, at the very least for the duration of the agreement, such agreement being the result of compromises made by both parties on certain issues, and of certain bargaining demands dropped in order to secure other rights*

which were given more priority by trade unions and their members. If these rights, for which concessions on other points have been made, can be cancelled unilaterally, there could be neither reasonable expectation of industrial relations stability, nor sufficient reliance on negotiated agreements [see *Digest*, op. cit., paras 939 and 941]. The Committee expects that the Government will take the necessary steps to ensure the respect of the principle enunciated above in the future.

**533.** *The Committee does observe, however, that the IBLSU has since been recognized by the company for two-and-a-half years now, and that according to the Government and the company (no information has been provided by the complainant), at the time of the recognition of the IBLSU, both the IBLSA and the IBLSU had less than 30 per cent membership in the undertaking (under section 36 of the EReA, 30 per cent is the threshold of worker support as of which the employer's recognition as a bargaining agent becomes an entitlement and failing which the recognition remains voluntary). Taking into account that the constitution of a joint bargaining panel has failed due to divergences between the two existing enterprise-level unions and observing that the main request of the IBLSA when challenging the company before various legal forums has always been to resume negotiations, the Committee 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. It also emphasizes that the principle that both employers and trade unions should negotiate in good faith and make efforts to reach an agreement means that any unjustified delay in the holding of negotiations should be avoided [see *Digest*, op. cit., paras 976 and 937]. The Committee requests 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.*

**534.** *As regards the allegations that the IBLSU, and especially its President and former IBLSA President, collaborates and has close ties with the management and that the IBLSU recognition was a collusive strategy of the IBLSU President and the employer, an allegation strongly refuted by the company, the Committee considers that the information available to it is insufficient to show that acts of anti-union interference, such as the creation of a puppet union and the domination of the IBLSU by the company have occurred. The Committee wishes to recall, however, as a general matter, that both the government authorities and employers should refrain from any discrimination between trade union organizations, and that Article 2 of Convention No. 98, ratified by Mauritius, establishes the total independence of workers' organizations from employers in exercising their activities [see *Digest*, op. cit., paras 343 and 855]. In view of the serious nature of the complainant's allegation, the Committee requests 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.*

### **The Committee's recommendations**

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

#### **Blue Lagoon Beach Hotel**

*(a) The Committee requests 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 Organisation 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. Should it be found in the course of the inquiry that the five dismissals were based on false charges and thus anti-union in nature, the Committee requests the Government to take the necessary steps to ensure that the union leader and the four union members are fully reinstated without loss of pay. If reinstatement is not possible for objective and compelling reasons, the Government should ensure that the workers concerned are paid adequate compensation which would represent a sufficiently dissuasive sanction for anti-union dismissals. The Committee requests to be kept informed of any developments in this respect. Noting also that this case is currently before the Industrial Court for a claim of compensation for unjustified termination of employment, the Committee requests the Government to keep it informed of any progress made in this regard and to transmit a copy of the judgment as soon as it has been handed down.*

- (b) Observing that the company has authorized the use of its premises for the holding of trade union meetings for more than ten years, the Committee, emphasizing that the change of a longstanding policy without imperative reasons involving the withdrawal of previously granted facilities would not be conducive to harmonious labour relations, requests the Government to intercede with the parties with a view to finding a mutually acceptable solution and to keep it informed of any developments in this regard.*
- (c) As regards the allegation that the company has prohibited all workplace representatives to communicate with workers at the trade union office during working hours, the Committee recalls 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, 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, and expects the Government to take the necessary measures to ensure respect for this principle in the future.*

#### **Ireland Blyth Ltd**

- (d) Regretting the infringement of the Procedural Agreement by the company and recalling that agreements should be binding on the parties, the Committee expects that the Government will take the necessary steps to ensure the respect of this principle in the future.*
- (e) The Committee requests 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.*

- (f) *The Committee requests 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.*

CASE NO. 2694

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

## **Complaints against the Government of Mexico**

**presented by**

**the International Metalworkers' Federation (FITIM)**

**supported by**

- **the International Trade Union Confederation (ITUC)**
- **the Independent Union of Workers of the Metropolitan Autonomous University (SITUAM)**
- **the National Steel and Allied Workers Union (STIMAHCA)**
- **the Mexican National Union of Miners, Metal and Allied Workers, and**
- **the Union of Telephone Operators of the Republic of Mexico (STRM)**

*Allegations: General questioning of the industrial relations system as a consequence of the extremely widespread use of employer protection collective agreements*

- 536.** The complaint in this case was examined by the Committee at its meeting in June 2012, when it presented an interim report to the Governing Body [see 364th Report, paras 729–759, approved by the Governing Body at its 315th Session (June 2012)].
- 537.** The Government presented new observations in a communication dated 22 May 2013.
- 538.** Mexico has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), but has not ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

### **A. Previous examination of the case**

- 539.** At its June 2012 meeting, the Committee made the following recommendations [see 364th Report, para. 759]:
- (a) The Committee requests the Government to examine, in the framework of the tripartite dialogue, the issues raised in this complaint regarding the enforcement of labour and trade union legislation. As the Committee stated in its previous examination of this case, such dialogue should cover: (1) the questions relating to the trade union security clauses, “exclusion clauses”, which were declared unconstitutional by the Supreme Court and which may give rise to the kind of situations contemplated in the complaint; (2) questions relating to the minimum representativeness of trade unions in order to bargain collectively; and (3) the alleged lack of impartiality of the conciliation and arbitration boards (JCAs) and the allegedly excessive length of their proceedings.

- (b) The Committee firmly expects that a dialogue will take place with the most representative national workers' and employers' organizations, as well as the six organizations that are complainants in this case or that have supported it.
- (c) The Committee requests the Government and the complainants to report on developments and trusts that legislative and other measures will be taken in the near future to strengthen protection against anti-trade union practices in breach of collective bargaining principles, which have been raised in the present complaint.

## B. The Government's new reply

**540.** In its communication dated 22 May 2013, the Government indicates that as a result of the joint efforts of the Government and the social partners, following a number of discussions between Congress and employers' and workers' representatives, under the Decree amending, adding and repealing various provisions of the Federal Labour Act published in the *Official Bulletin* of the Federation of 30 November 2012, various amendments to the Federal Labour Act (LFT) came into force. The most relevant amendments to this case concern: (a) union security clauses: the "exclusion by separation clause" is eliminated (article 395 LFT, paragraph 2); (b) efficiency: the union's formalities before the registering authorities have been facilitated through the use of electronic tools to submit reports and notify changes to their executive boards and regulatory amendments, as well as new memberships and resignations (article 377 LFT); (c) democracy: the trade union statutes will provide the procedure for the election of the executive board and establish the number of members, protecting the freedom of vote under the conditions established in the general assembly, of indirect secret voting or direct secret voting (article 371.IX LFT); and (d) transparency: Federal Conciliation and Arbitration Boards are required to publish the contents of collective labour agreements, thereby bringing them to the notice of the workers, who have legal instruments to amend, where necessary, the conditions which could affect them (article 391bis LFT).

**541.** The Government adds that it plans to introduce amendments to streamline labour justice, such as: (i) removing the Federal and Local Conciliation Boards; leaving only the Federal Conciliation and Arbitration Boards to hear and rule on labour disputes; (ii) incorporating the principle of conciliation into labour proceedings; (iii) establishing the special professional career service responsible for the intake, promotion, time in office, performance evaluations, dismissal and retirement of public servants of the Federal Conciliation and Arbitration Board; (iv) the professionalization of the legal staff of the Arbitration and Conciliation Boards, representatives to these and litigants on labour issues; (v) restructuring first instance ordinary proceedings; (vi) providing for the use of technological tools to facilitate labour justice administration and establishing rules for the provision, reception and examination of electronic evidence; (vii) establishing summary proceedings for disputes concerning social security benefits, housing contributions and benefits related to the pension saving system; and (viii) disciplinary correction fines, coercive measures and fines to sanction irregular appeals for review and claims against implementing acts.

**542.** As regards the minimum representativeness of trade unions in order to bargain collectively, the Government declares that under article 364 of the Federal Labour Act, trade unions must have a minimum membership of 20 workers, pursuant to the following:

Article 364. Trade unions shall have a minimum membership of twenty workers in active service or of at least three employers. In determining the minimum number of workers, those workers whose employment relationship has been rescinded or terminated within a period of thirty days prior to the date of the trade union registration request, submission and approval shall be taken into consideration.

**543.** The Government indicates that in companies with more than one active trade union, the holder of the collective labour agreement rights is the trade union with the highest number of affiliated workers, in accordance with articles 386 and 388 of the Federal Labour Act, which provide the following:

Article 386. A collective labour agreement is an agreement concluded between one or more trade unions and one or more employers, or one or more employers' organizations, with the objective of establishing conditions under which they must perform their work in one or more companies or establishments.

Article 388. Where there are various trade unions within one same company, the following shall apply:

- I. If there are various company or sectoral trade unions or both, the collective agreement shall be concluded with the one which has the highest number of affiliated workers within the company;
- II. If there are various occupational trade unions, the collective agreement shall be signed with all the majority occupational trade unions, provided that they are in agreement among themselves. Where this is not the case, each trade union shall conclude a collective agreement for its profession; and
- III. If there are various occupational and company or sectoral trade unions, the first may conclude a collective agreement for their profession, provided that the number of affiliates exceeds the number of workers of the same profession affiliated to the company or sectoral trade union.

**544.** As regards collective agreement rights, the Federal Labour Act provides that:

Article 389. The loss of the majority referred to in the article above, as declared by the Conciliation and Arbitration Board, shall incur the loss of the collective agreement rights.

**545.** The Government specifies that the labour authorities strictly observe trade union autonomy and on that basis, the trade unions enter into negotiations before the labour authority, subject to the powers and competences granted in their internal regulations, such as the trade union statutes, represented by an authorized trade union member, or the executive board (alone or with special trade union commissions), submitting the agreements concluded during negotiations to the approval of the trade union general assembly. The number of trade union representatives in collective bargaining is in no way limited or restricted.

**546.** The Government, however, indicates that where disputes arise over collective agreement rights, the Conciliation and Arbitration Board is the body to which cases must be referred, within the scope of its competence, as its decisions are governed by law and take into account jurisprudence relating to conditions of representativeness for collective bargaining with the employer, such as:

- *Trade union rights to collective bargaining.* If a trade union is created and registered, acquiring legal personality on a given date, it is understood that its rights to engage in collective bargaining are effective from that date, even if subsequent bargaining has resulted in the separation of a number of its workers and the termination of the contracts of some of these, if there is an indication that this was an attempt to break up the trade union to deprive it of its personality and subsequently request the signature of the collective agreement, because even if the dismissed workers are considered to be separated from the company, they are still members of the trade union for the purposes of any relevant transactions, and the company itself does not deny this when it declares the union disbanded due to the workers' ineligibility to form part of the organization without there being a specific decision by the labour

authorities. Therefore, the decision requiring the company to sign a collective agreement with a trade union, in such circumstances, does not prejudice its rights.

Direct *amparo* (protection of constitutional rights) labour proceedings No. 9301141. Company Vergara and Rangel, 4 June 1942. Unanimity of four votes. Absent: Antonio Islas Bravo. Reporter: Hermilo López Sánchez.

- *Minority trade unions are not entitled to carry out collective bargaining, which is the preserve of the majority trade union holding the collective agreement rights.* Freedom of association constitutes a fundamental right under article 123 of the federal Constitution. This outlines the development of freedom of association in international instruments and in their interpretation and implementation by specialized bodies, such as the Committee on Freedom of Association of the International Labour Organization, the decisions and principles of which highlight the complex structure of this fundamental right, which comprises a number of rights. Accordingly, the constitutional right of freedom of association includes not only the right of individuals to form trade unions and affiliate themselves to the trade union of their choosing, but also the rights of established trade unions to perform the tasks expected of them. The principles of freedom of association comprise the following rights and freedoms: (1) the right of all workers to join an established trade union or create a new trade union; (2) the right of all workers not to join a given trade union or any trade union; (3) the right of all workers to disaffiliate themselves or resign from the association; (4) the right of all trade unions to use the necessary means of action to fulfil the duties constitutionally assigned to them; (5) the exercise by trade unions of the right to bargain and engage in disputes; (6) the trade union's right to initiate collective disputes; (7) the right of every trade union to determine its programme of action, protecting it against illegitimate and undue interference by other trade unions; and (8) the right of workers not to suffer any prejudice to their professional or economic activity at the workplace on account of their affiliation or trade union activity. The latter implies the right of all trade unions to freedom of action, which covers all legal means of action, free from undue interference by third parties. However, minority trade unions are not entitled to carry out collective bargaining, although they may act and are entitled to speak on behalf of and represent their members in the event of an individual claim. The above is established in paragraph 359 of the *Digest of decisions and principles of the Freedom of Association Committee* of the Governing Body of the ILO, fifth (revised) edition, 2006, according to which: "Minority trade unions that have been denied the right to negotiate collectively should be permitted to perform their activities and at least to speak on behalf of their members and represent them in the case of an individual claim". In this context, it is indisputable that minority trade unions are not entitled to engage in collective bargaining, to which only majority trade unions holding the collective agreement rights are entitled, without prejudice to freedom of association, provided that such groups are able to perform their activities and enjoy the right to speak on behalf of their members, and to represent them on an individual basis. [Tenth Circuit Administrative and Labour Collegial Tribunal. Direct *amparo* proceedings No. 490/2010. Independent Democratic Trade Union of the Graduate College of Tabasco. 13 January 2011. Unanimous vote. Speaker: José Luis Caballero Rodríguez. Secretary: Lucía Guadalupe Calles Hernández.]

**547.** However, the Government indicates that in order to provide greater legal certainty in collective labour relations, the main aims of the legislative reform include: trade union transparency and democracy; and the determination of regulatory and supervisory powers in the implementation of labour and trade union legislation.



- 548.** The reform of the legal framework seeks to provide greater legal certainty in productive sectors, by improving the administration of labour justice, expediting it and rendering it professional and reliable; promoting transparency and effective accountability in trade union organizations, for the benefit of their members, with total respect for trade union autonomy and freedom, and provide the authorities with technological supervisory and law enforcement tools.
- 549.** This includes professionalizing the legal staff of the Conciliation and Arbitration Boards (court clerks, secretaries, conciliation officials, assistants, assistant secretaries, the general secretaries and chairpersons of special boards), the representatives to these bodies and litigants in labour proceedings. Legal staff are required to hold a law degree and certificate or qualifications to practice law, to have completed labour law studies and to enjoy a good reputation; representatives are required to hold a law degree or qualifications to practise law, and the corresponding certification, except in the case of workers' representatives, who are only required to provide proof of training on labour issues; litigants are required to hold a law degree or qualifications to practice law, a professional license or a letter of completion (articles 626, 627, 627-8, 628, 629, 630 and 692 LFT). In addition to professionalizing the administration of labour justice, this should avoid irregular practices during the processing of cases, which prejudice the parties and cause procedural delays.
- 550.** Likewise, the current Federal Labour Act contains a series of provisions aiming to strengthen the Conciliation and Arbitration Boards, such as requirements on the minimum number of secretary-generals and deputy secretaries, whose appointment shall be carried out pursuant to the regulations approved in the plenary session on the professional career service and performance evaluation (article 605 LFT).
- 551.** Provisions aiming to improve the operation of the boards should also be noted. These include the amendment of the quorum requirement for convening plenary sessions from two-thirds to the majority of employers' and workers' representatives (article 615.II LFT).
- 552.** In order to avoid irregular practices and corruption, legal staff attached to the boards are not permitted to act as the agent, adviser or lawyer of the employer party in labour proceedings (article 632 LFT).
- 553.** Employers' and workers' organizations will see significant progress in speeding up the administration of labour justice. Moreover, sanctions are provided against lawyers who deliberately delay or intentionally obstruct labour proceedings and against public servants who cause delays (suspension or dismissal, and hearing before the Public Prosecutor) (article 48, penultimate and last paragraph, LFT). The aforementioned provisions aim to prevent dishonest conduct among some representatives and lawyers who wrongfully seek to artificially extend the duration of cases, thereby prejudicing the workers and their organizations.
- 554.** As regards social dialogue, the Government indicates that the main objective of the labour policy of the Government of President Enrique Peña Nieto, coupled with the reforms and institutional changes that have been established in the country, is to provide the working class with new opportunities that enable them to offer their families improved living conditions. One of the mainstays of this labour policy engages the Ministry of Labour and Social Security (STPS) to promote peaceful industrial relations, tripartite dialogue and respect for individual and collective workers' rights, as a means of contributing to the governance of the country and as a fundamental condition to attract and maintain job-generating investments. In this framework, the STPS ensures permanent dialogue with the productive sectors and with the federal and local authorities, in particular including the following:

- Dialogue with employers’ and workers’ groups is constantly maintained through the review of their general working conditions, and in that context, the present administration carried out 2,282 pay and contract reviews in March 2013, which led to an average pay increase per worker of 4.38 per cent, which is equivalent to a purchasing power increase of 0.75 per cent.
- Through the Office of the Deputy Minister of Labour, continued and permanent dialogue is maintained with all workers’ organizations. It holds regular meetings with the members of the National Workers Union (UNT), the Mexican National Union of Miners, Metalworkers and Allied Workers (which supported the complaint presented by FITIM), and the National Union of Petroleum Technicians and Professionals (UNTyPP). Likewise, it is in continuous communication with trade unions, by holding discussions and meetings where concerns and opinions are respectfully exchanged on subjects of interest with a view to finding joint solutions.

**555.** This inclusive, plural and transparent dialogue was extended to international organizations, such as the International Trade Union Confederation, which supported the complaint, and other international groups, under the Mexican presidency of the G20.

**556.** In 2012 and at the beginning of 2013, follow-up was given to dialogue established with various trade unions and employers’ organizations which have expressed their specific concerns to the STPS.

**557.** At the entry into office of the present Government, the Minister of Labour and Social Welfare, Mr Alfonso Navarrete Prida, held a working meeting with members of the UNT, headed by its leaders, Francisco Hernández Juárez (Secretary-General of the Union of Telephone Operators of the Republic of Mexico, which supported the complaint), Agustín Rodríguez Fuentes and Carlos Manuel Díaz Morineau.

**558.** The Deputy Minister of Labour has also held meetings with organizations affiliated to the UNT, such as the UNTyPP, which supported the complaint, including dialogue with the participation of *Péroleros Mexicanos*, where both parties collaborated on issues raised by the trade union and undertook to review each of the cases of its members.

**559.** In conclusion, the Government highlights the following: (1) in the framework of tripartite dialogue, it continues fulfilling its commitment to ensure respectful and inclusive communication with the most representative national employers’ and workers’ organizations, and to promote an improvement in relations with the complainant organizations and with those that have supported the complaint, in line with the principles of freedom of association and collective bargaining; (2) the reform of the Federal Labour Act was an inclusive process, giving way to in-depth debates in Congress, including employers’ and workers’ representatives, academics and experts on the subject; (3) the current Federal Labour Act contains important provisions regarding trade union transparency and democracy and the specific definition of the rights and obligations of the labour authorities and courts, such as legal remedies allowing both employers’ and workers’ organizations to defend their rights with a view to eradicating any irregular practices in collective labour agreements, and (4) the possibility of invoking the “exclusion by separation clause” was eliminated.

### **C. The Committee’s conclusions**

**560.** *The Committee observes that the issues pending in this case relate to the need for legislative and other measures to strengthen protection against anti-union practices in breach of collective bargaining principles, which have been raised in the present complaint. These include: (1) the questions relating to trade union “exclusion” security*

clauses, which were declared unconstitutional by the Supreme Court and which may give rise to the kind of situations contemplated in the complaint; (2) questions relating to the minimum representativeness of trade unions in order to bargain collectively; and (3) the alleged lack of impartiality of the Conciliation and Arbitration Boards and the allegedly excessive length of their proceedings. The Committee had requested the Government, within the framework of tripartite dialogue, to examine the questions raised together with the most representative employers' and workers' organizations and with the six complainant organizations that presented or supported the complaint.

