INTERNATIONAL LABOUR OFFICE

Governing Body

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SIXTH ITEM ON THE AGENDA

353rd Report of the Committee on Freedom of Association

Contents

Introduction

1. The Committee on Freedom of Association set up by the Governing Body at its 117th Session (November 1951), met at the International Labour Office, Geneva, on 5, 6 and 16 March 2009, under the chairmanship of Professor Paul van der Heijden.

2. The members of Argentinian, Colombian and Peruvian nationality were not present during the examination of the cases relating to Argentina (Cases Nos 2606 and 2614), Colombia (Cases Nos 1787, 2434 and 2498) and Peru (Cases Nos 2533, 2539, 2553, 2587, 2596, 2597, 2624 and 2627), respectively.

3. The Committee recorded its sincere appreciation for the work of Mr Victor Van Vuuren who was the Committee's Employer spokesperson from June 2005 until November 2008. Mr Van Vuuren's knowledge and experience of issues related to the principles of freedom of association and collective bargaining, not only in Africa, but also in other regions of the world, as well as his conciliatory spirit ,were an asset to the work of the Committee.

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4. Currently, there are 138 cases before the Committee, in which complaints have been submitted to the governments concerned for their observations. At its present meeting, the Committee examined 34 cases on the merits, reaching definitive conclusions in 22 cases and interim conclusions in 12 cases; the remaining cases were adjourned for the reasons set out in the following paragraphs.

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

5. The Committee considers it necessary to draw the special attention of the Governing Body to Cases Nos 1787 (Colombia), 1865 (Republic of Korea), 2516 (Ethiopia), 2254 (Bolivarian Republic of Venezuela) because of the extreme seriousness and urgency of the matters dealt with therein.

New cases

6. The Committee adjourned until its next meeting the examination of the following cases: 2675 (Peru), 2676 (Colombia), 2678 (Georgia), 2679 (Mexico), 2680 (India), 2681 (Paraguay), 2682 (Panama), 2683 (United States), 2685 (Mauritius), 2686 (Democratic Republic of the Congo), 2687 (Peru), 2688 (Peru), 2689 (Peru), 2690 (Peru), 2691 (Argentina), 2692 (Chile), 2693 (Paraguay), 2694 (Mexico), 2695 (Peru), 2696 (Bulgaria), 2697 (Peru), 2699 (Uruguay) and 2700 (Guatemala) 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

7. The Committee is still awaiting observations or information from the Governments concerned in the following cases: Nos 2203 (Guatemala), 2355 (Colombia), 2450 (Djibouti), 2528 (Philippines), 2571 (El Salvador), 2576 (Panama), 2600 (Colombia), 2602 (Republic of Korea), 2613 (Nicaragua), 2647 (Argentina), 2648 (Paraguay), 2651

(Argentina), 2652 (Philippines), 2655 (Cambodia), 2657 (Colombia), 2658 (Colombia), 2659 (Argentina), 2660 (Argentina), 2661 (Peru), 2662 (Colombia), 2663 (Georgia), 2664 (Peru), 2665 (Mexico), 2666 (Argentina), 2667 (Peru), 2669 (Philippines), 2670 (Argentina), 2671 (Peru) and 2673 (Guatemala).

Partial information received from governments

8. In Cases Nos 2241 (Guatemala), 2265 (Switzerland), 2356 (Colombia), 2362 (Colombia), 2445 (Guatemala), 2476 (Cameroon), 2522 (Colombia), 2560 (Colombia), 2595 (Colombia), 2609 (Guatemala), 2617 (Colombia), 2623 (Argentina), 2626 (Chile), 2638 (Peru), 2639 (Peru), 2640 (Peru), 2642 (Russian Federation), 2643 (Colombia), 2644 (Colombia), 2646 (Brazil), 2653 (Chile), 2674 (Bolivarian Republic of Venezuela) and 2684 (Ecuador), the Governments have sent partial information on the allegations made. The Committee requests all these Governments to send the remaining information without delay so that it can examine these cases in full knowledge of the facts.

Observations received from governments

9. As regards Cases Nos 2177 and 2183 (Japan), 2318 (Cambodia), 2323 (Islamic Republic of Iran), 2341 (Guatemala), 2465 (Chile), 2478 (Mexico), 2508 (Islamic Republic of Iran), 2538 (Ecuador), 2565 (Colombia), 2567 (Islamic Republic of Iran), 2581 (Chad), 2587 (Peru), 2594 (Peru), 2612 (Colombia), 2641 (Argentina), 2649 (Chile), 2654 (Canada), 2656 (Brazil), 2668 (Colombia), 2672 (Tunisia) and 2677 (Panama), the Committee has received the Governments' observations and intends to examine the substance of these cases at its next meeting.