- 561.** *The Committee notes with interest that the Government's reply refers to progress regarding the issues raised and, in particular, observes that on 30 November 2012 a reform of the Federal Labour Act came into force which eliminates the exclusion by separation clause in collective agreements (which authorized dismissals in cases of resignation of union membership), requires Federal Conciliation and Arbitration Boards to make the contents of collective agreements public and eliminates the local conciliation boards, making the Federal Conciliation and Arbitration Boards alone responsible for the resolution of labour disputes. The Committee also notes that the Government's reply indicates that the legislative reform also provides for greater transparency and democracy in trade unions, the professionalization of the legal staff of the abovementioned boards, the adoption of rules to prevent irregular or corrupt practices in their proceedings, moves to expedite and streamline procedures and increased fines for deliberate delays.*
- 562.** *The Committee takes note of the information provided by the Government on the legal provisions and the national jurisprudence regarding the minimum number of workers required to create a trade union; the entitlement of the majority trade union to collective agreement rights; the rights of minority trade unions; the right of all workers to join or not join, and to create a trade union; and the right to decline affiliation. The Committee observes that the provisions described by the Government do not appear to go against the principles of freedom of association and collective bargaining.*
- 563.** *The Committee takes note of the information provided by the Government regarding its social dialogue and tripartite dialogue policy, whereby the Office of the Minister of Labour and Social Welfare has established permanent dialogue with employers' and workers' groups, achieving 2,282 pay and contract reviews (March 2013), including dialogue or communication with national trade union organizations (some of which are complainants in this case) and with organizations that have supported the complaint and the organizations to which these are affiliated.*
- 564.** *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 issues raised and to identify any issues that remain unresolved in law or practice.*
- 565.** *The Committee requests the Government and the complainant organizations to keep it informed in this regard.*
- 566.** *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.*

## The Committee's recommendations

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

- (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.*

CASE NO. 2973

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

**Complaint against the Government of Mexico  
presented by  
the Legitimate Academic Workers' Union of CONALEP  
in the State of Jalisco (SILTACEJ)  
supported by  
the National Federation of Academic Trade Unions of CONALEP  
(FENSACONALEP)**

*Allegations: The complainant organization alleges obstacles to accessing educational institutions faced by the organization's representatives*

**568.** The complaint is contained in a communication of the Legitimate Academic Workers' Union of CONALEP in the State of Jalisco (SILTACEJ) dated 8 March 2012. The National Federation of Academic Trade Unions of CONALEP (FENSACONALEP) supported the complaint in a communication dated 26 July 2012.

**569.** The Government sent its observations in a communication dated 17 June 2013 and in a communication received at the Office on 8 October 2013.

570. Mexico has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Workers' Representatives Convention, 1971 (No. 135), but has not ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

#### A. The complainant's allegations

571. In a communication dated 8 March 2012, SILTACEJ alleges that access has been denied to its representatives to the educational establishments of the National Technical Vocational Training College (CONALEP), which is a decentralized public body. Furthermore, CONALEP education authorities have stated that they will refuse entry to campuses, arguing that there is no explicit legal requirement to allow free access to its facilities.

572. SILTACEJ explains that on 10 March 2010, when the State administration and the various CONALEP colleges received official notification of its union registration, the United Trade Union of Academic Workers of CONALEP of the State of Jalisco (SUTACEJ), which is party to the collective agreement, forcibly prevented it from entering the Mexican/Italian college located in Zapopan, State of Jalisco.

573. The complainant adds that, at the meeting held with the then principal of CONALEP Jalisco on 18 March 2010, the latter stated that he would not grant the trade union access to CONALEP campuses, reportedly arguing that a signed collective agreement was already in place. In response to the request made on 14 June 2010, the principal of CONALEP Jalisco wrote to SILTACEJ, reiterating that its union representatives would not be granted access to the colleges, basing his decision on the alleged lack of an explicit legal requirement to grant free access to CONALEP campuses in the State. On 7 December 2010, a meeting was held with the new State principal of CONALEP Jalisco, who reiterated his predecessor's refusal. Consequently, on 21 September 2010, the complainant made a request for labour arbitration (ordinary procedure) to the Local Conciliation and Arbitration Board of the State of Jalisco, which was dismissed on 14 October 2011. The complainant filed direct *amparo* (protection of constitutional rights) proceedings against the final award, and a decision is still pending.

574. The complainant also alleges that on 17 November 2011, 17 January and 2 February 2012 it requested the Governor of the State of Jalisco to intervene to resolve the dispute and that no reply has been received to date. The Secretary of State for the State of Jalisco was also contacted on 15 February 2012. Round table discussions took place on 22 February 2010 with staff from the Office of the Undersecretary for Internal Affairs of the Government of the aforementioned State, following which the complainant organization was asked to be granted a period of two weeks, but this period expired with no solution forthcoming.

#### B. The Government's reply

575. In its communication of 12 June 2013, concerning the allegation made that staff of SUTACEJ have barred entry to members of SILTACEJ, the Government reports that the Secretary-General of SUTACEJ has stated that its organization respects the international treaties signed and ratified by the Government of Mexico; that it is party to the collective agreement concluded with CONALEP of Jalisco; that it has 1,000 workers duly affiliated and employed in this institution; and that none of the staff members affiliated to the union known as SILTACEJ are employed in the aforementioned institution.

576. With regard to the alleged denial of access to SILTACEJ to the various campuses belonging to CONALEP Jalisco to disseminate information to workers in the colleges, the Government emphasizes that the State General Directorate of CONALEP of the State of

Jalisco has informed it that, as indicated in the complaint to the Committee on Freedom of Association, SILTACEJ obtained its union registration following the proper procedure and via the competent authorities, a state of affairs that CONALEP of Jalisco has in no way or under no circumstances failed to acknowledge. The Government also emphasizes that the institution has stated that, it is free to deny access to anyone whose business is not directly connected to college professional activities, in order to protect the safety and security of the persons who, as teachers, students and administrative workers, are present on campus on a daily basis. Thus, it is incorrect to claim that CONALEP of Jalisco, in fulfilling these obligations, is violating the trade union right in question. In other words, CONALEP of Jalisco has certainly not prevented SILTACEJ from taking steps to raise awareness of its trade union organization programme. Incidentally, no legal provision stipulates that this activity should be carried out within educational establishments and during teaching hours; it can be carried out using a different approach that does not interfere with the normal functions of the colleges.

- 577.** Furthermore, the Government states that, on 16 November 2011, SILTACEJ filed direct *amparo* proceedings against the Local Conciliation and Arbitration Board's award of 14 October 2011. The original file was forwarded to the Collegiate Labour Tribunal of the Third Circuit and, in line with the duty rota, the appeal was then referred to the First Collegiate Labour Tribunal of the Third Circuit, but a recent communication from the Third Collegiate Labour Tribunal of the Third Circuit reports that one of the judges made a request to be excused, on grounds that he was being prevented from issuing a ruling on the *amparo* proceedings filed. The First Tribunal ordered the file to be referred to the Third Collegiate Tribunal; the request was found to be justified and another official was appointed to replace the judge who had been excused. No information has been received to date on whether an *amparo* ruling has been issued.
- 578.** With respect to the list of demands submitted to the various Jalisco State authorities, requesting their intervention to resolve the trade union dispute explained in the foregoing paragraphs, the Government reports that the Jalisco State Government noted that, on 6 December 2011, the Jalisco Ministry of Education's Director-General of Higher Intermediate Education responded to the Secretary-General of the complainant organization, pointing out that, as CONALEP is a decentralized public body, the list should be submitted to the campus director for his due consideration of the issues raised with the Governor. The State Government also noted that neither the State Governor nor the Government's Secretary of State are authorized to address and resolve the complaint lodged by the Secretary-General of SILTACEJ in the State of Jalisco, since Decree No. 18026 published on 2 November 1999 establishes the decentralized public body known as the Technical Vocational Training College of the State of Jalisco with its own legal personality and assets ... and that, in light of the above, the trade union should refer to the governing board of the aforementioned college for its advice and guidance on resolving the dispute with the trade union.
- 579.** The Government concludes that: (1) from its analysis of the complaint, no violations of Convention No. 87, or of the rights enshrined therein, are apparent because the right to freedom of association has been respected, as clearly shown through the granting of legal recognition to the complainant trade union by the Local Conciliation and Arbitration Board of the State of Jalisco; (2) neither is there any evidence that the authorities have prevented SILTACEJ from drawing up its constitution and rules, electing its representatives in full freedom, organizing its internal administration and activities, or formulating its programmes; (3) there is no evidence of any violation of Convention No. 135, since the information provided by SUTACEJ notes that neither the Secretary-General of SILTACEJ nor its executive committee belong to the workforce of that institution; and (4) it appears that CONALEP in Jalisco has not prevented SILTACEJ from taking steps to raise awareness of its trade union organization programme, which could be carried out without

interfering with the normal functions of the colleges, and that access to the colleges was denied to protect the safety and security of the persons who, as teachers, students and administrative workers, are present on campus.

**580.** In a communication received on 8 October 2013, the Government states that on 14 December 2012 the Third Collegiate Labour Tribunal of the Third Circuit approved the *amparo* appeal on the grounds that the authority responsible had to cancel the ruling challenged by the appeal and replace it with a new ruling which, irrespective of the fact that there is no law or standard granting the right demanded by the complainant union and regardless of the ILO's suggestions in the Workers' Representatives Recommendation, 1971 (No. 143), concerning the facilities to be granted to workers' representatives, determines the manner in which these facilities must be granted so that the minority union can express itself and enter the campuses of the educational establishment, as well as the conditions for informing the workers of its programme of action, according to the circumstances of the case in question, while ensuring the smooth and effective functioning of the colleges and with account taken of the respective characteristics of the worker-employer system.

**581.** The Government adds that on 15 February 2013, in accordance with direct *amparo* Order No. 319/2012, the Jalisco Conciliation and Arbitration Board issued a second ruling resulting from the SILTACEJ action ordering CONALEP Jalisco to:

Authorize access to each of the college campuses for SILTACEJ representatives, not only union members but also members of the union's executive committee, whether or not the latter were workers at the college, so that they would be able to perform their representative functions, promote their trade union platform to the workers and have the use of a space enabling the union to participate as an alternative organization at the workplace, and also to ensure that no measure interferes with its effective functioning, since it is the general source of information for the workers, enabling them to discuss the best options regarding the unions.

Enable the union representatives to communicate with the management of the enterprise to the extent necessary for the effective performance of their functions.

Authorize the workers' representatives who act on behalf of the union to display union notices on the enterprise premises in places fixed by joint agreement with the management and easily accessible by the workers, and to distribute bulletins, notices, publications and other union documents to the workers in the enterprise.

The abovementioned measures must be implemented in such a way as not to obstruct the normal functioning of the enterprise or the campuses.

**582.** Further to this decision, the other trade union (SUTACEJ) filed a number of appeals and is awaiting the outcome of its application for judicial review.

### **C. The Committee's conclusions**

**583.** *The Committee notes that this case refers to allegations of the denial of entry to the educational establishments of CONALEP, located in the State of Jalisco, to representatives of SILTACEJ. The complainant reports that, on the one hand, another trade union SUTACEJ prevented it from entering and that, on the other hand, CONALEP Jalisco management stated on two occasions that it will not grant SILTACEJ access.*

**584.** *The Committee takes note of the Government's statement that: (1) SUTACEJ is party to the collective agreement concluded with CONALEP in Jalisco and that it has almost 1,000 workers duly affiliated and employed in this institution and, according to SUTACEJ, no workers affiliated to SILTACEJ are employed in CONALEP of the State of Jalisco; (2) there is no evidence of any violation of Convention No. 135, as neither the Secretary-General of SILTACEJ nor the members of the union's executive committee belong to the*

workforce of that institution; (3) SILTACEJ (which obtained its union registration) has not been prevented from carrying out its activities, in so far as these do not interfere with the normal functions of the college; (4) the authorities have not prevented SILTACEJ from exercising the rights enshrined in Convention No. 87; and (5) CONALEP is open to the complainant trade union raising awareness of its plan of action using approaches that do not interfere with the normal functions of the colleges.

**585.** *The Committee notes with interest the Government's indication that the direct amparo appeal filed by the complainant organization on 16 November 2011 and submitted to the Third Collegiate Labour Tribunal of the Third Circuit resulted in a decision in favour of the organization, further to which the Jalisco Conciliation and Arbitration Board handed down a ruling ordering CONALEP to take a set of measures guaranteeing that the complainant organization and its representatives would have access to the various campuses of CONALEP and would have the possibility of communicating with the management, displaying trade union notices and distributing documents. The Committee observes that this decision was the subject of an application for judicial review from the other trade union (SUTACEJ) and this is still pending.*

**586.** *The Committee requests the Government to keep it informed of the outcome of the application for judicial review filed by SUTACEJ.*

### **The Committee's recommendation**

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

*The Committee requests the Government to keep it informed of the outcome of the application for judicial review filed by SUTACEJ.*

CASE NO. 2902

INTERIM REPORT

### **Complaint against the Government of Pakistan presented by the Karachi Electric Supply Corporation Labour Union (KESC)**

***Allegations: The complainant organization alleges refusal by the management of the Karachi Electric Supply Enterprise to implement a tripartite agreement, to which it is a party. It further alleges that the enterprise management ordered to open fire at the protesting workers, injuring nine, and filed criminal cases against 30 trade union office bearers***

**588.** The Committee last examined this case at its November 2012 meeting, when it presented an interim report to the Governing Body [see 365th Report, paras 1110–1123, approved by the Governing Body at its 316th Session (November 2012)].



589. Since there has been no reply from the Government, the Committee has been obliged to postpone its examination of this case on two occasions. At its May–June 2013 meeting [see 368th Report, para. 5], the Committee launched an urgent appeal and drew the attention of the Government to the fact that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body, it may present a report on the substance of this case even if the observations or information from the Government have not been received in due time.

590. Pakistan 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

591. In its previous examination of the case, the Committee made the following recommendations [see 365th Report, para. 1123]:

- (a) The Committee requests the Government to clarify which agreement it is referring to in its reply and should there be a more recent agreement, to transmit a copy thereof to the Committee. The Committee further requests the Government and the complainant to indicate whether the July 2011 agreement has now been implemented.
- (b) In view of the gravity of the matters raised in this case, the Committee requests the Government to institute immediately an independent judicial inquiry into the allegations that: (i) violence was used against trade union members during a demonstration against the refusal of the enterprise to implement the tripartite agreement, injuring nine; and (ii) 30 trade union officers were dismissed following this demonstration and/or criminal charges were brought against them, with a view to fully clarifying the facts, determining responsibility, punishing those responsible and preventing the repetition of such acts. The Committee requests the Government to inform it of the outcome of this investigation and to keep it informed of any follow-up measures taken. It expects that, should it be found that these unionists were dismissed or charged for the exercise of legitimate trade union activities, the Government will take all necessary steps to ensure their reinstatement and the dropping of all pending charges. If reinstatement is found not to be possible for objective and compelling reasons, the Committee requests the Government to take the necessary measures to ensure that the union members concerned are paid adequate compensation so as to constitute a sufficiently dissuasive sanction for anti-union discrimination.
- (c) Noting from the complainant's allegations that charges were brought against trade union officers under the Anti-terrorism Act, the Committee requests the Government to indicate precisely under which provisions of the Anti-terrorism Act the trade union officers were charged and invites it to ensure that the charges are dropped should they relate to the exercise of legitimate strike action.

## B. The Committee's conclusions

592. *The Committee regrets that, despite the time that has elapsed since this case was last examined, the Government has not replied to any of the Committee's outstanding recommendations, although it has been invited on several occasions, including by means of an urgent appeal, to present its comments and observations on the case. The Committee urges the Government to be more cooperative in the future.*

593. *Under these circumstances, and in accordance with the applicable rules of procedure [see 127th Report, para. 17, approved by the Governing Body at its 184th Session], 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.*

- 594.** *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.*
- 595.** *The Committee recalls that the complainant in this case alleged that the management of the Karachi Electric Supply Enterprise refused to implement a tripartite agreement signed on 26 July 2011, to which it was a party and that during a demonstration against the refusal of the enterprise to implement this agreement, the enterprise management ordered its security guards to open fire on protesting workers, injuring nine, and subsequently dismissed and/or filed criminal cases against 30 trade union officers. The Committee further recalls that, according to the complainant, the police refused to file criminal charges against the management of the company, and the complainant was only able to bring such a case following an order of the court. In its previous examination of the case, the Committee observed that the Government had sent only partial information indicating that an agreement had been reached between the management and the KESC as a result of an effective intervention of the Governor of Sindh and that subsequently, the government of the Province of Sindh had also been asked to make all efforts to ensure the implementation of this agreement in letter and spirit. It was not clear whether the Government was referring to the July 2011 agreement or to a more recent one that might have addressed the unfortunate events of August 2011. As no new information has been provided by the Government, the Committee reiterates its previous request to clarify which agreement the former is referring to and should there be a more recent agreement, to transmit a copy thereof to the Committee. The Committee further requests the Government and the complainant to indicate whether the July 2011 agreement has now been implemented.*
- 596.** *As regards the allegations of violent intervention in a peaceful demonstration, the Committee once again requests the Government to institute immediately an independent judicial inquiry into the allegations that: (i) violence was used against trade union members during a demonstration against the refusal of the enterprise to implement the tripartite agreement, injuring nine; and (ii) 30 trade union bearers were dismissed following this demonstration and/or criminal charges were brought against them, with a view to fully clarifying the facts, determining responsibility, punishing those responsible and preventing the repetition of such acts. The Committee requests the Government to inform it of the outcome of this investigation and to keep it informed of any follow-up measures taken. It expects that, should it be found that these unionists were dismissed or charged for the exercise of legitimate trade union activities, the Government will take all necessary steps to ensure their reinstatement and the dropping of all pending charges. If reinstatement is found not to be possible for objective and compelling reasons, the Committee requests the Government to take the necessary measures to ensure that the union members concerned are paid adequate compensation so as to constitute a sufficiently dissuasive sanction for anti-union discrimination.*
- 597.** *Recalling that Presidential Ordinance No. IV of 1999, which amended the Anti-terrorism Act by penalizing with imprisonment the creation of civil commotion, including illegal strikes or slowdowns, had been repealed and is no longer in force, and noting from the complainant's allegations that charges were brought against trade union officers under the Anti-terrorism Act, the Committee once again requests the Government to indicate under which provisions of the Anti-terrorism Act the trade union officers were charged and invites it to ensure that the charges are dropped should they relate to the exercise of legitimate strike action.*

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## The Committee's recommendations

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

- (a) *The Committee regrets that, despite the time that has elapsed since the complaint was last examined, the Government has not replied to any of the Committee's outstanding recommendations. The Committee urges the Government to be more cooperative in the future.*
- (b) *The Committee requests the Government to clarify which agreement it is referring to in its reply and, should there be a more recent agreement, to transmit a copy thereof to the Committee. The Committee recalls that it has already requested the Government and the complainant to indicate whether the July 2011 agreement has now been implemented and cannot but strongly reiterate its previous request.*
- (c) *In view of the gravity of the matters raised in this case, the Committee once again requests the Government to institute immediately an independent judicial inquiry into the allegations that: (i) violence was used against trade union members during a demonstration against the refusal of the enterprise to implement the tripartite agreement, injuring nine; and (ii) 30 trade union officers were dismissed following this demonstration and/or criminal charges were brought against them, with a view to fully clarifying the facts, determining responsibility, punishing those responsible and preventing the repetition of such acts. The Committee requests the Government to inform it of the outcome of this investigation and to keep it informed of any follow-up measures taken. It expects that, should it be found that these unionists were dismissed or charged for the exercise of legitimate trade union activities, the Government will take all necessary steps to ensure their reinstatement and the dropping of all pending charges. If reinstatement is found not to be possible for objective and compelling reasons, the Committee requests the Government to take the necessary measures to ensure that the union members concerned are paid adequate compensation so as to constitute a sufficiently dissuasive sanction for anti-union discrimination.*
- (d) *The Committee once again requests the Government to indicate under which provisions of the Anti-terrorism Act the trade union officers were charged and invites it to ensure that the charges are dropped should they relate to the exercise of legitimate strike action.*

CASE NO. 2922

DEFINITIVE REPORT

**Complaint against the Government of Panama  
presented by  
the Panama Judicial Services Workers'  
Trade Union (SITRASEJUP)**

*Allegations: The complainant organization alleges that the administrative authority rejected its application for legal personality, thereby preventing the professionals it represents from enjoying the right to organize*

**599.** The complaint is set forth in a communication from the Panama Judicial Services Workers' Trade Union (SITRASEJUP) dated 31 January 2012.

**600.** The Government sent its observations in a communication dated 3 May 2013.

**601.** 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**

**602.** In its communication of 31 January 2012, SITRASEJUP states that it is a nationwide trainee lawyers' association and that it submitted an application for legal personality to the Department of Social Organizations of the General Labour Department of the Ministry of Labour and Labour Development on 28 October 2011. SITRASEJUP alleges that the application was rejected and that this is stated in resolution DM205-2011 of 13 December 2011.

**603.** The complainant states that the administrative authority is preventing the professionals it represents from enjoying the right to organize and is in breach of article 68 of the national Constitution, which grants employers, employees and professionals of all categories the right to organize, and article 342(1) of the Labour Code, which provides for the existence of trade unions of persons from the same profession, trade or specialist skill area.

**B. The Government's reply**

**604.** In its communication of 3 May 2013, the Government states that the Ministry of Labour and Labour Development decided, by resolution DM205-2011 of 13 December 2011, to reject SITRASEJUP's application for legal personality as it failed to satisfy the criteria laid down in the Labour Code. The Government states that the documentation submitted by the complainant organization failed to meet the minimum requirements set forth in article 352 of the Labour Code. Furthermore, the Government notes that the trade union statute provides for eight secretariats whereas the founding instrument names only seven directors, and that the women's secretariat is mentioned in the founding instrument but not in the statute. The Government states that it issued the aforementioned resolution after examining the application and taking into account the shortcomings and inconsistencies.

605. The Government notes that after the trade union received notification of the resolution, its authorized representative submitted a request for review; however, the appellant failed to substantiate said request within the statutory time period and it was declared null and void.
606. Lastly, the Government informs the Committee that the case was due to be examined by the Committee for the Rapid Handling of Complaints concerning Freedom of Association and Collective Bargaining established under the 2012 Panama Tripartite Agreement, but that the work of said committee has been suspended since November 2012 because the workers' sector withdrew from the committee.

### C. The Committee's conclusions

607. *The Committee observes that, in the present case, the complainant organization alleges that on 28 October 2011, the Department of Social Organizations of the General Labour Department of the Ministry of Labour and Labour Development rejected its application for legal personality by resolution DM205-2011 dated 13 December 2011 and that it thereby prevented the professionals it represents from enjoying the right to organize.*
608. *In this regard, the Committee notes that the Government reports that: (1) the Ministry of Labour and Labour Development decided, by resolution DM205-2011 of 13 December 2011, to reject SITRASEJUP's application for legal personality as it failed to satisfy the criteria and minimum requirements laid down in the Labour Code, in particular article 352; (2) the trade union statute provides for eight secretariats, whereas the founding instrument names only seven directors, and that the women's secretariat is mentioned in the founding instrument but not in the statute; (3) after the trade union received notification of the resolution, its authorized representative submitted a request for review; however, the appellant failed to substantiate the said request within the statutory time period and it was declared null and void; and (4) the case was due to be examined by the Committee for the Rapid Handling of Complaints concerning Freedom of Association and Collective Bargaining established under the 2012 Panama Tripartite Agreement, but the work of the said committee has been suspended since November 2012 because the workers' sector had withdrawn from the committee.*
609. *The Committee takes note of this information and in particular the Government's submission that the complainant organization failed to substantiate the request for review which it lodged against the administrative resolution rejecting its application for legal personality. Furthermore, as regards the examination of the case by the Committee for the Rapid Handling of Complaints concerning Freedom of Association and Collective Bargaining and that committee's operational problems, the Committee notes with interest that, during the June 2013 session of the International Labour Conference, the Standards Department encouraged the Panama tripartite delegation to meet and that during that meeting an agreement was signed whereby the Government and the social partners undertook to make every effort to revive the roundtables with a view to officially resuming their work as soon as possible. Consequently, taking account of the fact that freedom of association is a fundamental right, the Committee is confident that the case in question may be examined promptly within the framework of the aforementioned committee, that the shortcomings identified by the Government will be remedied and that SITRASEJUP will ultimately be granted the legal personality it seeks.*

## The Committee's recommendation

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

*The Committee is confident that the case in question may be examined promptly by the Committee for the Rapid Handling of Complaints concerning Freedom of Association and Collective Bargaining, and that SITRASEJUP will ultimately be granted the legal personality it seeks.*

CASE NO. 2900

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

### **Complaint against the Government of Peru presented by the Single Confederation of Workers of Peru (CUT)**

***Allegations: The complainant organization alleges anti-union practices by Banco Falabella Peru against the Banco Falabella Workers' Trade Union (SUTBAF) and its members, including the dismissal of the Secretary-General, and pressure on its members to resign***

- 611.** The complaint is contained in a communication from the Single Confederation of Workers of Peru (CUT) dated 15 September 2011.
- 612.** The Government sent its observations in communications dated 24 February, 6 and 20 August 2012, and 15 January and 28 May 2013.
- 613.** Peru has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

#### **A. The complainant's allegations**

- 614.** In its communication of 15 September 2011, the CUT states that the Banco Falabella Workers' Trade Union (SUTBAF), affiliated to the Confederation, has been the subject of anti-trade union practices, which has resulted in a fall in membership numbers. According to the complainant organization, only ten union members remain of the 24 workers who founded SUTBAF in June 2012 because 14 left the union under pressure from the company (five no longer work in the company and nine still work there and state that they have agreed a settlement with the company). The complainant organization adds that the company has contested the registration of SUTBAF and that it has also rejected the list of demands to initiate collective bargaining.
- 615.** The CUT adds that SUTBAF members are subject to anti-trade union acts in the form of telephone calls to engage in discussions with individuals from the bank's management, during which they are urged to resign from the union and are offered incentives and better

conditions. The CUT alleges that against this background of refusal to recognize the union or to engage in collective bargaining, the Secretary-General of SUTBAF, Mr Hugo Rey Douglas, was dismissed on 2 December 2010, on the grounds of infringements and alleged non-compliance with respect to the employment relationship. The CUT also states that, despite repeated requests for the Ministry of Labour to intervene and the fact that labour inspections always conclude that anti-trade union acts have been committed, the employer is never penalized or ordered to restore the rights that have been violated (particular reference is made to the dismissal of the Secretary-General, who has had to take legal action regarding his dismissal).

## **B. The Government's reply**

- 616.** In its communication of 24 February 2012, the Government notes that Banco Falabella sent a report dated 6 December 2011, stating that a list of demands is currently being negotiated as per normal procedure and that meetings had been held for the purposes of collective bargaining (a copy of the record of the opening session of collective bargaining is attached to the reply).
- 617.** Regarding the complainant's allegation that SUTBAF was subject to anti-trade union practices, resulting in a systematic fall in membership numbers, the bank states that there are 34 union members, which contradicts information provided by the complainants that there are only ten remaining members. With respect to the request for the annulment of the administrative act on the automatic registration of SUTBAF, the bank states that the only reason for making the aforementioned request was because it was stated in the communication sent by the trade union that its executive board members included Mr Henry Llerena Córdova, who had voluntarily resigned from his post and whose employment relationship had ended before the union's registration. The bank also points out that the complainant organization has provided no evidence to show that the company is constantly calling workers affiliated to the union to urge or encourage them to resign in exchange for incentives, or that it is seeking the resignation of unionized workers.
- 618.** For its part, the Government states that the Ministry of Labour and Employment Promotion, in the exercise of its powers, has imposed a fine on the bank (through Subdirectorate Decision No. 608-2011 of 17 October (procedure No. 422-2011)) of 12,672,100 Peruvian nuevos soles (PEN) (approximately US\$4,600), for employment relationship infringements. (As recorded in the decision handed down by the Government: "It is ascertained that the company inspected is guilty of the following employment relationship infringements: I. The commission of acts relating to the suspension without pay of nine unionized workers (listed by name) on 21, 22 and 23 September 2010, which also affected the other 28 trade union members at the time the acts violating freedom of association were committed, as a result of which this office imposed a fine amounting to 6,336 Peruvian nuevos soles; II. A very serious employment relationship infringement: the commission of acts impinging on the freedom of association of the worker or trade union organization such as those encouraging resignation from the union, which concerned 37 workers affiliated to the Banco Falabella Workers' Trade Union referred to in point I of this paragraph, following which this office imposed a fine amounting to 6,336 Peruvian nuevos soles.") The Government adds that the bank lodged an appeal against this decision on 2 January 2012, which was granted on 6 January of the same year.
- 619.** The Government also reports that judicial proceedings are under way to deal with the application for annulment of the dismissal filed by Mr Rey against the bank, which will ascertain whether or not, in carrying out the dismissal, an anti-trade union act was committed.

**620.** In its communication of 6 August 2012, the Government reports that the Fourth Subdirectorate for Labour Inspection handed down a ruling through Subdirectorate Decision No. 350-2012-MTPE/1/20.44 on 25 May 2012, relating to the aforementioned procedure No. 422-2011, and decided to fine the workplace known as Banco Falabella the sum of PEN19,008 (approximately \$6,800). In its communication of 20 August 2012, the Government reports that the bank lodged an appeal against that decision, which was rejected, and that the Fourth Subdirectorate for Labour Inspection handed over the case file to the Fines Control Unit to process enforcement of the fine. In its communication of 15 January 2013, the Government states that the Fines Control Unit of the Ministry of Labour and Employment Promotion has informed it that the bank has paid the fine imposed.

### **C. The Committee's conclusions**

**621.** *The Committee notes that in this case the complainant organization alleges acts of anti-trade union discrimination and interference by Banco Falabella against members of SUTBAF (the alleged dismissal of the Secretary-General and pressure on members to resign from the union, which had allegedly resulted in a fall in membership numbers), and that the bank has contested the registration of SUTBAF and has also rejected the list of demands to initiate collective bargaining.*

**622.** *Regarding the alleged acts of anti-union discrimination and interference against SUTBAF members (pressure on members to resign, which had allegedly resulted in a fall in membership numbers), the Committee takes note of the Government's statement that the bank informed it that there are 34 union members, which contradicts information provided by the complainants that there are only ten remaining members, and that the complainant organization has provided no evidence to show that the company is constantly calling workers affiliated to the union to urge or encourage them to resign in exchange for incentives, or that it is seeking the resignation of unionized workers.*

**623.** *The Committee notes that the Government, for its part, reports the following: (1) The Ministry of Labour and Employment Promotion, in the exercise of its powers, has imposed a fine on the bank (through Subdirectorate Decision No. 608-2011 on 17 October (procedure No. 422-2011) of PEN12,672,100 (approximately \$4,600), for employment relationship infringements (as recorded in the decision handed down by the Government, the bank was guilty of the following employment relationship infringements: (i) the commission of acts relating to the suspension without pay of nine unionized workers (listed by name) on 21, 22 and 23 September 2010, which also affected the other 28 trade union members at the time the acts violating freedom of association were committed; and (ii) a very serious employment relationship infringement: the commission of acts impinging on the freedom of association of the worker or trade union organization such as those encouraging resignation from the union, which concerned 37 workers affiliated to SUTBAF referred to in point (i) of this paragraph; (2) the bank lodged an appeal against this decision on 2 January 2012, which was granted on 6 January of the same year; (3) the Fourth Subdirectorate for Labour Inspection handed down a ruling through Subdirectorate Decision No. 350-2012-MTPE/1/20.44 on 25 May 2012, relating to the aforementioned procedure No. 422-2011, and decided to fine the bank an amount in excess of PEN19,008 (approximately \$6,800); (4) the bank lodged an appeal against that decision, which was rejected; and (5) the Fines Control Unit of the Ministry of Labour and Employment Promotion has informed it that the bank has paid the fine imposed.*

**624.** *In this respect, the Committee notes that the administrative authority ascertained and penalized the alleged anti-trade union acts; however, because they involve very serious violations of freedom of association, the Committee notes with concern that the administrative proceedings ultimately resulting in a fine being imposed lasted more than 13 months (October 2011 to January 2013) and 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 person concerned* [see *Digest of decisions and principles of the Freedom of Association Committee*, fifth (revised) edition, 2006, para. 826].

- 625.** *With regard to the alleged anti-union dismissal of the SUTBAF Secretary-General, Mr Hugo Rey Douglas, on 2 December 2010, the Committee takes note of the Government's statement that judicial proceedings are under way to deal with the application for annulment of the dismissal filed by Mr Rey against the bank, which will determine whether or not, in carrying out the dismissal, an anti-trade union act was committed. In this respect, the Committee notes with concern that more than two years have elapsed since this union official's dismissal and recalls that "justice delayed is justice denied" [see *Digest*, op. cit., para. 105]. Under these circumstances, the Committee expects that the judicial authority will hand down a ruling in the very near future and that, if the dismissal proves to have been of an anti-union nature, he will be reinstated without delay and paid any outstanding wages. The Committee requests the Government to keep it informed on this matter.*
- 626.** *As for the alleged challenge against the union registration of SUTBAF by the bank, the Committee takes note of the Government's statement that the bank reports that the only reason for making the aforementioned request was that it was stated in the communication sent by the trade union that its Executive Board members included Mr Henry Llerena Córdova, who had voluntarily resigned from his post and whose employment relationship had ended before the union's registration. In this connection, regretting that the Government has failed to send its observations concerning this allegation, the Committee requests the Government to keep it informed about the status of the SUTBAF registration.*
- 627.** *With regard to the bank's alleged refusal to engage in collective negotiation with SUTBAF, the Committee takes note of the Government's statement that the bank reports in its communication dated 6 December 2011 that it was negotiating a list of demands as per normal procedure and that meetings had been held for the purposes of collective bargaining (the Government sent a copy of the record of the opening session of collective bargaining). In this regard, the Committee regrets that the Government has failed to send more detailed observations concerning these allegations and that it has merely transmitted the information from the bank stating that negotiations took place in December 2011. Recalling that "measures should be taken to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements" [see *Digest*, op. cit., para. 880], the Committee requests the Government to keep it informed about the outcome of the negotiations between the bank and SUTBAF and whether an agreement is ultimately reached on the terms and conditions of employment in the aforementioned workplace.*

## **The Committee's recommendations**

- 628.** *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) *With regard to the alleged anti-union dismissal of the Secretary-General of SUTBAF, Mr Hugo Rey Douglas, on 2 December 2010, the Committee expects that the judicial authority will hand down a ruling in the very near*

*future and that, if the dismissal proves to have been of an anti-union nature, he will be reinstated without delay and paid any outstanding wages. The Committee requests the Government to keep it informed on this matter.*

- (b) *As for the alleged challenge against the union registration of SUTBAF by the bank, the Committee, regretting the lack of reply from the Government to these allegations, requests the Government to keep it informed about the status of this organization's registration.*
- (c) *The Committee requests the Government to keep it informed about the outcome of the negotiations between the bank and SUTBAF and whether an agreement is ultimately reached on the terms and conditions of employment in the aforementioned workplace.*

CASE NO. 2966

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

**Complaint against the Government of Peru  
presented by  
the Autonomous Confederation of Peruvian Workers (CATP)**

***Allegations: The complainant alleges acts of anti-union discrimination and persecution in the National Public Records Office (SUNARP)***

- 629.** The complaint is contained in a communication from the Autonomous Confederation of Peruvian Workers (CATP) dated 1 June 2012.
- 630.** The Government sent its observations in communications dated 17 August and 22 and 26 October 2012.
- 631.** Peru has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

**A. The complainant's allegations**

- 632.** In its communication dated 1 June 2012, the CATP states that an in-depth analysis of the trade union situation shows that since the change of Government in July 2011, the National Public Records Office (SUNARP) has systematically adopted a hostile and discriminatory attitude against trade union officers, section delegates or members who claim workers' rights or call for compliance with arbitration awards (in particular, those in the central office, in Registry Zone XI of Ica, in Registry Zone V of Trujillo, in Registry Zone IV of Iquitos and in Registry Zone XIII, Tacna office). Specifically, the CATP states more concretely that: (1) since the beginning of the trade union action taken by the General Secretary of the Trade Union of Workers of SUNARP (SITRASUNARP) in the central office, together with the union officers of Registry Zone IX, in protest against the employer's labour policy and calling for labour inspections to verify compliance with the collective agreement, a climate of anti-union discrimination and harassment began to

prevail, to the detriment of the General Secretary of SITRASUNARP, Mr Jorge Aliaga Montoya, who ultimately received a reprimand in the form of Decision No. 119-2012-SUNARP/SN of 16 May; (2) Mr Agustín Mendoza Champion, Culture and Training Secretary of the Trade Union of Registry Zone IX, Ica Zone, received a disciplinary penalty for failing to obey the order to cease his trade union activities (in particular, organizing courses on freedom of association and preparing comments on the application of Conventions Nos 135, 151 and 154); (3) in an attempt at intimidation, administrative disciplinary proceedings were instituted against Mr Carlos Holguín Nacarino, General Secretary of the Trade Union of Registry Zone V of Trujillo, who had started submitting complaints against the dismissal of a union member; (4) Mr Rolando Valdivia Cornejo, Organization Secretary of the Trade Union of Workers of Registry Zone XIII, Tacna office, was transferred from his post, preventing him from carrying out his trade union activities; and (5) Mr Elvis Félix Zavala Guerra, Social Affairs Secretary of the National Federation of Workers of the Public Registry System (FETRASINARP), was suspended for having submitted a complaint regarding the situation of workers who had been subjected to penalties. The union officer was subsequently dismissed on 14 May 2012.

**633.** Lastly, the complainant states that in view of this situation, the President of the Republic and the National Public Records Superintendent were informed of the ongoing violations of freedom of association and requested to issue an order for the acts of discrimination being committed at national level in the SUNARP to be stopped, but no reply was received. The complainant considers that in the light of the foregoing, it appears that there is clearly systematic persecution of union officers, who are penalized for complying with the law, and are being subjected to penalties or dismissed on the pretext of disciplinary offences, disloyalty, inefficiency, inability or failure to perform their assigned duties, for the sole purpose of causing panic among members, dismantling the trade union organization and preventing it from operating.

## **B. The Government's reply**

**634.** In its communications dated 17 August and 22 October 2012, the Government states that the allegations relate to workers who were or had been officers of different trade unions of SUNARP at the national level. It adds that the measures adopted and implemented by SUNARP through its various areas and officials were in strict compliance with the labour and administrative regulations in force, objectively applied to cases of non-compliance with such regulations. As regards the allegations relating to five cases of union officers referred to by the complainants, the Government states the following:

- concerning Mr Jorge Aliaga Montoya, it was found in the context of administrative disciplinary proceedings that, in his capacity as personnel specialist, he had failed to report the accumulation of unused leave of an important group of workers – resulting in SUNARP being fined by the Ministry of Labour and Employment Promotion – and was thus issued with a written reprimand. The Government adds that the same penalty for the same offence was applied to other staff who are not union members, such as, for example, the Director of Human Resources. Mr Aliaga Montoya is currently working as a personnel specialist in human resources and as a trade union official. He has been provided with facilities to carry out his union activities without violation of his rights and is also covered by trade union immunity;
- concerning Mr Agustín Hermes Mendoza Champion, Public Registrar in Registry Zone IX, two administrative proceedings were instituted against him for conduct contrary to the agency's internal regulations, and he was suspended for 30 and 60 days by Decisions Nos 259-2010/ZRN and 201-2011/ZRN of 8 November 2010 and 17 June 2011. He lodged appeals against the decisions with the Civil Service Tribunal, and filed *amparo* (protection of constitutional rights) proceedings with the

Second Civil Court of Ica, which are currently pending. As regards the appeals filed against the decisions with the Civil Service Tribunal, the Government adds that one of them was rejected as the offence with which he was accused was confirmed, while the other is still pending. The penalties imposed on the official were a consequence of his conduct in the performance of his duties, and he is currently still employed as public registrar in the Ica office;

- concerning Mr Carlos Holguín Nacarino, an administrative investigation was ordered for inappropriate use of email and it was found that he had not committed a disciplinary offence. In addition, by Decision No. 224-2012 of 22 May 2012, administrative proceedings were instituted upon finding that he had approved a decision allowing payment of benefits to workers who were not covered by the collective agreement, to the financial detriment of the agency, and a penalty was ordered by Decision No. 393-2012. An appeal was lodged against this decision with the Civil Service Tribunal. Lastly, administrative disciplinary proceedings were also instituted against Mr Holguín Nacarino, who is employed as an asset and stock control specialist in Registry Zone V, in view of indications that he is not performing his professional duties, such as managing and controlling the agency's assets. The proceedings are at the stage of evaluation by the employer. Mr Holguín Nacarino is performing his duties without his trade union rights being violated;
- concerning Mr Rolando Valdivia Cornejo, his transfer from the Llo office to the Moquegua office took place with his consent, on justified grounds based on the need to ensure a temporary improvement in the work atmosphere in the Llo office. In addition, he was granted an increment of 1,000 nuevos soles (PEN) in addition to his monthly salary. There is no discrimination against him, and the transfer was for six months;
- concerning Mr Elvis Félix Zavala Guerra, he was transferred with his express consent, based on the requirements of the service, without any reduction in grade or salary, within the same jurisdiction and region on family grounds. He was also paid a supplement for accommodation costs. He filed criminal proceedings against the Director of the Iquitos Zone, which were rejected. He was dismissed for serious misconduct after accusing the employer of a criminal offense, an accusation found to be false by the Public Prosecutor's Office.

**635.** Lastly, the Government states that no worker has been subjected to prejudicial measures in employment on account of trade union membership, nor has there been or will there be any discrimination against them. Disciplinary penalties and action were carried out against the workers referred to in the complaint for having failed to comply with the labour and administrative regulations in force, and due process was observed.