Urgent appeals

10. As regards Cases Nos 2601 (Nicaragua) and 2633 (Côte d'Ivoire), 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.

Withdrawal of the complaint

Case No. 2608 (United States)

11. In a communication dated 10 February 2009, the American Federation of Labour and Congress of Industrial Organizations (AFL–CIO), complainant in Case No. 2608, indicated its desire to withdraw this case. The Committee takes note of the complainant's request in this respect and considers Case No. 2608 withdrawn.

Article 26 complaints

12. As regards Case No. 2645 (Zimbabwe), the Committee notes the decision taken by the Governing Body at its 303rd Session to constitute a Commission of Inquiry into the

non-observance by Zimbabwe of Conventions Nos 87 and 98. In accordance with the established practice, the Governing Body also referred the relevant matters before the various ILO supervisory bodies to this Commission.

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

14. As regards the article 26 complaint against the Government of the Bolivarian Republic of Venezuela, the Committee recalls its recommendation for a direct contacts mission to the country in order to obtain an objective assessment of the actual situation.

Transmission of cases to the Committee of Experts

15. The Committee draws the legislative aspects of the following case to the attention of the Committee of Experts on the Application of Conventions and Recommendations: Brazil (Cases Nos 2635 and 2636), El Salvador (Case No. 2615), Indonesia (Case No. 2585), Pakistan (Cases Nos 2399 and 2520) and Poland (Cases Nos 2395 and 2474).

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

Case No. 2153 (Algeria)

16. This case was last examined by the Committee at its November 2007 session and concerns allegations of obstacles to the establishment of trade union organizations and a trade union confederation and to the exercise of trade union rights, anti-union dismissals, anti-union harassment by the public authorities, and the arbitrary arrest and detention of union members [see 348th Report, paras 16–27]. On that occasion, the Committee requested the Government: to provide a copy of the Supreme Court decision on the dispute between different factions within the National Autonomous Union of Public Administration Staff (SNAPAP); to take clear and unequivocal measures rapidly, regarding the competent authorities, in order to ensure that in the future they do not demand in practice, in order to determine the threshold for the representativeness of trade union organizations, a list of names of the organization's members and copies of their membership cards; to take the necessary steps to determine the representativeness of the SNAPAP, should the latter make such a request and, in the event that all the elements determining the representativeness of the SNAPAP are provided, to recognize all those rights going hand in hand with the granting of trade union status, and in particular the right of its leaders to exercise activities involving the representation and defence of the interests of the members of the trade union organization; to keep it informed of any rulings issued concerning Mr Rabah Mebarki and Mr Mourad Tchiko and of any measures taken by the employer in this regard; to keep it informed regarding the appeal pending and any decision reached on the matter of the seven workers dismissed from the Prefecture of Oran for having protested on the premises of the Prefecture; and lastly, to keep it informed of the outcome of the review of section 4 of Act No. 90-1, of 2 June 1990, with a view to finding an improved wording for the notion of federation, union or confederation [see 348th Report, paras 21–26].

17. The Committee notes that in a communication dated 29 May 2008, SNAPAP sent additional information on the matter of follow-up to the Committee's recommendations. The SNAPAP, referring to the Government's last statements to the effect that it was unable to provide any information on the union's representativeness, states that in fact the National Union of Civil Protection – National Autonomous Union of Public

Administration Staff (UNPC–SNAPAP) as early as 16 July 2003 had shown the authorities that its membership was such as to take its representativeness over the legal 20 per cent threshold, and that on that basis the UNPC had obtained facilities for its trade union activities, including detached duty arrangements for its officers, collaboration from the prefecture directors and the chief of the National Education and Intervention Unit, premises and the right to participate in the work of the commission set up to revise the special draft regulations concerning civil protection agents.

18. The complainant organization, however, claims to be the victim of a conspiracy involving the General Directorate for Civil Protection and the General Federation of Algerian Workers (UGTA), which aims to prevent the exposure of questionable management of social programmes and even misuse of funds. This, it is claimed, is what prompted the National Directorate to break off all dialogue with the UNPC–SNAPAP.

19. The SNAPAP once again refers to the situation of a number of delegates who were allegedly dismissed and suffered anti-union harassment. They were: Mr Nasserdine Chibane, Ms Fatima Zohra Khaled, Mr Mourad Tchikou, Mr Mohamed Hadj Djilani and Mr Rabah Mebarki [see 344th Report, paras 16 and 17; and 348th Report, para. 18]. As regards Mr Mohamed Hadj Djilani, who as the Committee noted had been sentenced to one month's imprisonment for slander, the SNAPAP states that he has appealed to the Supreme Court and is still awaiting a ruling in the proceedings initiated by the government-supported faction. The complainant organization also refers to the dismissal of Mr Keddour Houari (member of the National Council for Health – SNAPAP) from the health administration on 6 March 2006 for trade union activities, without referral to the Disciplinary Commission or any recourse to the remedies provided for by law.