### **C. The Committee's conclusions**

**636.** *The Committee observes that in this case the CATP alleges acts of anti-union persecution and discrimination in different offices of the SUNARP. Specifically, the Committee observes that the CATP alleges that in the context of anti-union persecution the SUNARP authorities: (1) issued a reprimand against the General Secretary of SITRASUNARP, Mr Jorge Aliaga Montoya; (2) applied a penalty to Mr Agustín Mendoza Champion, Culture and Training Secretary of Registry Zone IX, Ica Zone; (3) instituted administrative disciplinary proceedings against Mr Carlos Holguín Nacarino, General Secretary of the Trade Union of Registry Zone V of Trujillo; (4) transferred Mr Rolando Valdivia Cornejo, Organization Secretary of the Trade Union of Workers of Registry Zone XIII, Tacna office; and (5) dismissed Mr Elvis Félix Zavala Guerra, Social Affairs Secretary of the FETRASINARP.*

- 637.** *As regards the allegations concerning the reprimand issued against the General Secretary of SITRASUNARP, Mr Jorge Aliaga Montoya, the Committee notes the Government's statements to the effect that: (1) it was found in the context of an administrative disciplinary proceeding that, in his capacity as personnel specialist, he had failed to report the accumulation of unused leave of an important group of workers – resulting in SUNARP being fined by the Ministry of Labour and Employment Promotion – and was thus issued with a written reprimand; (2) the same penalty for the same offence was applied to other staff who are not union members, such as the Director of Human Resources; and (3) Mr Aliaga Montoya is currently working as a personnel specialist in human resources and, as a trade union officer, has been provided with facilities to carry out his union activities without violation of his rights, and is covered by trade union immunity. In the light of this information, the Committee will not pursue its examination of these allegations.*
- 638.** *As regards the allegation that Mr Agustín Mendoza Champion, Culture and Training Secretary of the Trade Union of Registry Zone IX, Ica Zone, received a disciplinary penalty for failing to obey the order to cease his trade union activities, the Committee notes the Government's statements to the effect that: (1) two administrative proceedings were instituted against him for conduct contrary to the agency's internal regulations, and he was suspended for 30 and 60 days by Decisions Nos 259-2010/ZRN and 201-2011/ZRN of 8 November 2010 and 17 June 2011; (2) he lodged appeals against the decisions with the Civil Service Tribunal (one of them was rejected, while the other is still pending), and filed amparo proceedings with the Second Civil Court of Ica, which are currently pending; and (3) the penalties imposed on the official were a consequence of his conduct in the performance of his duties, and he is currently employed as public registrar in the Ica office. The Committee takes note of this information, observes that the Government does not give details of the acts constituting infringements of the agency's internal regulations and requests the Government to keep it informed of the outcome of the appeal proceedings filed by the union officer against the suspensions ordered against him.*
- 639.** *As regards the allegation that, in an attempt to intimidate Mr Carlos Holguín Nacarino, General Secretary of the Trade Union of Registry Zone V of Trujillo, administrative disciplinary proceedings were brought against him, the Committee notes the Government's statement to the effect that: (1) an administrative investigation was ordered against him for inappropriate use of e-mail and it was found that he had not committed a disciplinary offence; (2) by Decision No. 224-2012 of 22 May 2012, administrative proceedings were instituted upon finding that he had approved a decision allowing payment of benefits to workers who were not covered by the collective agreement, to the financial detriment of the agency, and a penalty was ordered by Decision No. 393-2012 (an appeal was lodged against this decision with the Civil Service Tribunal); (3) an administrative disciplinary proceeding was also instituted against Mr Holguín Nacarino, who is employed as an asset and stock control specialist in Registry Zone V, in view of indications that he is not performing his professional duties, such as managing and controlling the agency's assets (these proceedings are at the stage of evaluation by the employer); and (4) Mr Holguín Nacarino is performing his duties without his trade union rights being violated. The Committee takes note of this information and requests the Government to keep it informed of the outcome of the appeal proceedings filed by Mr Holguín Nacarino against the administrative decision penalizing him, and of the outcome of the pending administrative disciplinary proceedings against him. Moreover, in view of the numerous administrative proceedings initiated against this union officer, the Committee requests the Government to ensure that these proceedings were not aimed at harassing the worker on account of his trade union activities.*
- 640.** *As regards the alleged transfer of Mr Rolando Valdivia Cornejo, Organization Secretary of the Trade Union of Workers of Registry Zone XIII, Tacna office, preventing him from*

carrying out his trade union activities, the Committee notes the Government's statement to the effect that: (1) his transfer from the Llo office to the Moquegua office took place with his consent, on justified grounds based on the need to ensure a temporary improvement in the work atmosphere in the Llo office; (2) he was granted a salary increment of PEN1,000 per month; and (3) there is no discrimination against him, and the transfer was for six months. In the light of this information, and noting that the transfer was temporary and carried out with the union officer's consent, the Committee will not pursue its examination of these allegations.

- 641.** *As regards the allegation concerning the suspension and subsequent dismissal of Mr Elvis Félix Zavala Guerra, Social Affairs Secretary of the FETRASINARP, for having submitted a complaint regarding the situation of workers who had been subjected to penalties, the Committee notes the Government's statement to the effect that: (1) the union officer was transferred with his express consent, based on the requirements of the service, without any reduction in grade or salary, within the same jurisdiction and region on family grounds; (2) he was paid a supplement for accommodation costs; (3) he filed criminal proceedings against the director of Iquitos Zone, which were rejected; and (4) he was dismissed for serious misconduct for having brought a criminal action against his employer, accusing him of abuse of authority (it appears from the documentation sent by the Government that the Public Prosecutor's Office set aside the investigation definitively and declared that the complaint filed by Mr Elvis Félix Zavala Guerra was unfounded). In the light of this information, the Committee will not pursue its examination of these allegations.*

### **The Committee's recommendation**

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

*The Committee requests the Government to keep it informed of the outcome: (1) of the appeals filed by trade union officer Mr Agustín Mendoza Champion, Culture and Training Secretary of the Trade Union of Registry Zone IX, Ica Zone, against the penalties of suspension imposed on him; and (2) of the appeal filed by Mr Holguín Nacarino, General Secretary of the Trade Union of Registry Zone V of Trujillo, against the administrative decision penalizing him, as well as on the outcome of the pending administrative disciplinary proceedings against him.*

CASE NO. 2745

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

**Complaint against the Government of the Philippines  
presented by  
the Kilusang Mayo Uno Labor Center (KMU)**

*Allegations: The complainant alleges the implementation of an unofficial “no union, no strike” policy by the Philippines Export Processing Zones Authority (PEZA), in collusion with local and national government agencies. Elements of the anti-union policy include: illegal dismissal of trade unionists, restrictive union registration processes, the closure of companies to obstruct union formation and collective bargaining, interference by local government authorities in union affairs and violation of civil liberties – including assaults, threats, intimidation, harassment, blacklisting, criminalization, abduction and murder of trade unionists*

- 643.** The Committee last examined this case at its June 2012 meeting, when it presented an interim report to the Governing Body [364th Report, paras 971–1008, approved by the Governing Body at its 315th Session (June 2012)].
- 644.** The Government forwarded its observations in communications dated 26 April and 2 May 2013.
- 645.** The Philippines has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

**A. Previous examination of the case**

- 646.** At its June 2012 session, in the light of the Committee’s interim conclusions, the Governing Body approved the following recommendations:
- (a) The Committee expects that the Government will continue to engage with the KMU in dealing with cases involving its members and leaders and invites the complainant organization to cooperate as far as possible with the Government to this end. The Committee requests to be kept informed in this respect.
  - (b) The Committee requests the Government to keep it informed on any progress made towards the adoption of the Strengthening Workers’ Rights to Self Organization Bill.
  - (c) Recalling that the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy provides that special incentives to attract foreign investment should not include any limitation of the workers’ freedom of association or the right to organize and bargain collectively, the Committee once again requests the

Government to indicate the concrete steps taken or envisaged to guarantee the full and effective exercise of trade union rights in the EPZs.

- (d) Concerning the concrete allegations of Government interference into internal union affairs at the Nagkakaisang Manggagawa sa Hoffen Industries-OLALIA factory (Hoffen), Samahan ng Manggagawa sa Mariwasa Siam Ceramics, Inc. (Siam Ceramics), Golden Will Fashion and Samahan ng Manggagawa sa EDS Mfg, Inc. (EDS Inc.), the Committee requests to be kept informed of the motu proprio (on its own violation) investigations that were to be conducted into these allegations by the CHR, expects that the Government will soon be able to report progress in the resolution of these cases and requests the Government to take all the necessary measures to ensure full respect of the principle that public authorities must exercise great restraint in relation to intervention in the internal affairs of trade unions.
- (e) With respect to the complainant's allegations that on various occasions, companies in the EPZs closed down either the whole company or strategic departments where most unionists were located following the recognition of a union (in particular Goldilocks, Sensuous Lingerie and Golden Will Fashion Philippines), the Committee, considering that the closure or restructuring and the lay-off of employees specifically in response to the exercise of trade union rights is tantamount to the denial of such rights and should be avoided, the Committee urges the Government to ensure that the Labor Code, which governs the relationship between labour and management in the registered enterprises in the EPZs, is applied in practice. The Committee requests the Government to provide information concerning the motu proprio investigations conducted by the CHR and expects that the Government will make efforts to ensure a speedy resolution of the above cases by the agencies concerned. It requests the Government to keep it informed in this regard.
- (f) As regards the allegations of anti-union discrimination and more particularly of illegal dismissals of trade union members in the enterprises Enkei Philippines, Sun Ever Lights, Daiho Philippines Inc., Hanjin Garments, Asia Brewery, Nagkakaisang Manggagawa sa Chong Won (NMCW) and Anita's Home Bakeshop, the Committee requests the Government, in respect of the first company, to take the necessary steps so that, pending the outcome of any appeal proceedings instituted by the company, the union members who were dismissed are reinstated immediately in their jobs under the same terms and conditions prevailing prior to their dismissal with compensation for lost wages and benefits, in conformity with the 2007 NLRC order for reinstatement; if reinstatement is not possible for objective and compelling reasons, the Government should ensure that the workers concerned are paid adequate compensation which would represent a sufficiently dissuasive sanction for anti-trade union dismissals. Similarly, in the case of the second company, the Committee requests the Government to keep it informed of any developments in regard to the motion for writ of execution of the 2008 NLRC reinstatement order pending with the NLRC. Concerning the alleged illegal dismissals at the other companies, the Committee requests the Government to carry out independent investigations of the dismissals and, if it finds that they constitute anti-union acts, to take measures to ensure the reinstatement of the workers concerned without delay. If reinstatement is not possible for objective and compelling reasons, the Government should ensure that the workers concerned are paid adequate compensation which would represent a sufficiently dissuasive sanction for anti-trade union dismissals. In addition, in the case of the last company, the Committee once again urges the Government to keep it informed of any relevant judgment handed down, and in particular of the decisions of the NLRC RAB VII or the NLRC Division 4 in Cebu City. The Committee further requests the Government to keep it informed of the motu proprio on its own volition investigations that were to be conducted by the CHR into the abovementioned allegations. It expects that the Government will do its utmost to ensure a speedy and equitable resolution of all cases by the agencies concerned.
- (g) As to the allegations concerning denial of the right to strike, the Committee trusts that the ongoing legislative reform will advance successfully and requests the Government to continue to keep it informed in regard to progress made towards the adoption of Senate Bill No. 632, which seeks to align article 263(g) of the Philippine Labor Code with the essential services criteria under Convention No. 87. The Committee expects that the Government will take the necessary measures without delay to ensure the full respect for



the trade union rights of EPZ workers in practice, including the right to strike, as well as to ensure the speedy resolution of the case of NMCW.

- (h) With respect to the allegations of blacklisting and vilification of union members at Daiho Philippines and Anita's Home Bakeshop, the Committee requests the Government to keep it informed of the outcome of any inquiries conducted by the CHR and to make efforts to ensure the swift investigation and resolution of these cases.
- (i) As regards the serious allegations that on many occasions, the PEZA and municipal government sent PNP units or security forces to intimidate and/or disperse workers during protests, strikes or on picket lines, which, in the case of Hanjin Garments, resulted in the death of one protester, the Committee once again requests the Government to establish without delay an independent judicial inquiry and proceedings before the competent courts as soon as possible with regard to the allegation of the killing of a protester with a view to shedding full light onto the relevant facts and circumstances, and to determine where responsibilities lie, punish the guilty parties and prevent the repetition of similar events. The Committee firmly expects that the Government will do its utmost to ensure the speedy investigation and judicial examination of this case and requests to be kept informed in this respect. Concerning the alleged involvement of the army and police in the dispersal of the picket line and union collective actions at Sun Ever Lights, Sensuous Lingerie, Hanjin Garments and Asia Brewery, the Committee, in view of the conflicting versions of the complainant, the Government and the management, requests the Government to take all necessary measures for an independent investigation to be carried out into the alleged incidents with a view to identifying and punishing those responsible without further delay. The Committee requests the Government to keep it informed of the motu proprio investigations conducted by the CHR and to make all efforts to ensure timely progress in the resolution of these cases.
- (j) Concerning the allegations of a prolonged presence of the army inside the workplaces in the enterprises Sun Ever Lights, Aichi Forging Company and Siam Ceramics, the Committee requests the Government to keep it informed of the motu proprio investigations conducted by the CHR and to take the necessary measures to ensure the speedy resolution of these cases. It also requests the Government to supply a copy of the PNP Guidelines on the Accountability of the Immediate Officer for the Involvement of His Subordinates in Criminal Offenses.
- (k) As regards the allegations of arrest and detention following false criminal charges filed against labour leaders and unionists at the onset of union formation, during collective bargaining negotiations, picket protests, and strikes at the companies Hanjin Garments, Asia Brewery, Golden Will Fashion, Sensuous Lingerie and Kaisahan ng Manggagawa sa Phils. Jeon Inc., the Committee requests the Government to ensure that all relevant information is gathered in an independent manner so as to shed full light on the situation and the circumstances surrounding the arrest of the above trade unionists; should it be determined that they were arrested in relation to their trade union activities, the Committee requests the Government to take the necessary measures to ensure that they are immediately released and all charges dropped. The Committee requests the Government to keep it informed of the motu proprio investigations conducted by the CHR, to do its utmost to soon be able to report progress in investigating all alleged cases of arrest and detention and to communicate the texts of any judgments handed down in these cases.
- (l) The Committee draws the special attention of the Governing Body to the extreme seriousness and urgent nature of the matters dealt with in this case.

## B. The Government's reply

**647.** In its communication dated 2 May 2013, the Government reiterates that the Monitoring Body of the National Tripartite Industrial Peace Council (NTIPC-MB) has issued resolution No. 8, series of 2012, on 15 February 2012, where 17 cases of alleged violation of trade union rights involving companies within the special economic zones were classified as possibly labour-related under ILO Convention No. 87. Out of this number,

one case has been recommended for closure, and the following four cases are covered by separate resolutions issued by the NTIPC-MB as they have been previously raised in other ILO cases:

- (a) The *Samahan ng mga Manggagawa sa EMI-Independent* case involves the killings of Gerardo Cristobal and Jesus Butch Servida, both of which have been raised in Case No. 2528. These cases were endorsed to the Commission on Human Rights (CHR) through resolution No. 2, series of 2010, for in-depth investigation or final pass. After evaluating the recommendation of the CHR vis-à-vis the other information gathered on the cases, the NTIPC-MB resolved to refer the cases back to Task Force Usig of the Philippine National Police (PNP), through resolution No. 1, series of 2012, for further investigation and validation of facts. The PNP Task Force Usig has recommended their treatment as a regular case because the circumstances and evidences point to the fact that they do not constitute an infringement of the exercise of freedom of association.
- (b) The *Kaisahan ng Manggagawa sa Phils. Jeon Inc.* case involves the alleged abduction and alleged filing of criminal action against Normelita Galon and Aurora Afafe and has been raised in Case No. 2528. Through resolution No. 2, series of 2012, the NTIPC-MB referred the case to the Philippine Economic Zone Authority (PEZA), PNP-Task Force Usig and CHR for validation and reconciliation of reports that may be used as factual evidence for the resolution of the case and, request for updates on the pending case before the Municipal Trial Court of Rosario, Cavite.
- (c) The *Aniban Manggagawang Inaapi sa Hanjin Garments* case involves the alleged filing of criminal cases against Christopher Capistrano, et al., which was likewise raised in ILO Case No. 2528 and was covered by resolution No. 3, series of 2012. It is worthy to note that information from the Department of Justice (DOJ) shows that the direct assault case filed against Capistrano, et al., had already been dismissed on 10 March 2011.
- (d) The *PAMANTIK (Solidarity of Workers in Southern Tagalog)–KMU* case involves the alleged filing of criminal charges against Jay Abhan, et al., was raised as an additional case under Case No. 2528 and was covered by resolution No. 7, series of 2012. Initial information from the DOJ indicated that the case was docketed as UA No. 08C-02358 before the Office of the Assistant Prosecutor. However, after verification with the Office of the Manila City Prosecutor, records show that the case does not exist.

**648.** As to the other remaining cases, the Government provides the following updated information gathered from the various concerned agencies through the NTIPC-MB:

- (a) The *Goldilocks Ant-Bel* case involves company closure. The workers' association of the company filed a complaint for unfair labour practice, illegal dismissal, moral and exemplary damages and attorney's fees, which was resolved by the Labour Arbiter of the National Labour Relations Commission (NLRC) in favour of the union on 27 January 2011. However, on 18 July 2011, the NLRC issued a decision reversing the order dated 27 January 2011, dismissing the complaint and directing the respondent to pay the complainants their separation pay. The union then elevated the case to the Court of Appeals. The NTIPC-MB resolved to refer the case to the Court of Appeals to expedite its resolution. On 19 June 2012, the petition for certiorari was denied and dismissed for lack of merit. The Court ruled that the decision to close business is a management prerogative exclusive to the employer, the exercise of which no court can meddle with, except when the employer fails to prove compliance with the requirements of section 283 of the Labour Code, which recognizes the company's cessation of business operation as an authorized cause. In this particular

case, petitioners' services were validly terminated due to the non-renewal of private respondents' franchise agreement with Goldilocks Bakeshop, Inc. after it expired on 17 November 2008. The closure of Goldilocks Harrizon Plaza, Manila was inevitable after the franchiser no longer renewed the franchise due to Ant-Bel Marketing, Inc.'s continuing inability to conform with the standards of "Goldilocks system" by undertaking a renovation of the store. According to the Court, with the legality of private respondents' cessation and closure of business having been established, it goes without saying that there is no illegal dismissal to speak of, hence, no obligation to pay back wages, moral and exemplary damages, as well as attorney's fees. A motion for reconsideration has been filed but the same was denied on 25 September 2012.

- (b) Golden Will Fashion Phils. Workers Organization-Independent – This case involves alleged illegal dismissal, company closure, and interference of the local government unit (LGU) with union affairs. Allegedly, there had been threat, harassment and intervention of the Office of the Provincial Government under the Cavite Industrial Peace Advisory Group which constituted violation of trade union rights. The NTIPC-MB resolved to refer the case to the appropriate agencies for further investigation on the alleged interference of local government officials who allegedly tried to suppress union organizing in favour of the management, and validation of the PEZA report. As per the PEZA, it appears that when the union was registered in the company, the management invited the mayor to lecture on the labour management committee. The company, however, is already closed and its PEZA registration was cancelled in 2009.
- (c) The case *Tunay na Pagkakaisa ng Manggagawa sa Asia Brewery Incorporated-Independent (TPMA-Independent) and PIMA-Independent* against Asia Brewery involves alleged illegal dismissal, assault and criminalization of labour cases. Bonifacio Fenol, et al., were criminally charged for throwing stones on the group of policemen who tried to pacify them during the strike that transpired in front of the company on 4 February 2009. Likewise, Rodrigo Perez, et al., were charged with malicious mischief when they smashed two plastic windows and punctured all the tires of a shuttle bus at the company on 4 October 2004. The NTIPC-MB resolved to refer the cases to the Supreme Court and DOJ to ensure the speedy resolution of the criminal charges filed against Bonifacio Fenol, et al., and Rodrigo Perez, et al., that are before the Cabuyao Municipal Trial Court docketed as criminal cases Nos 10061 and 9338, respectively. Based on the information provided, it was found that criminal case No. 10061 (*People of the Philippines v. Bonifacio Fenol, et al.*) was already dismissed on 11 August 2011. Meanwhile, the NTIPC-MB is still monitoring criminal case No. 9338 (*People of the Philippines v. Rodrigo Perez, et al.*), where the last update received was that the new judge who had taken over needed to review the records of the case and that a hearing was called for clarification purposes.
- (d) *Nagkakaisang Manggagawa sa Chong Won (NMCW)* – This case involves alleged illegal dismissal, closure and criminalization of labour dispute. It was noted, however, that all criminal cases (Nos 09–34) were dismissed in 2009. Moreover, the company closed in February 2007 and an insolvency case has been filed. The lawyer of the workers was appointed to distribute the assets of the company to the workers claimant in the case. The NTIPC-MB resolved to refer the case to PEZA for monitoring of the insolvency case filed by the company and of the distribution of assets of the company to the workers. PEZA reported that it has auctioned the properties of the company for about 1.6 million Philippine pesos (PHP). The court has drawn up a report on the distribution of the money, a copy of which is to be transmitted to the NTIPC-MB.

**649.** The Government observes that common issues that are being raised include: illegal dismissal; interference of local government units with union affairs; criminalization; and

assault in the picket lines. It reiterates that these cases have occurred under the past administration and that, at present, no violence occurs in the economic zones. This can be attributed to the implementation of the Joint DOLE (Department of Labour and Employment)–PNP–PEZA Guidelines on the conduct of PNP personnel, economic zone police and security guards, company security guards and similar personnel during labour disputes. The capacity building being conducted on the Guidelines as well as on freedom of association, collective bargaining and international labour standards are effective in educating all the stakeholders (including the police and officials of the local government units) as regards their respective responsibilities and limitations relative to labour disputes and exercise of trade union rights.

- 650.** Moreover, to ensure that labour disputes are not converted into criminal cases, the DOLE is coordinating with the DOJ for an issuance reinforcing the provisions of Circulars Nos 15, series of 1982, and 9, series of 1986, requiring fiscals/prosecutors and other government prosecutors to secure clearance from the DOLE and/or the Office of the President “before taking cognizance of complaints for preliminary investigation and the filing in court of the corresponding information of cases arising out of, or related to, a labour dispute”, including with “allegations of violence, coercion, physical injuries, assault upon a person in authority and other similar acts of intimidation obstructing the free ingress, to and egress from, a factory or place of operation of the machines of such factory, or the employer’s premises”.

### ***Legislative reforms***

- 651.** Concerning the progress on legislative reforms, the Government indicates that the legislative measure seeking to address the alleged arbitrariness in the exercise of the assumption of jurisdiction power of the Secretary of Labour and Employment has passed second reading at the Senate while the House of Representatives’ version has stalled at the committee deliberation stage. On the other hand, the proposed bill on union registration or the Strengthening Workers’ Rights to Self-Organization Bill, amending articles 234, 235, 236, 237 and 270 of the Labour Code, was approved by the House of Representatives but the Senate version has stalled at second reading. According to the Government, there is a very slim chance for the two bills gaining approval at this 15th Congress, as it is already in recess until June 2013 and the election campaign for seats in the 16th Congress has started.
- 652.** However, the Government points out that in DOLE Department Order No. 40-G-03, the interim measure providing implementing rules on the exercise of the assumption of jurisdiction power of the Secretary of Labour and Employment to address its claimed arbitrariness, has been complemented by the implementation of the Single Entry Approach (SEnA) Programme or DOLE Department Order No. 107-10, providing for a 30-day mandatory conciliation–mediation service on all individual and collective labour and employment disputes as the first approach. The use of intensive conciliation–mediation has been effective as it reduced resort to compulsory mode of dispute resolution including that of assumption of jurisdiction. The Government supplies statistics stating that, since the implementation of SEnA mid-2010, the number of settled requests for assistance under SEnA has increased, the number of handled collective labour cases has declined, the number of compulsory arbitration cases has decreased, and the number of assumption of jurisdiction cases has markedly declined.
- 653.** The legislative measure to institutionalize the use of conciliation–mediation under SEnA as prior resort in all labour disputes by amending article 228 of the Labour Code and the Strengthening of Tripartism Bill have been enacted into law (Republic Acts Nos 10396 and 10395 of 14 March 2013). According to the Government, these legislative measures are critical in the institutionalization of reforms in dispute settlement, as they provide for expeditious and non-adversarial venues for dispute settlement. SEnA and the tripartite

approach in the delivery of conciliation–mediation services have, so far, been effective in the settlement of collective disputes, and might eventually render resort to assumption of jurisdiction unnecessary as they prevent escalation into full-blown labour disputes.

- 654.** The Government also states that the success of enacting into law the bills concerning SENa and tripartism is largely due to the fact that department orders or administrative issuances were issued prior to their filing in Congress. The administrative issuances were crafted through the NTIPC, and the tripartite partners have had the opportunity to go through them. Additionally, they were able to fine-tune their features during their implementation and the positive experiences contributed to their tripartite endorsement in Congress. This approach will be used in securing a consensus to shift the exercise of the assumption of jurisdiction power from the “industry indispensable to the national interest” criteria to “essential services” through the proposed bill that will be re-filed in the 16th Congress convening in July 2013.
- 655.** Tripartite discussion at the Tripartite Executive Committee (TEC) of the NTIPC to come out with a list of industries indispensable to the national interest using the essential services criteria of the ILO has started on 10 and 11 April 2013. The administrative issuance is contemplated to provide for conditions for the exercise of the Secretary of Labour and Employment’s assumption power over the following: (a) industries considered indispensable to the national interest as listed using the essential services criteria; and (b) industries not considered indispensable to the national interest. In both instances, either or both parties shall invoke the exercise of the assumptive power through a petition, and if invoked by both parties, its issuance shall be automatic regardless of the category of the industry.

### ***Capacity-building activities***

- 656.** The Government reiterates that the Joint DOLE–PNP–PEZA Guidelines were issued on 23 May 2011, and the Guidelines on the Conduct of the DOLE, Department of the Interior and Local Government (DILG), Department of National Defence (DND), DOJ, Armed Forces of the Philippines (AFP) and PNP Relative to the Exercise of Workers’ Rights and Activities were signed and issued on 7 May 2012. The two sets of Guidelines specifically prescribe conduct that must be observed by implementers, as well as other stakeholders, if and when labour disputes arise so as not to undermine the exercise of workers’ rights.
- 657.** In order to cascade the 2011 Joint DOLE–PNP–PEZA Guidelines, four area-wide orientation seminars were held in Luzon, Mindanao and Visayas at the end of 2011 for members of the Regional Tripartite Industrial Peace Councils (RTIPCs) and Regional Coordinating Councils. The exercise aimed at fostering a common understanding on the Guidelines, understanding the function and jurisdiction of DOLE, PNP and PEZA and promoting their close coordination. Four one-day advocacy workshops will be conducted from September to December 2013 on the 2012 Guidelines on the conduct of the DOLE, DILG, DND, DOJ, AFP and PNP for the sectoral/tripartite partners (DOLE, RTIPCs, RTIPC-Monitoring Bodies, DILG especially LGUs, DND, DOJ, AFP and PNP). The objective is to orientate on the significance of the Guidelines so as to promote compliance among all stakeholders; raise understanding of their roles and functions relative to the exercise of workers’ rights and trade union activities; improve coordination within the Government in handling labour disputes; strengthen the networking links and engagement between workers and employers; and contribute to tripartite prevention and monitoring of violence against workers and unions.
- 658.** On the part of the military, since the signing of the Guidelines on the conduct of the DOLE, DILG, DND, DOJ, AFP and PNP in May 2012, the AFP adopted a two-pronged approach to mainstream the Guidelines in its rank and file. The first approach is education

and training of individual soldiers when they undertake their respective career courses in the military by taking up the Guidelines. The second is advocacy and information dissemination campaigns for formed units in the operational and tactical settings. Thus far, all units have been very supportive and have undertaken the two-pronged programs with zeal and resolve to uphold workers' rights vis-à-vis Conventions Nos 87 and 98. The efforts have been directed by the AFP Chief of Staff, with the Office of the Deputy Chief of Staff for Education and Training, J8, the AFP Human Rights Office, and the Philippine Army, Philippine Air Force and Philippine Navy Human Rights Offices at the helm. For the current 2013 Operational Thrusts of the AFP, this matter is generally stated in the Fragmentary Order 01-2013 dated 18 February 2013 to the Internal Peace and Security Plan "BAYANIHAN" as part of the imperatives during military combat and non-combat operations/activities. Likewise, it is an integral part of the AFP efforts towards enhancing the culture of human rights, international humanitarian law and the rule of law.

- 659.** On the ground, soldiers who benefit from these efforts exude commitment and compliance to the Guidelines. In fact, they are collectively one with the directive that the AFP must be insulated from any labour disputes and/or issues unless specifically requested in writing by the DOLE, or unless there is actual violence to protect persons and communities from untoward loss of lives or limbs and prevent the escalation of violence. They also have been clarified on the provisions to prevent undue labelling/tagging, involvement or presence during certification elections, and establishment of detachments or patrol bases within the proximity of such activity or incidence of labour dispute. By and large, the AFP soldiers, officers and enlisted personnel alike, welcome and are very positively receptive of the AFP Guidelines. The AFP is intensifying its efforts towards education and training and advocacy and information dissemination campaigns through coordination and consultation with the DOLE and the ILO. A series of trainings and advocacy projects shall be conducted starting May 2013 up to the end of the current year. These will be undertaken within the Unified Command levels with the Human Rights Officers and/or staff officers from Operations or Civil-Military Operations Staff Offices in attendance. With the inclusion of these in the aforesaid Fragmentary Order 01-2013, the AFP continuously embarks on these efforts.
- 660.** Since their issuance, the Guidelines served as an important instrument prescribing the conduct to be observed by implementers and stakeholders during labour disputes. In instances where the Guidelines have been invoked, they so far have been successful in ensuring that no untoward incident or violence attended the concerted activities of workers. On the part of the PNP, the Joint DOLE–PNP–PEZA Guidelines have so far been very effective and have actually resulted in zero labour dispute-related violence, both within and outside the economic zones, and in the effective coordination of all stakeholders during labour disputes.
- 661.** Under the Technical Cooperation programme "Promoting the effective recognition and implementation of the fundamental rights of freedom of association and collective bargaining in the Philippines", the strengthening of the operational capacity of the PNP and the AFP to foster an enabling environment for the enjoyment of constitutionally guaranteed civil liberties and trade union rights, capacity-building and advocacy programs are currently being carried out. In line with the Government's commitment towards ending police and military interference during trade union campaigns and labour disputes, the DOLE, PNP, PEZA, AFP and LGUs agreed to conduct joint seminars on the effective implementation of the two sets of guidelines. Further area-wide advocacies for the military, police and sectoral partners shall be conducted from March to December 2013 by using ILO training modules and conducting intensive lectures and discussions.
- 662.** In addition, in coordination with the ILO, a training of trainers on international labour standards, freedom of association and collective bargaining was conducted on

21–25 January 2013 to inculcate common understanding and interpretation of international labour standards, specifically on the right to freedom of association, collective bargaining, concerted actions and other trade union activities, among DOLE implementers. Twenty-one participants from DOLE and PEZA were trained to act as trainers on these areas. Other activities to be conducted from March to December 2013 using ILO training modules, include the following: (i) four two-day trainings for DOLE and PEZA implementers; (ii) capacity-building workshops for DOLE officials on dispute prevention and settlement; (iii) second batch of seminar workshops on the improved use of international labour standards at the national level by lawyers, arbitrators, conciliators and mediators; (iv) area-wide orientation seminars on international labour standards, freedom of association and collective bargaining for DOLE labour law compliance officers; and (v) orientation and awareness-raising seminars on the same subjects for law students of selected universities. The ILO modules shall subsequently be included in the training program of the PNP and AFP on human rights and serve as a requirement for application or renewal of license for private security personnel and security guards.

### C. The Committee's conclusions

- 663.** *The Committee notes that the present case concerns allegations of the denial of the right to organize, strike and collective bargaining in the Philippines export processing zones (EPZs), special economic zones, industrial enclaves and related areas due to the implementation of an unofficial “no union, no strike” policy by the PEZA, in collusion with the local and national government agencies. Elements of anti-union policy include allegations of: illegal dismissal of trade unionists; restrictive union registration processes; the closure of companies to obstruct union formation and collective bargaining; interference by local government authorities in union affairs; and violation of civil liberties – including assaults, threats, intimidation, harassment, blacklisting, criminalization, militarization, abduction and murder of trade unionists in more than 15 different companies.*
- 664.** *The Committee notes that some issues mentioned in the Government's reply are being addressed in Case No. 2528 and were previously examined by the Committee in its 364th Report, paragraphs 913–970. These elements, which will not be raised in the present case, concern: (i) the killings of Jesus Butch Servida (union President of Samahan ng Manggagawa sa EDS Mfg., Inc.-Independent (SM-EMI-Ind)) and Gerardo Cristobal (former President and organizer of SM-EMI-Ind) on 11 December 2006 and on 10 March 2008, respectively; and (ii) the abduction of Normelita Galon and Aurora Afable, President and Shop Steward of Kaisahan ng Manggagawa sa Phils. Jeon Inc.-Independent on 5 August 2007.*
- 665.** *The Committee notes the Government's indication that the Strengthening Workers' Rights to Self-Organization Bill, amending articles 234, 235, 236, 237 and 270 of the Labour Code, was approved by the House of Representatives but that the Senate version stalled at second reading. The Committee also notes that the 15th Congress is already in recess, and that the 16th Congress convenes in July 2013. The Committee expects that this bill, which removes the 20 per cent minimum membership for registration of independent labour organizations, reduces the required membership of local unions for federation registration, and removes the required government authorization on receipt of foreign funding, will be adopted in the near future. It urges the Government to keep it informed on any progress made in this regard.*
- 666.** *Concerning the concrete allegations of interference of LGUs into internal union affairs at the Nagkakaisang Manggagawa sa Hoffen Industries-OLALIA factory (Hoffen), Samahan ng Manggagawa sa Mariwasa Siam Ceramics, Inc. (Siam Ceramics), Samahan ng Manggagawa sa EDS Mfg, Inc. (EDS Inc.) and Golden Will Fashion Phils., the Committee*

notes that the Government indicates with regard to the latter company that: (i) the NTIPC-MB resolved to refer the case to the appropriate agencies for further investigation on the alleged interference of local government officials (including the Office of the Provincial Governor under the Cavite Industrial Peace Advisory Group) who allegedly tried to suppress union organizing in favour of the management, and validation of the PEZA report; (ii) according to the PEZA, when the union Golden Will Fashion Workers Organization-Independent had been registered in the company, the management had invited the mayor to lecture on the labour management committee; and (iii) the company is closed and its PEZA registration was cancelled in 2009. The Committee takes due note of this information and requests the Government to keep it informed regarding the outcome of the further investigation conducted on the alleged interference of local government officials. With respect to the remaining three companies mentioned above, the Committee once again requests the Government to keep it informed of the status of the motu proprio investigations that were to be conducted by the CHR into the allegations of Government interference in union affairs and expects that the Government will soon be able to report progress in the resolution of these cases. Recalling that respect of principles of freedom of association requires that the public authorities and employers exercise great restraint in relation to intervention in the internal affairs of trade unions [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 859], the Committee also requests the Government to keep it informed of the measures taken or envisaged to ensure full respect of this principle in the future.

**667.** *With respect to the complainant's allegations that on various occasions, enterprises in the EPZs closed down, either the whole company or strategic departments where most unionists were located, following the recognition of a union (in particular Sensuous Lingerie, Golden Will Fashion Phils. and Goldilocks), the Committee notes that the Government indicates concerning the latter company that: (i) the complaint filed by the union for unfair labour practice, illegal dismissal, and moral and exemplary damages was resolved by the Labour Arbiter in favour of the union on 27 January 2011; (ii) on 18 July 2011, the NLRC reversed this decision and dismissed the complaint; (iii) the union elevated the case to the Court of Appeals; (iv) on 19 June 2012, the petition for certiorari was denied and dismissed for lack of merit, since the Court considered that the decision to close business is a management prerogative exclusive to the employer, subject to compliance with section 283 of the Labour Code, which recognizes the company's cessation of business operation as an authorized cause for dismissal; and that, in the particular case, petitioners' services were validly terminated after cessation and closure of business due to the non-renewal of the private respondents' franchise agreement expired on 17 November 2008, owing to the franchisee's continuing inability to conform to the company's standards by undertaking a renovation of the store; and (v) a motion for reconsideration was denied on 25 September 2012. The Committee takes due note of this information.*

**668.** *The Committee also notes that, concerning Golden Will Fashion Phils., the Government merely indicates that the NTIPC-MB resolved to refer the case to the appropriate agencies for further investigation on the alleged interference of local government officials, and that the company is closed and its PEZA registration cancelled since 2009. Considering that, while the genuine closure or restructuring of companies is not contrary to freedom of association principles, the closure or restructuring and the lay-off of employees specifically in response to the exercise of trade union rights is tantamount to the denial of such rights and should be avoided, the Committee once again requests the Government to provide information concerning the motu proprio investigations that were to be conducted by the CHR into the relevant allegations concerning the aforementioned company as well as Sensuous Lingerie, and expects that the Government will make efforts to ensure a speedy resolution of these cases by the agencies concerned. It requests the Government to keep it informed in this regard.*



669. *As regards the allegations of anti-union discrimination in the form of illegal dismissals of trade union members in various enterprises, the Committee notes the information provided by the Government concerning NMCW, according to which, after its closure in February 2007, an insolvency case has been filed by the company, the NTIPC-MB resolved to refer the case to PEZA for monitoring of the insolvency case and of the distribution of the company's assets (auctioned for about PHP1.6 million), and the court has drawn up a report on the distribution of the money to the workers claimant in the case, which is to be transmitted to the NTIPC-MB. While taking due note of this information, the Committee reminds the Government that it is responsible for preventing all acts of anti-union discrimination and must ensure that complaints of anti-union discrimination are examined in the framework of national procedures which should be prompt, impartial and considered as such by the parties concerned. 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 and members dismissed by the enterprise, constitute a denial of justice and therefore a denial of the trade union rights of the persons concerned [see *Digest*, op. cit., paras 817 and 826].*
670. *In view of the principles enunciated above, the Committee once again requests the Government to carry out independent investigations of the dismissals which occurred at Daiho Philippines Inc., Hanjin Garments, Asia Brewery, Anita's Home Bakeshop and NMCW and, if it finds that they constitute anti-union acts, to take measures to ensure the reinstatement of the workers concerned without delay. If reinstatement is not possible for objective and compelling reasons (as in the case of NMCW due to closure of business), the Government should ensure that the workers concerned are paid adequate compensation which would represent a sufficiently dissuasive sanction for anti-union dismissals. In addition, the Committee urges the Government to keep it informed of any relevant judgment handed down in the case of Anita's Home Bakeshop, and in particular of the decisions of the NLRC RAB VII or the NLRC Division 4 in Cebu City. The Committee further requests the Government to keep it informed of the motu proprio investigations that were to be conducted by the CHR into the abovementioned allegations. It expects that the Government will do its utmost to ensure a speedy and equitable resolution of all cases by the agencies concerned.*
671. *Furthermore, in the absence of information provided by the Government, the Committee once again requests the Government, in respect of Enkei Philippines, to take the necessary steps so that, pending the outcome of any appeal proceedings instituted by the company, the union members who were dismissed are reinstated immediately in their jobs under the same terms and conditions prevailing prior to their dismissal with compensation for lost wages and benefits, in conformity with the 2007 NLRC order for reinstatement; if reinstatement is not possible for objective and compelling reasons, the Government should ensure that the workers concerned are paid adequate compensation which would represent a sufficiently dissuasive sanction for anti-union dismissals. Similarly, in the case of Sun Ever Lights, the Committee once again requests the Government to keep it informed of any developments in regard to the motion for writ of execution of the 2008 NLRC reinstatement order pending with the NLRC.*
672. *With respect to the alleged denial of the right to strike, the Committee further notes the Government's indication that: (i) the legislative measure seeking to address the alleged arbitrariness in the exercise of the assumption of jurisdiction power of the Secretary of Labor and Employment has passed second reading at the Senate while the House of Representatives' version has stalled at the committee deliberation stage; (ii) there is a very slim chance for this bill gaining approval at the 15th Congress as it already is in recess until June 2013; (iii) DOLE Department Order No. 40-G-03, the interim measure*

*providing implementing rules on the exercise of the assumption of jurisdiction power of the Secretary of Labor and Employment to address its claimed arbitrariness, has been complemented by the implementation of the SEnA programme or DOLE Department Order No. 107-10, providing for a 30-day mandatory conciliation–mediation service on all individual and collective labour and employment disputes as the first approach; (iv) the use of intensive conciliation–mediation has been effective in the settlement of collective disputes as it reduced resort to compulsory mode of dispute resolution including that of assumption of jurisdiction; (v) the legislative measure to institutionalize the use of conciliation–mediation under SEnA as prior resort in all labour disputes by amending article 228 of the Labour Code and the Strengthening of Tripartism Bill have been enacted into law (Republic Acts Nos 10396 and 10395, signed on 14 March 2013); (vi) these two legislative measures provide for expeditious and non-adversarial venues for dispute settlement and will, according to the Government, eventually render resort to assumption of jurisdiction unnecessary; (vii) the success of these enactments is largely due to the fact that department orders or administrative issuances crafted through the NTIPC were issued and implemented prior to their filing in Congress; (viii) the same approach will be used in securing a consensus for the proposed assumption of jurisdiction or essential services bill that will be re-filed in the 16th Congress that convenes in July 2013; (ix) tripartite discussion at the TEC of the NTIPC has started on 10 April 2013 to come out with an administrative issuance containing a list of industries indispensable to the national interest according to the essential services criteria of the ILO and providing for conditions for the exercise of the Secretary of Labour and Employment’s assumption power.*

- 673.** *The Committee expects that the ongoing legislative reform and the steps taken within the framework of the NTIPC towards the elaboration of an administrative issuance will advance expeditiously and successfully and urges the Government to continue to keep it informed in this regard. Recalling that workers in EPZs – despite the economic arguments often put forward – like other workers, without distinction whatsoever, should enjoy the trade union rights provided for by the freedom of association Conventions [see **Digest**, op. cit., para. 264], the Committee expects that the Government will take the necessary measures without delay to ensure the full respect for the trade union rights of EPZ workers in practice, including the right to strike.*
- 674.** *In relation to the allegations of blacklisting and vilification of union members at Daiho Philippines and Anita’s Home Bakeshop, the Committee had previously noted the Government’s indication that these cases had been referred to the concerned agencies (Court of Appeals, NLRC, CHR, PEZA, DOLE, DILG, Supreme Court and DOJ) for appropriate action and immediate resolution. In the absence of further information provided by the Government in this regard, the Committee reiterates that the restriction of a person’s movements to a limited area, accompanied by the prohibition of entry into the area in which his or her trade union operates and in which he or she normally carries on trade union functions, is inconsistent with the normal enjoyment of the right of association and with the exercise of the right to carry on trade union activities and functions, and that all practices involving blacklisting of trade union officials or members constitute a serious threat to the free exercise of trade union rights and, in general, governments should take stringent measures to combat such practices [see **Digest**, op. cit., paras 129 and 803]. The Committee once again requests the Government to keep it informed of the outcome of any inquiries conducted by the CHR into these allegations and to make every effort to ensure the swift investigation and resolution of these cases.*
- 675.** *With respect to the alleged arrest, detention and false criminal charges filed against trade union leaders, the Committee welcomes the information according to which, in order to ensure that labour disputes are not converted into criminal cases, the DOLE is coordinating with the DOJ for an issuance reinforcing the provision of Circulars Nos 15, series of 1982, and 9, series of 1986, requiring fiscals/prosecutors and other government*