20. The SNAPAP also refers to police repression of the trade union section representing workers in Béjaia prefecture, who were forbidden to hold general meetings and whose general secretary Sadek Sadou is suspended from his post, without pay, since June 2007, and is being prosecuted for his trade union activities.

21. As for the Committee's recommendations regarding instructions to the competent authorities aimed at avoiding in future a situation in which they are able to require in practice the list of members of a trade union and copies of their membership cards in order to determine the union's representativeness, the complainant organization indicates that no action has been taken by the authorities which, furthermore, do not follow up requests made by the UNPC–SNAPAP on this subject. The authorities even allegedly continue to demand the list of members' names in the case of certain trade union sections.

22. Lastly, the complainant organization states that the attitude of the authorities towards it remains hostile because it has complained to the ILO's supervisory bodies and refuses to take a political stance in elections. Its appeals to the relevant state bodies are ignored, its officers are subjected to harassment at the workplace, and the SNAPAP subsidy is diverted to the other faction within the organization, even before the court has given a definitive ruling on the dispute. The SNAPAP states that it expects nothing from a justice system, which, in its view, is biased and docile and disregards both national law and international conventions.

23. The Government has transmitted a copy of a communication received on 4 November 2008 in response to new observations from the complainant organization.

24. As regards the situation of trade union delegates in respect of whom the Committee had previously asked the Government to provide copies of the relevant court rulings, the Government states that: Mr Tchikou was subjected to disciplinary sanctions involving a transfer to a different prefecture and was notified in April 2005 of a court action initiated

by his employer; Mr Mebarki was informed by the civil protection authorities of the complaint made against him and is still awaiting a court ruling.

25. With regard to the officials whose names are given for the first time in the most recent communication from the complainant organization, the Government states that: Mr Keddour Houari (member of the National Health Council – SNAPAP) was transferred to the El Abiodh Medjadja health centre following the receipt of a letter from the SNAPAP (signed by Mr Malaoui) informing him of the dissolution of the trade union organization to which he had been assigned to carry on his mandate. As Mr Houari had still not returned to his post several months later, the administration of the establishment started proceedings against him for abandoning his post which resulted in a dismissal order on 6 March 2006; Mr Sadek Sadou (General Secretary of the trade union section representing workers in Béjaia prefecture) appeared on a number of occasions before the disciplinary council for offences including coming to work drunk, lack of courtesy in dealing with the public, breaches of general discipline, refusing to remain on duty, disregard for work timetables and insubordination. For these reasons, Mr Sadou was suspended on 6 July 2007 and appeared before the Joint Commission which decided to transfer him, a decision subsequently upheld by the Appeals Commission of the prefecture. Lastly, in view of Mr Sadou's refusal to take up his new post in the subprefecture of Kharrata, dismissal proceedings were initiated and the dismissal was confirmed on 2 October 2007 by the General Directorate of the Civil Service. Mr Sadou has lodged a judicial appeal and requested the suspension of all sanctions until such time as a definitive decision is forthcoming.

26. As regards the Committee's recommendations concerning the representativeness of the SNAPAP, the Government refers to its previous replies on the subject and states that the National Trade Union of Civil Protection Agents affiliated to the CGTA is regarded as the oldest civil protection union with a total membership in 2004–05 of nearly 9,303, making it the representative union in that administration within the meaning of section 37 of Act No. 90-14 of 2 June 1990 concerning procedures for exercising trade union rights.

27. The Government states that holding trade union office does not dispense individuals from the duty to meet obligations arising from their status as civil servants, and a reminder by the administration of Béjaia prefecture of the rules relating to hours of work and general discipline should not be construed as interference in union activities.

28. *With regard to the internal dispute between different SNAPAP factions of which it had been informed previously, the Committee notes that no information has been provided by the complainant organization or by the Government on any resolution of the dispute by, in particular, a ruling of the Supreme Court. The Committee again expresses its concern at a situation that has been going on since 2003 and has been examined by the Committee for a number of years. The Committee trusts that the Supreme Court will hand down a definitive ruling in the near future so as to resolve this internal dispute, and that the Government will communicate a copy of that decision as soon as it has been handed down as well as information on any follow-up action.*

29. *The Committee also notes with regret that the Government does not provide any information with regard to its recommendations on the clear and unequivocal measures to be taken in respect of the competent authorities in order to ensure in future that they cannot in practice require the list of names of an organization's members and copies of their membership cards in order to determine the organization's representativeness. It notes with concern the statement of the SNAPAP to the effect that the authorities still require such information from some trade union sections. Recalling the risk of reprisals and anti-union discrimination, the Committee urges the Government to take the necessary measures to ensure that such information could no longer be required by the authorities.*

The Government is requested once again to keep the Committee informed of measures adopted in this regard.