*prosecutors to secure clearance from the DOLE and/or the Office of the President before taking cognizance for preliminary investigation and filing in court of cases arising of, or related to, labour disputes (including with allegations of violence, intimidation, etc.).*

- 676.** *As to the allegations of false criminal charges filed against labour leaders and unionists at the onset of union formation, or during collective bargaining negotiations, picket protests and strikes, at the companies Sensuous Lingerie, Kaisahan ng Manggagawa sa Phils. Jeon Inc., Golden Will Fashion, Asia Brewery and Hanjin Garments, the Committee notes the information forwarded by the Government concerning the latter company, according to which the case concerning the alleged filing of criminal charges against Christopher Capistrano, et al., was covered by resolution No. 3, series of 2012, and, pursuant to information from the DOJ, the direct assault charge filed against Capistrano, et al., had already been dismissed on 10 March 2011. The Committee takes due note of this information.*
- 677.** *Concerning Asia Brewery, the Committee notes the Government's indication that: (i) criminal case No. 10061 (People of the Philippines v. Bonifacio Fenol, et al.), involving criminal charges for throwing stones on the group of policemen who tried to pacify them during the strike that transpired in front of the company on 4 February 2009, was already dismissed on 11 August 2011; and (ii) the NTIPC-MB is still monitoring criminal case No. 9338 (People of the Philippines v. Rodrigo Perez, et al.), involving criminal charges with malicious mischief for smashing two plastic windows and puncturing all tires of a shuttle bus at the company on 4 October 2004; and the case was still pending before the Municipal Trial Court of Cabuyao, Laguna, where the new judge who had taken over needed to review the records of the case and a hearing was called for clarification purposes. The Committee recalls that in cases involving the arrest, detention or sentencing of a trade union official, the Committee, taking the view that individuals have the right to be presumed innocent until found guilty, has considered that it was incumbent upon the Government to show that the measures it had taken were in no way occasioned by the trade union activities of the individual concerned [see **Digest**, op. cit., para. 94]. Emphasizing that the events underpinning the charges against Rodrigo Perez, et al. date back already nine years, the Committee urges the Government to keep it informed of the motu proprio investigation that was to be conducted by the CHR, and to do its utmost to report progress in investigating this case without further delay. The Committee once again requests the Government to ensure that all relevant information is gathered in an independent manner, and, should it be determined that the persons employed in the abovementioned companies were arrested in relation to their trade union activities, to take the necessary measures to ensure that all charges are immediately dropped. The Committee requests to be kept informed of the developments, including any judgment handed down.*
- 678.** *As regards the serious allegations of involvement of the army and police (units of the PNP, Regional Special Action Forces–PNP, and/or AFP Special Warfare Group (SWAG) or security guards sent by the PEZA and the municipal government) to intimidate and/or disperse workers during protests, strikes or on picket lines, at Sun Ever Lights, Sensuous Lingerie, Asia Brewery and Hanjin Garments, which in the latter company's case resulted in the death of one protester, the Committee had previously noted the Government's indication that these cases had been referred to the agencies concerned (Court of Appeals, NLRC, CHR, PEZA, DOLE, DILG, Supreme Court or DOJ) for appropriate action and immediate resolution, and notes that no information has since been provided by the Government in this regard.*
- 679.** *The Committee recalls that the authorities should resort to calling in the police in a strike situation only if there is a genuine threat to public order. The intervention of the police should be in proportion to the threat to public order and governments should take*

measures to ensure that the competent authorities receive adequate instructions so as to avoid the danger of excessive violence in trying to control demonstrations that might undermine public order [see *Digest*, op. cit., para. 647]. The Committee therefore once again requests the Government to take all necessary measures for an independent investigation to be carried out into the abovementioned incidents alleged by the complainant with a view to identifying and punishing those responsible without further delay. The Committee requests the Government to keep it informed of the motu proprio investigations that were to be conducted by the CHR and to make all efforts to ensure timely progress in the resolution of these cases. Recalling also that, in cases in which the dispersal of public meetings by the police has involved loss of life or serious injury, the Committee has attached special importance to the circumstances being fully investigated immediately through an independent inquiry and to a regular legal procedure being followed to determine the justification for the action taken by the police and to determine responsibilities [see *Digest*, op. cit., para. 49], the Committee once again requests the Government to establish without delay an independent judicial inquiry and proceedings before the competent courts as soon as possible, with regard to the allegation of the killing of a protester at Hanjin Garments, with a view to shedding full light on to the relevant facts and circumstances, and to determine where responsibilities lie, punish the guilty parties and prevent the repetition of similar events. The Committee firmly expects that the Government will do its utmost to ensure the speedy investigation and judicial examination of this case and requests to be kept informed in this respect.

- 680.** Concerning the allegations of a prolonged presence of the army inside the workplaces in the enterprises Sun Ever Lights and Siam Ceramics, the Committee had previously noted the Government's indication that these cases had been referred to the agencies concerned (Court of Appeals, NLRC, CHR, PEZA, DOLE, DILG, Supreme Court or DOJ) for appropriate action and immediate resolution. In the absence of further information, the Committee requests the Government to keep it informed in this respect.
- 681.** With a view to giving instructions to the law enforcement authorities so as to eliminate the danger entailed by the use of excessive violence when controlling demonstrations, the Committee notes with interest the Government's indications that: (i) in order to cascade the 2011 Joint DOLE–PNP–PEZA Guidelines in the conduct of PNP personnel, economic zone police and security guards, company security guards and similar personnel during labour disputes, four area-wide orientation seminars were held at the end of 2011 for members of the RTIPCs and Regional Coordinating Councils, so as to foster a common understanding on the Guidelines, understand the function and jurisdiction of DOLE, PNP and PEZA and promote their close coordination; (ii) as regards the 2012 Guidelines on the conduct of the DOLE, DILG, DND, DOJ, AFP and PNP relative to the exercise of workers' rights and activities, four one-day advocacy workshops are scheduled from September to December 2013 for the sectoral/tripartite partners (DOLE, RTIPCs, RTIPC-Monitoring Bodies, DILG especially LGUs, DND, DOJ, AFP and PNP), so as to orientate on the significance of the Guidelines, promote compliance, deepen understanding of roles and functions and improve coordination when handling labour disputes; (iii) since the signing of the latter Guidelines, the AFP adopted a two-pronged programme to mainstream the Guidelines in its rank and file, namely education and training of individual soldiers when they undertake their respective career courses in the military, and advocacy and information dissemination campaigns for formed units in the operational and tactical settings, which, so far, has been undertaken with zeal and resolve; (iv) for the current 2013 operational thrusts of the AFP, this matter is generally stated in the Fragmentary Order 01-2013 dated 18 February 2013 to the Internal Peace and Security Plan "BAYANIHAN" as part of the imperatives during military combat and non-combat operations/activities; (v) soldiers are very positively receptive of the Guidelines, and have been made aware of the directive that the AFP must be insulated from labour disputes unless specifically requested in writing by the DOLE or unless there is actual violence to

*protect persons and communities from untoward loss of lives or limbs and prevent the escalation of violence, as well as of the provisions to prevent undue labelling/tagging, involvement or presence during certification elections, and establishment of detachments or patrol bases within the proximity of such activity or incidence of labour dispute; (vi) a series of trainings and advocacy projects are scheduled from May to December 2013; and (vii) since their issuance, the two sets of Guidelines have been effective in preventing violence against workers and unions during labour disputes.*

- 682.** *The Committee requests the Government to continue to keep it informed with regard to the capacity-building activities carried out in 2013 with a view to giving instructions to the law enforcement authorities so as to eliminate the danger entailed by the use of excessive violence when controlling demonstrations as well as their impact. It further requests the Government to supply copies of the PNP Guidelines on the accountability of the immediate officer for the involvement of his subordinates in criminal offenses, mentioned in the previous examination of the case.*
- 683.** *As regards its previous recommendation that the Government indicate the specific measures envisaged to ensure the full and effective exercise of trade union rights in the EPZs, the Committee welcomes the Government's general assurances that the common issues raised in the present case, such as illegal dismissal, interference of local government units with union affairs, criminalization and assault in the picket lines, occurred under the past administration, and that, at present, no violence occurs in the economic zones. The Committee notes with interest the Government's indication that these positive developments can be attributed to the effective implementation of the Guidelines, to the capacity-building activities being conducted in this respect (as outlined above) as well as to the capacity-building activities being conducted on freedom of association, collective bargaining and international labour standards in general, which have been scheduled throughout the year 2013 and are effective in educating all the stakeholders (including the police and officials of the local government units) as regards their respective responsibilities and limitations relative to labour disputes and exercise of trade union rights. The Committee requests the Government to continue to keep it informed with regard to the upcoming capacity-building activities as well as their impact on the alleged implementation of a "no union, no strike" policy in the country's EPZs. It also requests the Government to provide statistics of complaints on anti-union discrimination in the EPZs.*

### **The Committee's recommendations**

- 684.** *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) *The Committee expects that the Strengthening Workers' Rights to Self-Organization Bill, amending articles 234, 235, 236, 237 and 270 of the Labour Code, which removes the 20 per cent minimum membership for registration of independent labour organizations, reduces the required membership of local unions for federation registration, and removes the required government authorization on receipt of foreign funding, will be adopted in the near future. It urges the Government to keep it informed on any progress made in this regard.*
- (b) *Concerning the concrete allegations of interference of LGUs into internal union affairs at the Nagkakaisang Manggagawa sa Hoffen Industries-OLALIA factory (Hoffen), Samahan ng Manggagawa sa Mariwasa Siam Ceramics, Inc. (Siam Ceramics), Samahan ng Manggagawa sa EDS Mfg, Inc. (EDS Inc.) and Golden Will Fashion Phils., the Committee takes due*

*note of the information provided as regards the latter enterprise and requests the Government to keep it informed regarding the outcome of the further investigation conducted on the alleged interference of local government officials. With respect to the remaining three companies mentioned above, the Committee once again requests the Government to keep it informed of the status of the motu proprio investigations that were to be conducted by the CHR into the allegations of Government interference in union affairs and expects that the Government will soon be able to report progress in the resolution of these cases. The Committee also requests the Government to keep it informed of the measures taken or envisaged to ensure full respect in the future of the principle that the public authorities and employers exercise great restraint in relation to intervention in the internal affairs of trade unions.*

- (c) *With respect to the complainant's allegations that, on various occasions, enterprises in the EPZs closed down, either the whole company or strategic departments where most unionists were located, following the recognition of a union (in particular Sensuous Lingerie and Golden Will Fashion Phils.), the Committee once again requests the Government to provide information concerning the motu proprio investigations that were to be conducted by the CHR into the relevant allegations concerning these companies, and expects that the Government will make efforts to ensure a speedy resolution of these cases by the agencies concerned. It requests the Government to keep it informed in this regard.*
- (d) *As regards the allegations of anti-union discrimination in the form of illegal dismissals of trade union members in various enterprises, the Committee once again requests the Government to carry out independent investigations of the dismissals which occurred at Daiho Philippines Inc., Hanjin Garments, Asia Brewery, Anita's Home Bakeshop and NMCW and, if it finds that they constitute anti-union acts, to take measures to ensure the reinstatement of the workers concerned without delay. If reinstatement is not possible for objective and compelling reasons (as in the case of the latter company), the Government should ensure that the workers concerned are paid adequate compensation which would represent a sufficiently dissuasive sanction for anti-union dismissals. In addition, the Committee urges the Government to keep it informed of any relevant judgment handed down in the case of Anita's Home Bakeshop, and in particular of the decisions of the NLRC RAB VII or the NLRC Division 4 in Cebu City. The Committee further requests the Government to keep it informed of the motu proprio investigations that were to be conducted by the CHR into the abovementioned allegations. It expects that the Government will do its utmost to ensure a speedy and equitable resolution of all cases by the agencies concerned. Furthermore, the Committee once again requests the Government, in respect of Enkei Philippines, to take the necessary steps so that, pending the outcome of any appeal proceedings instituted by the company, the union members who were dismissed are reinstated immediately in their jobs under the same terms and conditions prevailing prior to their dismissal with compensation for lost wages and benefits, in conformity with the 2007 NLRC order for reinstatement; if reinstatement is not possible for objective and compelling reasons, the Government should*

*ensure that the workers concerned are paid adequate compensation which would represent a sufficiently dissuasive sanction for anti-union dismissals. Similarly, in the case of Sun Ever Lights, the Committee once again requests the Government to keep it informed of any developments in regard to the motion for writ of execution of the 2008 NLRC reinstatement order pending with the NLRC.*

- (e) With respect to the alleged denial of the right to strike, the Committee expects that the ongoing legislative reform and the steps taken within the framework of the NTIPC towards the elaboration of an administrative issuance will advance expeditiously and successfully, and urges the Government to continue to keep it informed in this regard. The Committee expects that the Government will take the necessary measures without delay to ensure the full respect for the trade union rights of EPZ workers in practice, including the right to strike.*
- (f) In relation to the allegations of blacklisting and vilification of union members at Daiho Philippines and Anita's Home Bakeshop, the Committee once again requests the Government to keep it informed of the outcome of any inquiries conducted by the CHR into these allegations and to make every effort to ensure the swift investigation and resolution of these cases.*
- (g) As to the allegations of false criminal charges filed against labour leaders and unionists at the onset of union formation, or during collective bargaining negotiations, picket protests and strikes, at the companies Sensuous Lingerie, Kaisahan ng Manggagawa sa Phils. Jeon Inc., Golden Will Fashion and Asia Brewery, the Committee urges the Government to keep it informed of the motu proprio investigation that was to be conducted by the CHR into the allegations concerning the latter company, and to do its utmost to report progress in investigating this case without further delay. The Committee once again requests the Government to ensure that all relevant information is gathered in an independent manner, and, should it be determined that the persons employed in the abovementioned companies were arrested in relation to their trade union activities, to take the necessary measures to ensure that all charges are immediately dropped. The Committee requests to be kept informed of the developments, including any judgment handed down.*
- (h) As regards the serious allegations of involvement of the army and police (units of the PNP, Regional Special Action Forces-PNP, and/or AFP SWAG or security guards sent by PEZA and the municipal government) to intimidate and/or disperse workers during protests, strikes or on picket lines, at Sun Ever Lights, Sensuous Lingerie, Asia Brewery and Hanjin Garments, which in the latter company's case resulted in the death of one protester, the Committee once again requests the Government to take all necessary measures for an independent investigation to be carried out into the abovementioned incidents alleged by the complainant with a view to identifying and punishing those responsible without further delay. The Committee requests the Government to keep it informed of the motu proprio investigations that were to be conducted by the CHR and to make all efforts to ensure timely progress in the resolution of these cases. Also, the*

*Committee once again requests the Government to establish without delay an independent judicial inquiry and proceedings before the competent courts as soon as possible, with regard to the allegation of the killing of a protester at Hanjin Garments, with a view to shedding full light on to the relevant facts and circumstances, and to determine where responsibilities lie, punish the guilty parties and prevent the repetition of similar events. The Committee firmly expects that the Government will do its utmost to ensure the speedy investigation and judicial examination of this case and requests to be kept informed in this respect.*

- (i) *Concerning the allegations of a prolonged presence of the army inside the workplaces in the enterprises Sun Ever Lights and Siam Ceramics, the Committee requests the Government to keep it informed in regard to action taken and resolution of these cases.*
- (j) *The Committee requests the Government to continue to keep it informed with regard to the capacity-building activities carried out in 2013 with a view to giving instructions to the law enforcement authorities so as to eliminate the danger entailed by the use of excessive violence when controlling demonstrations as well as their impact. It further requests the Government to supply copies of the PNP Guidelines on the accountability of the immediate officer for the involvement of his subordinates in criminal offenses, mentioned in the previous examination of the case.*
- (k) *The Committee requests the Government to continue to keep it informed with regard to the upcoming capacity-building activities for the effective implementation of the Guidelines, or concerning freedom of association, collective bargaining and international labour standards in general, as well as their impact on the alleged implementation of a “no union, no strike” policy in the country’s EPZs. It also requests the Government to provide statistics of complaints on anti-union discrimination in the EPZs.*
- (l) *The Committee draws the special attention of the Governing Body to the extreme seriousness and urgent nature of the matters dealt with in this case.*

CASE No. 2712

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

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

*Allegations: Abduction and arbitrary detention  
by the special services of three trade unionists,  
including the President of the Congolese Labour  
Confederation*



- 685.** The Committee last examined this case at its June 2012 meeting, when it presented an interim report to the Governing Body [see 364th Report, approved by the Governing Body at its 315th Session, paras 1009–1018].
- 686.** At its June 2013 meeting [see 368th Report, para. 5], the Committee launched an urgent appeal and drew the attention of the Government to the fact that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body (1971), it may present a report on the substance of the case at its next meeting even if the observations or information from the Government have not been received in due time. To date, the Government has not sent any information. However, on its visit to the country, a technical assistance mission of the Office was able to collect information on this case from the Government’s representatives.
- 687.** The Democratic Republic of the Congo has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Workers’ Representatives Convention, 1971 (No. 135).

#### **A. Previous examination of the case**

- 688.** In its previous examination of the case, in June 2012, deploring the fact that, despite the time that had elapsed, the Government had not provided any information on the allegations, the Committee made the following recommendations [see 364th Report, para. 1018]:
- (a) In general, the Committee can only deplore the fact that the Government has still not provided any information whatsoever regarding the five consecutive complaints presented since 2009, which have already been examined in the absence of the Government’s reply and which allege grave violations of freedom of association. The Committee notes once again with deep regret that the Government continues to fail to comply, despite assurances given to the Chairperson of the Committee at a meeting held in June 2011. The Committee expects the Government to be more cooperative in the future. With regard to the present case, the Committee deeply deplores the fact that, despite the time that has elapsed since the presentation of the complaint in April 2009, the Government has still not replied to the complainant’s allegations, even though it has been requested several times, including through three urgent appeals, to present its observations on the allegations and its reply to the recommendations made by the Committee.
  - (b) The Committee urges the Government to hold an independent inquiry without delay to elucidate the reasons for the arrests of the two Congolese Labour Confederation (CCT) trade unionists, Mr Richard Kambale Ndayango and Mr Israël Kanumbaya Yambasa, and of the President of the organization, Mr Nginamau Malaba, on 11, 16 and 19 January 2009, respectively, by National Intelligence Agency (ANR) agents; to ascertain the charges laid against them to justify their detention; and, if it is found that they were detained solely for reasons linked to their legitimate union activities, to release them immediately and punish those responsible in a manner sufficiently dissuasive to prevent any recurrence of such acts in the future, and compensate them for any lost wages.
  - (c) The Government is requested to provide copies of the relevant court decisions in this case, including the decision of 26 February 2009 of the Kinshasa/Gombe magistrate’s court, the decision of the appeals court for which a hearing was set for 13 March 2009, and to indicate any follow-up action taken.
  - (d) The Committee urges the Government to hold an inquiry without delay into the allegation that the three trade unionists concerned were held in custody for one month before obtaining a hearing and were subjected to inhumane and degrading treatment, and to indicate the outcome.

- (e) The Committee requests the Government or the complainant organization to indicate the follow-up action taken on the complaint filed by the CCT with the Attorney-General of the Republic on 28 January 2009.
- (f) The Committee requests the Government to accept a high-level mission to discuss all the complaints pending before the Committee concerning the Democratic Republic of the Congo.

## **B. The Committee's conclusions**

- 689.** *The Committee notes with interest that the Government accepted a technical assistance mission from the International Labour Office to gather information on the various cases that have been examined by the Committee over the years without any real progress being made in following up on its recommendations. The Committee has taken note of the report of the technical assistance mission (set out in the appendix to this report) and welcomes the new spirit of cooperation demonstrated by the Government. It expects the recommendations it makes to be put into effect in the same spirit.*
- 690.** *Concerning the present case, the Committee takes note of the information that Mr Richard Kambale Ndayango, Mr Israël Kanumbaya Yambasa and Mr Nginamau Malaba, all of whom are representatives of the CCT at the Secretariat for Economic Affairs, were arrested in January 2009. They were then held in detention for a month on suspicion of forgery and using forged documents (production of a falsified mission order). On 2 March 2009, the judge of the Kinshasa/Gombe magistrates' court ordered their release on bail on the grounds of a lack of evidence that they were guilty. However, the Public Prosecutor's Office appealed the decision and they remained in prison. The Committee notes that they were released by an order of 18 March 2009 by the Gombe High Court, which confirmed the lack of evidence against them (the complainant organization provided the mission with copies of the court decisions).*
- 691.** *The Committee notes that the unionists filed a complaint in May 2009 with the Office of the Attorney-General of the Republic claiming that they had been ill-treated during their detention and seeking redress. However, the Committee notes that, to date, no follow-up action has been taken on their complaint. The Committee expects that measures will be taken without delay in order to examine the complaint submitted by the CCT members for unlawful detention and ill-treatment and requests the Government to keep it informed in this respect. The Committee expects that any decision will take into account compensation principles consistent with its previous recommendations (see paragraph 688(b)) above.*
- 692.** *The Committee notes the statement made to the mission by the representative of the Secretary-General for Economic Affairs indicating that the administration was not responsible for the arrest and detention of the trade unionists in question. It had just been a spectator of the situation and, when the trade unionists had been released, they had been able to return to their jobs and continue to exercise their trade union activities. The Committee notes that the trade unionists confirmed to the mission that they were carrying out their trade union activities without hindrance.*
- 693.** *The Committee deeply regrets the long period of detention undergone by the unionists (almost two months) solely on the grounds of there being "strong circumstantial evidence that they were guilty of forgery and of using forged documents" submitted by the Public Prosecutor's Office, even though the courts that examined the case ruled that the Public Prosecutor's Office was unable to prove the existence of such evidence. Therefore, even though no aspect of this case can be used to support the allegation that the arrest and detention of Mr Richard Kambale Ndayango, Mr Israël Kanumbaya Yambasa and Mr Nginamau Malaba were linked to their trade union activities, the Committee nevertheless notes that the events in question do not allow for this possibility to be*

*discounted. On this issue, the Committee draws the Government's attention to the principle that the arrest of trade unionists against whom no charge is brought involves restrictions on freedom of association, and governments should adopt measures for issuing appropriate instructions to prevent the danger involved for trade union activities by such arrests [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 70]. The Committee expects the Government to ensure the strict observance of this principle of freedom of association.*

## **The Committee's recommendation**

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

*The Committee expects that measures will be taken without delay in order to examine the complaint submitted by the CCT members in May 2009 for unlawful detention and ill-treatment and requests the Government to keep it informed in this respect. The Committee expects that any decision will take into account compensation principles consistent with its previous recommendations (see paragraph 688(b)) above.*

## **Appendix**

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

#### **A. Background**

1. Since 2009, the Committee on Freedom of Association has received several complaints from different trade union confederations against the Government of the Democratic Republic of the Congo. To date, the Committee has received six complaints. In accordance with the Committee's procedures, the Government has been invited to provide its observations in response to the allegations made in the complaints. However, until very recently, the Government had not provided a response with regard to any of the cases and, despite regular reminders by the Office, no observations, either on the allegations or on the Committee's recommendations, were received by the Office. The Chairperson of the Committee on Freedom of Association has met with a Government delegation to reiterate the importance of providing information and, in this regard, the Committee has proposed on several occasions the technical assistance of the Office.
2. The Government sent partial information on three of the six cases in January 2013 and accepted an assistance mission from the Office to gather information on the cases. The mission, comprising a legal specialist on freedom of association issues from the International Labour Standards Department and the international labour standards specialist from the ILO office in Yaoundé, visited Kinshasa from 14 to 20 July 2013.
3. The mission benefited from the logistical support of the ILO office in Kinshasa and the cooperation of the Ministry of Labour to organize its schedule of meetings. The mission was therefore able to meet all the parties involved in the six cases being examined by the Committee, as well as the Minister for Labour and the Director of the Prime Minister's Office (the Prime Minister himself was prevented from coming at the last minute).

**B. Information gathered by the mission on  
Case No. 2712**

4. Concerning Case No. 2712, the mission met the CCT members involved at the organization's headquarters. They were: Mr Nginamau Malaba, President of the CCT at the Ministry of the National Economy and Trade; Mr Richard Kambale Ndayango; and Mr Israël Kanumbaya Yambasa. The mission also held talks with a representative of the General Secretariat for Economic Affairs concerning the case.
5. According to the information gathered by the mission, Mr Kambale Ndayango, Mr Kanumbaya Yambasa and Mr Nginamau Malaba were arrested in January 2009 by agents of the National Intelligence Agency (ANR). They were held in detention for a month on suspicion of forgery and using forged documents (production of a falsified mission order). On 2 March 2009, the judge of the Kinshasa/Gombe magistrates' court ordered their release on bail on the grounds of a lack of evidence that they were guilty. However, the Public Prosecutor's Office appealed the decision and they remained in prison. Ruling on the appeal, the High Court in Gombe confirmed that there was no evidence that they were guilty and ordered their release on 18 March 2009. According to the unionists, they went back to work at the General Secretariat for Economic Affairs and have been exercising their trade union duties without hindrance. However, with the help of the African Association for the Defence of Human Rights (ASADHO), they filed a complaint in May 2009 to the Office of the Attorney-General of the Republic claiming that they were ill-treated during their detention and seeking redress. To date, no follow-up action has been taken on their complaint.
6. The representative of the Secretary-General for Economic Affairs told the mission that his administration was not responsible for the arrest and detention of the trade unionists in question. It had just been a spectator to the situation and, when the trade unionists had been released, they had been able to return to their jobs and continue to exercise their trade union activities.

CASE NO. 2714

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

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

***Allegations: Harassment and intimidation of  
trade union leaders***

- 695.** The Committee last examined this case at its March 2012 meeting, when it presented an interim report to the Governing Body [see 363rd Report, approved by the Governing Body at its 313th Session (2012), paras 1088–1097].
- 696.** At its June 2013 meeting [see 368th Report, para. 5], 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. However, on its visit to the country, a technical assistance mission of the Office was able to collect information on this case from the Government's representatives.

**697.** The Democratic Republic of the Congo has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Workers' Representatives Convention, 1971 (No. 135).

## **A. Previous examination of the case**

**698.** In its last examination of the case in March 2012, deploring the fact that, despite the time that had elapsed, the Government had not provided any information on the allegations, the Committee made the following recommendations [see 363rd Report, para. 1097]:

- (a) In general, the Committee notes with deep regret that the Government has still not provided any information whatsoever regarding the five consecutive complaints presented since 2009, which have already been examined in the absence of the Government's reply and which allege grave violations of freedom of association. The Committee notes with deep regret that the Government continues to fail to comply, despite assurances given to the Chairperson of the Committee at a meeting held in June 2011, and expects the Government to be more cooperative concerning this case.
- (b) The Committee urges the Government to provide detailed information without delay on the reasons for the disciplinary measures applied against Mr Basila Baelongandi and Mr Bushabu Kwete, CCT union leaders, in June 2008 and January 2009, indicating in particular whether they remain suspended and, if so, why. If it is found that the measures in question were motivated solely by their legitimate trade union activities, the Committee expects that the officials in question will be reinstated without delay and paid the wages arrears and other benefits owed to them, and that the Government will ensure that such acts of anti-union discrimination will not recur in future. If reinstatement is not possible for objective and compelling reasons, the Committee requests the Government to take the necessary measures to ensure that the trade union leaders are paid adequate compensation which would represent a sufficiently dissuasive sanction for anti-union discrimination.
- (c) The Committee requests the Government to provide its observations without delay on the summons issued by the prosecution service for Mr Bushabu Kwete to attend a hearing and, in particular, the reasons for the summons.
- (d) The Committee, recalling that it is for trade unions to appoint their own representatives on consultative bodies, requests the Government to reply without delay in detail to the complainant's allegations concerning the appointment of a trade unionist who, according to the complainant, has no union mandate, to the Bonus Allocations Committee.
- (e) The Committee requests the Government, or the complainant, to provide information on the composition of the bodies within the General Directorate for Administrative, Judicial, Property and Share Revenues (DGRAD) and to clarify the role of the unions in that regard.
- (f) The Committee reminds the Government of the possibility to avail itself of the technical assistance of the Office.

## **B. The Committee's conclusions**

**699.** *The Committee notes with interest that the Government has accepted a technical assistance mission by the International Labour Office to collect information in relation to the different cases that the Committee has been examining for a number of years without evidence of any real progress in the follow-up to its recommendations. The Committee has taken note of the report of the technical assistance mission (in the appendix to this report)*

*and welcomes the new spirit of collaboration demonstrated by the Government. It hopes that any further recommendations will be followed in the same spirit.*

- 700.** *In this case, the Committee notes with concern the information that, from 2009 to 2012, Mr Basila Baelongandi, member of the Congolese Labour Confederation (CCT) at the General Secretariat for Foreign Trade, was regularly harassed and underwent disciplinary measures, including his suspension from work, on account of his union activities. The Committee notes that Mr Baelongandi's last suspension from work and of pay dates back to the period July–October 2010. However, the disciplinary action brought against him was not upheld and a decision of the Ministry of Public Service of 16 April 2012 ordered his reinstatement. In this decision, the Ministry notes the expiry of the disciplinary action filed in August 2010 and only referred to the Ministry ten months later, in breach of the Act on the status of state public service career staff, which establishes a statutory timeframe of three months. The decision orders the reinstatement of Mr Baelongandi to the General Secretariat for Foreign Trade, to the rank and position that he occupied at the time of his suspension, and the back payment of wages and other benefits outstanding from the date of his suspension. The Committee notes that, according to the complainant organization, Mr Baelongandi has been reinstated to his position as head of the department for social actions.*
- 701.** *The Committee, however, notes that Mr Baelongandi requests the administration to pay all his outstanding wages and benefits for the period of his suspension, in accordance with the decision of 16 April 2012, which does not yet appear to have been done. The Committee notes that the representative of the Secretary-General for Foreign Trade, who met with the ILO mission, confirmed that officials' wages are paid partly by the Ministry of Public Services, and partly by the department in which they work. In the case of Mr Baelongandi, measures will be taken by the administration of the General Secretariat for Foreign Trade to calculate and pay the wages outstanding for the period of his suspension. The Committee urges the Government to take all necessary steps to ensure that Mr Baelongandi is paid all outstanding wages and benefits without delay and to keep it informed in this regard.*
- 702.** *In conclusion, the Committee, while noting that the complainant organization informed the ILO mission that its trade union representatives are now able to carry out their trade union activities at the General Secretariat for Foreign Trade without hindrance, wishes to express its deep concern that trade unionists performing their legitimate trade union activities have regularly been the subject of disciplinary measures within this administration that have not been followed up, and that the perpetrators of these anti-union actions have not been prosecuted. The Committee recalls that no one should be subjected to discrimination or prejudice with regard to employment because of legitimate trade union activities or membership, and that the persons responsible for such acts should be punished [see **Digest of decisions and principles of the Freedom of Association Committee** of the Governing Body of the ILO, fifth (revised) edition, 2006, para. 772]. The Committee expects the Government to ensure respect for this principle and that all anti-union acts in respect of employment in the public administration are from now on heavily sanctioned.*

## **The Committee's recommendations**

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

- (a) *The Committee urges the Government to take all necessary steps to ensure that Mr Baelongandi is paid all outstanding wages and benefits without delay and to keep him informed in this regard.*
- (b) *The Committee, recalling that no one should be subjected to discrimination or prejudice with regard to employment because of legitimate trade union activities or membership, and that the persons responsible for such acts should be punished, expects the Government to ensure respect for this principle and that all anti-union acts in respect of employment in the public administration are from now on heavily sanctioned.*

## Appendix

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

#### A. *Context of the mission*

1. Since 2009, the Committee on Freedom of Association has received several complaints from a number of trade union confederations against the Government of the Democratic Republic of the Congo. To date, the Committee has received six complaints. In accordance with Committee procedure, the Government has been invited to provide its observations in response to the allegations presented in the complaints. However, until recently, the Government has not reacted to any of the cases and, despite regular reminders from the Office, no observations on the allegations nor on the Committee's recommendations have reached the Office. The President of the Committee on Freedom of Association was obliged to meet with a government delegation to stress the importance of providing information and, to that end, the Committee has offered the Office's technical assistance on various occasions.
2. The Government sent partial information regarding three of the six cases in January 2013 and accepted an assistance mission from the Office to collect information on the cases. The mission, comprising a legal specialist on freedom of association from the International Labour Standards Department and the specialist on international labour standards of the ILO Office in Yaoundé, visited Kinshasa from 14 to 20 July 2013.
3. The mission received logistical support from the ILO Office in Kinshasa and the collaboration of the Ministry of Labour to draw up the schedule of meetings. The mission was thus able to meet all the parties to the six cases examined by the Committee, as well as the Minister of Labour and the Chief of Staff of the Prime Minister, who was prevented from attending at the last minute.

#### B. *Information collected by the mission regarding Case No. 2714*

4. Regarding Case No. 2714, the mission met a member of the CCT involved in the case, Mr Basila Baelongandi, at the organization's headquarters. The mission was informed that Mr Hervé Bushabu Kwete is no longer a party to the complaint and has resigned from the complainant organization (he has remained in the department and has joined another organization). The mission also spoke with a representative of the General Secretariat for Foreign Trade regarding this case.

5. According to the information collected by the mission: Mr Basila Baelongandi, member of the CCT at the General Secretariat for Foreign Trade, was regularly harassed and underwent disciplinary measures, including suspension from work, on account of his trade union activities. According to the information submitted to the mission, Mr Baelongandi's last suspension from work and of wages dates back to the period of July–October 2010. However, the disciplinary action brought against him was not upheld and a decision of the Ministry of Public Service of 16 April 2012 ordered his reinstatement. In this decision, the Ministry notes the expiry of the disciplinary action filed in August 2010 and only referred to the Ministry ten months afterwards, in breach of the Act on the status of state public service career staff which establishes a mandatory timeframe of three months. The decision orders the reinstatement of Mr Baelongandi to the General Secretariat for Foreign Trade, to the rank and position that he held at the time of his suspension and orders the payment of the wages and other benefits outstanding from the date of his suspension.
6. The complainant organization informed the mission that Mr Baelongandi is currently performing without hindrance his functions as head of the department for social actions as well as his trade union activities. It, however, requests the administration to pay Mr Baelongandi all the wages and benefits outstanding for the period of his suspension, in accordance with the decision of 16 April 2012, which does not yet appear to have been done.
7. The mission has received confirmation from the representative of the Secretary-General for Foreign Trade that officials' wages are paid partly by the Ministry of Public Service, and partly by the department in which they work. He undertook to ensure that the administration of the General Secretariat for Foreign Trade takes measures to calculate and pay the outstanding wages and benefits for the period of Mr Baelongandi's suspension.

CASE NO. 2949

INTERIM REPORT

**Complaint against the Government of Swaziland  
presented by  
the Trade Union Congress of Swaziland (TUCOSWA)**

*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*

704. The Committee last examined this case at its March 2013 meeting where it presented an interim report to the Governing Body [see 367th Report, approved by the Governing Body at its 317th Session (March 2013), paras 1186–1225].
705. The Government sent additional observations in communications dated 19 March and 29 May 2013.
706. 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

707. In its previous examination of the case at its March 2013 meeting, the Committee made the following recommendations [see 367th Report, para. 1225]:

- (a) While taking due note of the Government's expressed openness to promptly resolve the legislative omission concerning the registration and the amalgamation of federations in consultation with the social partners concerned, the Committee expresses its deep concern that the matter is apparently yet to be resolved nearly one year since the TUCOSWA's registration was nullified, thus hindering its effective exercise of its trade union rights. The Committee urges the Government to provide information on the progress made to amend the IRA.
- (b) The Committee urges the Government to take the necessary measures to ensure that the TUCOSWA is registered without any further delay and requests the Government to indicate the specific steps taken in this regard.
- (c) The Committee urges the Government to take all measures urgently, including those necessary for the registration of the TUCOSWA, to ensure the participation of its representatives in the relevant tripartite structures and to indicate the specific steps taken to this end.
- (d) The Committee urges the Government to ensure that the principles of freedom of association concerning the right to peaceful demonstrations and to celebrate May Day, which constitute a traditional form of trade union action, are fully respected in the future.

## B. The Government's reply

708. In a communication dated 19 March 2013, the Government provides its observation in reply to the latest allegations of the TUCOSWA. It indicates in particular that:

- At the time the TUCOSWA submitted a protest action notice before the Labour Advisory Board, it was not registered under Section 40 of the Industrial Relations Act (IRA).
- The non-recognition of the TUCOSWA is only limited to it taking part in any structure established under the labour laws of the country. It needs to be registered first.
- The Government decision and subsequent removal of the TUCOSWA from the Register of Organizations is not unlawful. The Courts have actually fortified the Government actions, which were primarily aimed at ensuring that the law is complied with. There was never, on the part of the Government, any scintilla of ill will against the TUCOSWA, hence the Government has urgently initiated an amendment of the Industrial Relations Act and the TUCOSWA was part of the body which formulated the draft amendments. The Government has also received technical comments from the ILO.
- The last day of arguments by the parties in court was on 18 December 2012, which was two days after the end of the Third Session of the Industrial Court. The Industrial Court resumed its sittings on 4 February 2013. The delivering of the court decision on 26 February 2013 was therefore not influenced by the Government.
- The TUCOSWA's statement to the effect that the Court cited in ignorance all the provisions of Convention No. 87 is unfortunate and irresponsible, particularly because it is degrading to an instance composed of qualified and experienced arbiters, who for years, have enormously developed the Country's jurisprudence and guided

labour relations in the right direction. In any event, the TUCOSWA still has a right to appeal the Court's decision.

- Concerning TUCOSWA's participation in tripartite structures, the Government has, in compliance with the Court directive, called all the registered trade unions which formed the federation, so that a way forward may be charted while awaiting the promulgation of the IRA (amendment) Bill into law. Alternatively, the Government has proposed the formation of an interim tripartite structure.
- On 8 March 2013, in a meeting convened by the Commissioner for Labour, the Federation of the Swazi Business Community (FESBC) was informed that they are not a Federation in terms of the IRA as they were registered under the same provision of the Act as the TUCOSWA. A letter of removal from the Register of Organizations was issued in this regard.
- On 13 March 2013, the Ministry of Labour invited all the affiliates of the TUCOSWA, to get their views on what would be the ideal "modus operandi" for the parties to work together as was ordered by the Court. The meeting had to be aborted due to poor attendance. The trade unions were again invited on 19 March 2013, which they also did not honour.
- The Government has done all in its power to ensure that the issue of the amendment of the IRA is dealt with as expeditiously as possible. However, the Government recalls that once in Parliament, the Bill will no longer be within the purview of the Executive's control as it cannot prescribe to Parliament the manner in which it should handle the matter.
- However, this should not spell doom for labour relations in general and social dialogue in particular. The federation of trade unions and employer associations still enjoy their freedom of association. The only orderly thing which needs to be done urgently is promulgation of a law to enable registration of labour market federations. Unlike the case of political parties, a legislative framework for the registration of federations is being developed.

**709.** In conclusion, the Government reiterates its commitment to facilitate the speedy amendment to the IRA to allow for the registration and amalgamations of federations. The Government is willing to work together with the social partners in finding an amicable way forward in the spirit of the Court Order. The Government also informs that the Ministry of Labour has tabled the Industrial Relations (amendment) Bill for Cabinet consideration. The Government joins a copy of the bill entitled "An Act to amend the Industrial Relations Act, 2000 to provide for the registration of federations and other incidental matters".

**710.** In a communication of 29 May 2013, the Government reports that the amendment of the IRA to allow for registration of federations has been approved by the Cabinet and issued through an Extraordinary Government Gazette, as Bill No. 14 of 2013 (the Bill is attached to the Government's communication). The Government specifies that the bill was developed in consultation with the social partners through the Labour Advisory Board and will be tabled before Parliament under a Certificate of Urgency.

**711.** Furthermore, in line with the Industrial Court's directive in Case No. 342/12, several consultative meetings were held between Government, Workers' and Employers' representatives to agree on the principles that would guide the tripartite relations in the country. The said principles have been published in the Gazette as a general notice (No. 56 of 2013), (attached to the Government's communication). According to the Government, the principles will affect the Federation of the Swazi Business Community (FESBC), the Federation of Swaziland Employers and Chamber of Commerce (FSE/CC)

and the TUCOSWA and Swazi Commercial Amadoda as entities existing in terms of their own constitutions. The General Notice has force of law and is binding on the social partners. The purpose of publishing the Principles in the Gazette is to allow for its widest possible distribution and ensures that parties are guided by a binding covenant which is enforceable by law.

- 712.** Lastly, the Government indicates that the General Notice allows for the restoration of all tripartite structures. In this regard, the Government had already received a letter from the TUCOSWA advising of its decision to resume participation in all tripartite structures (letter dated 28 May 2013 attached to the Government's communication). Consequently, the Government informs of its intention to call a meeting of the National Steering Committee on Social Dialogue to draw up a workplan on all issues pending before the Committee.

### **C. The Committee's conclusions**

- 713.** *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.*
- 714.** *The Committee takes note of the explanations provided in the Government's communications in reply to the complainant organization with regard to the sequence of events in this case. It also takes note of the information on the steps taken with regard to the amendment to the IRA to allow for the registration and amalgamations of federations. The Committee notes in particular that the Ministry of Labour tabled the "Industrial Relations (amendment) Bill" for Cabinet's consideration in March 2013. The said bill is entitled "An Act to amend the Industrial Relations Act, 2000 to provide for the registration of federations and other incidental matters". The Committee takes due note of the latest communication of the Government reporting that the amendment of the IRA was approved by the Cabinet and issued through an Extraordinary Government Gazette, as Bill No. 14 of 2013. It notes that the bill was developed in consultation with the social partners through the Labour Advisory Board and is to be tabled before Parliament under a Certificate of Urgency. The Committee welcomes the abovementioned proposal for amendment which it expects will ensure full effect, in law and in practice, to Articles 2 and 5 of Convention No. 87 which provide that workers' and employers' organizations themselves have the right to establish and join federations and confederations of their own choosing.*
- 715.** *The Committee notes from the Government's reply and the discussion in the Committee on the Application of Standards during the 102nd Session of the International Labour Conference (June 2013) with respect to the application of Convention No. 87 by Swaziland that the proposed bill is yet to be placed before the Parliament.*
- 716.** *The Committee expresses its deep concern that the matter concerning the TUCOSWA's registration is yet to be resolved more than a year since its registration was nullified, thus hindering its capacity to effectively exercise its trade union rights. 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.*
- 717.** *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.*

**718.** *The Committee recalls that in its previous examination of the case, it expressed its deep concern over the delay in finding a solution to the recognition and registration of the TUCOSWA and the consequences this has had for any meaningful tripartite social dialogue in the country. In this regard, the Committee takes note that in line with the Industrial Court's directive in Case No. 342/12 several consultative meetings were held between Government, Workers' and Employers' representatives with respect to the principles that would guide the tripartite relations in the country. Subsequently the Government published these principles in the Gazette as a General Notice (No. 56 of 2013). The Committee notes with interest that the General Notice would appear to allow for the restoration of all tripartite structures and that the Government had received a letter dated 28 May 2013 from the TUCOSWA advising of its decision to resume participation in these structures. Consequently, the Government informed of its intention to call a meeting of the National Steering Committee on Social Dialogue to draw up a workplan on all issues pending before the Committee. The Committee takes due note of this information and firmly hopes that the restoration of the tripartite structures will allow for meaningful dialogue with the social partners in the future.*

**719.** *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. Having learned that the Government has communicated that it is not in a position to receive a mission until the beginning of 2014, the Committee expresses its deep regret that no solution has been found to these important outstanding issues since the submission of the complaint in May 2012. 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.*

### **The Committee's recommendations**

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

- (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.*

CASE NO. 2994

INTERIM REPORT

**Complaint against the Government of Tunisia  
presented by  
the Tunisian General Confederation of Labour (CGTT)**

*Allegations: The complainant organization denounces acts of interference in its internal affairs, the withholding of the dues paid by its members and its exclusion from tripartite consultations held with a view to drawing up a national social contract. Furthermore, it denounces acts of anti-union discrimination carried out against its members by the airline TUNIS AIR*

- 721.** The complaint is contained in a communication from the Tunisian General Confederation of Labour (CGTT) dated 4 June 2012.
- 722.** Since there has been no reply from the Government, the Committee has been obliged to postpone its examination of the case twice. At its June 2013 meeting [see 368th Report, para. 5], 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. To date, the Government has not sent any information.
- 723.** Tunisia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Workers' Representatives Convention, 1971 (No. 135).

**A. The complainant's allegations**

- 724.** In a communication dated 4 June 2012, the CGTT indicates that, although the legal recognition of the organization was obtained on 1 February 2011, the majority of its affiliated trade unions are being denied their right to carry out their activities freely in enterprises. The complainant regrets that, despite the fact that Tunisia has ratified Convention No. 135, the authorities have not yet issued a decree allowing the free exercise of trade union rights in enterprises and, in particular, recognizing trade union pluralism with a view to protecting all workers' representatives. The complainant also denounces the anti-union violence to which many activists have fallen victim in all economic sectors (health, banking, transport, energy etc.). The complainant regrets that the labour inspection services are unable to ensure respect for trade union rights in enterprises.

- 725.** By way of an example of the anti-union acts to which activists are subjected, the complainant refers to the situation within the national airline, TUNIS AIR. In accordance with the legislation in force, the CGTT had given notice of strike action for 22 and 23 May 2012 a fortnight before the strike was due to begin, despite the fact that article 376bis of the Labour Code requires a minimum of ten days' notice. The authorities ignored the notice of strike action, which constitutes a violation of article 380 of the Labour Code, which requires them to convene the Central Conciliation Committee in order to find an amicable solution to the collective conflict that has given rise to the notice of strike action. The situation subsequently escalated and the strike lasted until 24 May 2012. According to the complainant, the strike was denounced in the national media by both the leadership of the airline and by the Minister for Social Affairs. Leaders of the CGTT were suspended and had legal proceedings initiated against them. The following leaders were affected: Belgacem Aouina, Adnane Jemaiel, Faouzi Belam, Imed Hannachi, Walid Ben Abdellatif and Nabil Ayed. Furthermore, the complainant alleges that it is the target of a media smear campaign.
- 726.** Moreover, the complainant denounces the Government's refusal to establish objective criteria for trade union representativeness at the enterprise, sectoral and national levels, which runs counter to the provisions of the Labour Code. In this connection, the complainant recalls that, according to article 39 of the Labour Code, which refers to collective agreements, "in the event of a conflict over the representativeness of one or more organizations, a decree from the Minister for Social Affairs, issued following consultations with the National Social Dialogue Committee, shall determine which of these organizations ...". However, according to the complainant, the Committee referred to in article 335 of the Labour Code never met.
- 727.** The complainant denounces the fact that the Government is prepared to use this situation to justify the exclusivity of the representativeness of another umbrella organization, namely the Tunisian General Labour Union (UGTT), during tripartite consultations. The complainant, which claims to suffer as a result of this situation, is of the opinion that the National Social Dialogue Committee would be the appropriate forum for addressing the new situation of trade union pluralism, which has been a reality since Spring 2011. By way of an example of its exclusion from all tripartite consultations, the CGTT denounces its exclusion from the national consultations organized by the Ministry of Social Affairs with a view to drawing up a national social contract, which was signed in January 2013.
- 728.** Lastly, the complainant denounces serious acts of interference in its affairs. Recalling that the principles of freedom of association require the public authorities to exercise restraint when it comes to the internal workings of trade unions, the complainant regrets that the Government, acting through the Minister for Social Affairs, saw fit to intervene in the national media to enquire about the situation inside the CGTT by making insinuations about how many members it actually had and by mentioning a possible case before the courts. Furthermore, the complainant states that the union dues of its members in the public sector for the year 2012 have been withheld for no apparent reason, despite the fact that it received the dues for the year 2011 by virtue of a circular from the Prime Minister dated 13 August 2011. In addition, the CGTT has still not received the sum to which it is entitled from the Public Fund for Economic Development, like the other trade union and employers' organizations.

## **B. The Committee's conclusions**

- 729.** *The Committee regrets that, despite the time that has elapsed since the presentation of the complaint, the Government has not replied to the complainant's allegations, even though it has been requested several times, including through an urgent appeal, to present its*

*comments and observations on this case. The Committee urges the Government to be more cooperative in the future.*

- 730.** *Under these circumstances, in accordance with the applicable rule of procedure [see 127th Report, para. 17, approved by the Governing Body at its 184th Session], the Committee is bound to submit a report on the substance of the case without the information it hoped to receive from the Government.*
- 731.** *The Committee reminds the Government that the purpose of the whole procedure established by the ILO 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 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 [see First Report of the Committee, para. 31].*
- 732.** *The Committee notes that, in the present case, the allegations made by the complainant, the CGTT, refer to acts of interference in its affairs carried out by the authorities; to its exclusion from all national tripartite consultations; and to the anti-union acts committed by certain enterprises against its leaders without these being punished by the labour inspection authorities.*
- 733.** *Firstly, the Committee notes that the last case it examined concerning Tunisia in March 2010 also mentioned the situation of the CGTT and, in particular, the authorities' refusal to register it [see 356th Report, Case No. 2672, paras 1263–1280]. On that occasion, while regretting the time that had elapsed since the submission of the initial request for registration, the Committee had requested the authorities to recognize the legal personality of the CGTT quickly, as soon as it had completed the formalities prescribed in the Labour Code. The Committee had also requested the Government to keep it informed of developments in the process of setting objective and pre-established criteria for determining the representativeness of the social partners in accordance with article 39 of the Labour Code, which was supposedly under way. The Committee notes with regret that the CGTT still seems to face difficulties in carrying out its trade union activities, despite the fact that it was registered more than two years ago.*
- 734.** *The Committee notes that, according to the complainant, despite the fact that it obtained legal recognition in February 2011, the majority of its affiliated trade unions are being denied their right to carry out their activities freely in enterprises. The Committee notes with concern the general allegations concerning the anti-union violence to which many activists have allegedly fallen victim in all economic sectors (health, banking, transport, energy etc.). It takes particular note of the situation that arose within the national airline, TUNIS AIR, where, following the submission of a notice of strike action, which, in violation of the Labour Code, was ignored, despite the fact that article 380 of the Labour Code requires the public authorities to assemble the Central Conciliation Committee in order to find an amicable solution to the collective conflict that has given rise to the notice of strike action, the strike that took place was allegedly denounced in the national media by both the leadership of the airline and by the authorities. Leaders of the CGTT, namely Belgacem Aouina, Adnane Jemaiel, Faouzi Belam, Imed Hannachi, Walid Ben Abdellatif and Nabil Ayed, were allegedly suspended and had legal proceedings initiated against them.*
- 735.** *The Committee wishes to recall that it has always recognized the right to strike by workers and their organizations as a legitimate means of defending their economic and social interests, and that no one should be penalized for carrying out or attempting to carry out a legitimate strike. In that regard, the responsibility for declaring a strike illegal should not*

lie with the government, but with an independent body which has the confidence of the parties involved [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, paras 521, 628 and 660]. The Committee requests the Government to send its observations on the strike that took place from 22 to 24 May 2012 in the company TUNIS AIR without delay; to indicate, in particular, the reasons for the suspension of the leaders of the CGTT following the strike; and to report on the situation regarding the legal proceedings initiated and, in particular, on any decisions taken in these cases.

- 736.** The Committee also notes with concern the allegations made by the complainant concerning acts of interference in its affairs, in particular the statements made by the Government in the national media concerning the situation inside the CGTT. In this regard, the Committee is of the opinion that the right of organizations to carry out their activities freely and to formulate their programmes requires the public authorities to refrain from commenting on or intervening in the workings of these organizations, which is in the interests of the normal development of the trade union movement and harmonious professional relations.
- 737.** Taking note of the complainant's allegations concerning the union dues of its members in the public sector for the year 2012, which, for no apparent reason, they allegedly never received, despite the fact that it had received the dues for the year 2011 by virtue of a circular from the Prime Minister dated 13 August 2011, the Committee requests the Government to send its observations on that matter without delay. On that point, the Committee recalls that it considers that the dues deducted from the wages of public officials do not belong to the authorities, nor are they public funds, but rather they are an amount on deposit that the authorities may not use for any reason other than to remit them to the organization concerned without delay [see **Digest**, *op. cit.*, para. 479].
- 738.** Lastly, the Committee notes with concern that, according to the complainant's allegations, the Government has still not established objective criteria for trade union representativeness at the enterprise, sectoral and national levels. The complainant, which claims to suffer as a result of this situation, denounces the fact that this situation has led to its exclusion from the national consultations organized by the Ministry of Social Affairs with a view to drawing up a national social contract, which was signed in January 2013. The Committee recalls that it is not called upon to rule on the representativeness of a given trade union structure, be it at the enterprise, sectoral or national level. However, the Committee is of the opinion that it is important for the determination of the representativeness of trade unions for the purposes of collective bargaining at all levels to be based on objective and pre-established criteria, so as to avoid any opportunity for partiality or abuse. The Committee recalls that, in a previous case examined in March 2010, it had already requested the Government to take all necessary measures to set these criteria in consultation with the social partners. The Committee notes with concern that no progress seems to have been made in that regard. The Committee finds itself obliged to reiterate its previous recommendation and to request the Government to keep it informed of any developments in that regard. The Committee reminds the Government that it may avail itself of the technical assistance of the Office, if it so desires.

### **The Committee's recommendations**

- 739.** In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:
- (a) *The Committee regrets that, despite the time that has elapsed since the presentation of the complaint, the Government has not replied to the*



*complainant's allegations, even though it has been requested several times, including through an urgent appeal, to present its comments and observations on this case. The Committee urges the Government to be more cooperative in the future.*

- (b) The Committee requests the Government to send its observations on the strike that took place from 22 to 24 May 2012 in the company TUNIS AIR without delay; to indicate, in particular, the reasons for the suspension of the leaders of the CGTT following the strike (namely Belgacem Aouina, Adnane Jemaiel, Faouzi Belam, Imed Hannachi, Walid Ben Abdellatif and Nabil Ayed); and to report on the situation regarding the legal proceedings initiated and, in particular, on any decisions taken in these cases.*
- (c) The Committee requests the Government to send, without delay, its observations on the allegations made by the CGTT concerning the union dues of its members in the public sector for the year 2012, which they allegedly never received.*
- (d) Recalling that it is important for the determination of the representativeness of trade unions for the purposes of collective bargaining at all levels to be based on objective and pre-established criteria so as to avoid any opportunity for partiality or abuse, the Committee finds itself obliged to reiterate the recommendation that it made in 2010 in a previous case, which requested the Government to take all necessary measures to set these criteria in consultation with the social partners, and to keep it informed of any developments in that regard. The Committee reminds the Government that it may avail itself of the technical assistance of the Office, if it so desires.*

CASE NO. 3006

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 National Union of Press Workers (SNTP)**

*Allegations: The complainant alleges the dismissal of 25 members of the Unitary Trade Union of Graphic Arts and Similar and Connected Workers of the Federal District and Miranda State (SUTAGSC) by the enterprises Visión de Hoy Comunicaciones C.A. and C.A. Editorial Diario Vea, and the labour inspectorate's failure to act*

**740.** The complaint is contained in a communication from the National Union of Press Workers (SNTP) dated 11 December 2012.

- 741.** The Government sent its observations in a communication dated 11 December 2012.
- 742.** 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**

- 743.** In a communication dated 11 December 2012, the SNTTP alleges that two enterprises, Visión de Hoy Comunicaciones C.A. and C.A. Editorial Diario Vea, committed serious and repeated violations of Convention No. 87 by dismissing 25 of its workers on 29 October 2010 because of their membership of the Unitary Trade Union of Graphic Arts and Similar and Connected Workers of the Federal District and Miranda State (SUTAGSC), and that the failure of the “Pedro Ortega Díaz” labour inspectorate, which is attached to the People’s Ministry for Labour and Social Security, to take action has rendered the application of the provisions of Convention No. 87 null and void.
- 744.** The complainant states that both enterprises operate from the same building; both develop, print and distribute publishing products; and the dismissed workers worked in both enterprises. The employees who were later dismissed had on 27 August 2010 notified the Trade Union Department of the Labour Inspectorate of Libertador Municipality, Capital District, of the appointment of two SUTAGSC delegates. On 16 September 2010, they submitted the forms authorizing the deduction of union dues, and on 14 October 2010 they sent a communication to the president of Visión de Hoy Comunicaciones C.A. stating that they wished to continue their union membership. On 28 October 2010, the workers sent a written communication to the Labour Inspectorate of Libertador Municipality, Capital District, in which they stated that the two enterprises would not recognize SUTAGSC union membership or the appointment of union delegates.
- 745.** On 29 October 2010, both enterprises unjustly terminated the employment of 25 employees; on 5 November 2010, the dismissed workers submitted an application to the “Pedro Ortega Díaz” labour inspectorate for reinstatement and payment of lost wages. On 8 November 2010, the Labour Inspectorate ordered the dismissed workers’ reinstatement and payment of the lost wages as a “preventive measure”, with a view to reaching an agreement or acknowledgement of fault through conciliation. However, when visiting the premises of Visión de Hoy Comunicaciones C.A on 12 November 2010 and C.A. Editorial Diario Vea on 17 November 2010, the Special Commissioner of the Labour Inspectorate noted that the two enterprises had failed to comply with the preventive measure. The employers’ non-compliance should have triggered administrative proceedings culminating in the issuance of an administrative ruling by the labour inspector; however, more than two years have passed and no ruling has been issued.

#### **B. The Government's reply**

- 746.** In its communication dated 24 May 2013, the Government states that the “Pedro Ortega Díaz” labour inspectorate, which is attached to the People’s Ministry for Labour and Social Security, complied fully with Convention No. 87 by issuing the corresponding administrative decisions ordering the reinstatement of the following citizens and payment of lost wages and other benefits which they had stopped receiving: Any del Carmen Charama Panacual, Jorge Gerardo Sanz, Robert Jose Migua Vargas, Wandit Rafael Charaya Panacual, Jorge Gerardo Marrero, Jesús Francisco Rodríguez Bustamante, César Augusto Charama Pascual, Edgar Alberto Rastran Sánchez, Rudy Marcano, Alexander Rafael Guete Hernández, Jose Antonio Aguilera and Alberto José Rodríguez Yáñez, and also Henry Landaeta Freddy Gómez, Jesús Alberto Pérez, Pablo César Gamboa Castellano,

Jose Ricardo Moreno, Juan Carlos Gamboa, Gerardo Cerone Ruvo, Jose Vidal Vásquez, Carlos Roman Corro, Henry González Quintero, Jean Carlos Vega, Adolfo Vegas, Ernesto-José Rodríguez Rodríguez and Adolfo Antonio Castañeda González.

747. The Government adds that the administrative rulings which were executed by the aforementioned inspectorate were not observed by Visión de Hoy Comunicaciones C.A. and C.A. Editorial Diario Vea, whose legal representative stated that the workers would not be reinstated, since negotiations were under way before the Ombudsman concerning the payment of social benefits. In view of the aforementioned enterprises' refusal to reinstate the workers, the "Pedro Ortega Díaz" labour inspectorate proceeded, in accordance with the provisions of articles 531 and 538 of the Organic Labour Act, to initiate the corresponding sanctions proceedings. The administrative channels are thereby exhausted; however, the workers who consider themselves affected may seek recourse through the labour courts.

### C. The Committee's conclusions

748. *The Committee notes that this case concerns allegations of the anti-union dismissal of 25 workers by the enterprises Visión de Hoy Comunicaciones C.A. and C.A. Editorial Diario Vea as a result of the workers' membership of the complainant trade union; the appointment of two trade union delegates in October 2010; and the labour inspectorate's lack of action by having failed at the time of the complaint (almost two years after the fact) to issue the administrative decisions provided for under the law.*

749. *The Committee notes that the Government states in its reply of 11 December 2012 that the "Pedro Ortega Díaz" labour inspectorate, which is attached to the People's Ministry for Labour and Social Security, issued, in strict compliance with Convention No. 87, the corresponding administrative decisions ordering that the 25 citizens to which the complainant refers be reinstated and paid for lost wages and other benefits which they had stopped receiving.*

750. *The Committee further notes that the Government states that the two enterprises failed to comply with the administrative decisions and that their legal representative stated that the workers would not be reinstated, since negotiations were under way before the Ombudsman concerning the payment of social benefits. The Government adds that in view of the enterprises' refusal to reinstate the workers, the "Pedro Ortega Díaz" labour inspectorate initiated the corresponding sanctions proceedings; and that workers who consider themselves affected may seek recourse through the labour courts.*

751. *The Committee recalls that no person shall be prejudiced in employment by reason of trade union membership or legitimate trade union activities, whether past or present [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 770] and, since the labour inspectorate found the dismissals in this case to be unlawful, requests the Government to take the steps within its power to ensure compliance with the labour laws and in particular the reinstatement of the dismissed workers which was ordered by the inspectors. At the same time, the Committee requests the Government to advise whether the dismissed workers have taken legal action and to inform it of the outcome of the administrative sanctions proceedings.*

752. *Lastly, the Committee observes that the complainant trade union draws its attention to delays in the authorities' handling of its case. The Committee notes that the dismissals occurred in October 2010 and that it appears in any event that the administrative sanctions proceedings have not yet been concluded. The Committee regrets this delay and requests the Government to take steps to ensure that the proceedings in question are concluded more expeditiously.*

## The Committee's recommendations

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

- (a) Since the labour inspectorate found the dismissals to be unlawful, the Committee requests it to take the steps within its power to ensure compliance with the labour laws and in particular the reinstatement of the 25 workers which was ordered by the labour inspectorate.***
- (b) The Committee requests the Government to advise whether the dismissed workers have taken legal action in the labour courts and to inform it of the outcome of the administrative sanctions proceedings.***
- (c) The Committee requests the Government to solicit information from the relevant national employers' organization, with a view to having at its disposal the views of the enterprises concerned.***

Geneva, 25 October 2013

*(Signed)* Professor Paul van der Heijden  
Chairperson

*Points for decision:* Paragraph 129  
Paragraph 143  
Paragraph 168  
Paragraph 194  
Paragraph 226  
Paragraph 292  
Paragraph 318  
Paragraph 332  
Paragraph 342  
Paragraph 354  
Paragraph 363  
Paragraph 391  
Paragraph 400  
Paragraph 412  
Paragraph 425  
Paragraph 444

Paragraph 455  
Paragraph 464  
Paragraph 492  
Paragraph 535  
Paragraph 567  
Paragraph 587  
Paragraph 598  
Paragraph 610  
Paragraph 628  
Paragraph 642  
Paragraph 684  
Paragraph 694  
Paragraph 703  
Paragraph 720  
Paragraph 739  
Paragraph 753