30. *As regards the situation of a number of the SNAPAP delegates, in particular Mr Mourad Tchikou and Mr Rabah Mebarki, in the absence of any information on the expected judicial rulings, the Committee trusts that definitive rulings will be handed down by the competent courts in the near future and that the Government will keep it informed of any follow-up action taken by the employer and the situation of the trade unionists concerned following those rulings. The Committee requests the Government or the complainant organization to supply information on any ruling by the Supreme Court on the legal proceedings initiated against Mr Mohamed Hadj Djilani by the second faction within the SNAPAP and to indicate whether Mr Keddour Houari, following his dismissal for abandoning his post in March 2006, instigated legal proceedings to challenge that decision. Lastly, with regard to the appeal lodged by Mr Sadek Sadou and his application to suspend the disciplinary sanctions against him, the Committee requests the Government to keep it informed of the outcome. The Committee recalls that justice delayed is justice denied [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth edition, 2006, para. 105].*

31. *The Committee notes additional information sent by the SNAPAP in communications dated 28 January, and 2 and 5 February 2009. It requests the Government to provide its observations thereon.*

Case No. 2302 (Argentina)

32. The Committee last examined this case at its November 2007 meeting [see 348th Report, paras 28–34]. On that occasion, it expressed the hope that the judicial proceedings (concerning the dismissal of the General Secretary of the Trade Union of "Puntanos" Judicial Employees (SIJUPU)) and/or administrative proceedings (summary proceedings against members of the SIJUPU executive committee) would be concluded in the near future and that the dialogue between the parties initiated, according to the Government, following the appointment of the new higher court authorities would continue to be consolidated.

33. In a communication dated 27 November 2007, the SIJUPU states that administrative proceedings instituted some two years ago against the SIJUPU executive committee members, Ms María Fabiana Aquín, Mr Raúl Suárez, Ms Lía Barroso and Ms Susana Muñoz were riddled with irregularities and applications were therefore filed to have them declared null and statute-barred, but they have still not been settled, nor has there been a definitive ruling on the *amparo* (protection of constitutional rights) application filed by the SIJUPU General Secretary, Mr Juan Manuel González in 2004 (for having been dismissed while holding trade union immunity). Since 2004, an application for review by the employer has been pending. The SIJUPU adds that it has been unable to participate in the organization of the Judicial Training Institute.

34. *The Committee expects that the appeals relating to the administrative proceedings against members of the SIJUPU executive committee and the* amparo *application relating to the dismissal of the SIJUPU General Secretary will be settled in the very near future. The Committee recalls that justice delayed is justice denied [see* ***Digest of decisions and principles of the Freedom of Association Committee,*** *fifth edition, 2006, para. 105]. the Committee requests the Government to keep it informed in this regard and to send its observations regarding the alleged lack of participation of the SIJUPU in the organization of the Judicial Training Institute.*

Case No. 2373 (Argentina)

35. The Committee last examined this case at its March 2008 meeting [see 349th Report, paras 15–17]. On that occasion it expressed the hope that the Supreme Court of Justice of Mendoza would issue a ruling in the near future with regard to the proceedings for constitutional protection *(amparo)* proceedings instituted by the Association of State Workers (ATE) concerning contested Ruling No. 2735/04, in which the Under-Secretariat of Labour and Social Security of Mendoza province had declared the industrial action (assembly at the workplace) carried out by the workers of Godoy Cruz municipality on 22 June 2004 to be illegal, and also with regard to the alleged penalty of warnings issued to 45 workers who had participated in the industrial action of 22 June 2004, which had been declared illegal by the administrative authority of Mendoza province.

36. In a communication dated 16 September 2008, the Government stated that the Supreme Court of Justice of Mendoza province rejected the appeal for review filed by the union in the case "*Association of State Workers (ATE)* v. *the Municipality of Godoy Cruz* regarding *amparo*".

37. *The Committee notes this information, particularly the points in the ruling of the Supreme Court of Justice of Mendoza to the effect that: (1) the appeal for* amparo *was lodged after expiry of the applicable deadline – five months after the industrial action – and the mayor's decision was to issue a warning without any deduction of pay, which did not entail any immediate threat for those penalized; (2) the party bringing the action appealed and went through the other normal judicial and administrative channels in order to obtain recognition and full protection of the right to freedom of association, which it considers to have been violated; and (3) as an exceptional means of protection,* amparo*, in common with the other normal legal remedies, is subject to rules regarding its admissibility, including time limits. The Committee invites the complainant to keep it informed, if it so wishes, of the outcome of any legal action it has taken through ordinary channels in relation to this matter.*

Case No. 2499 (Argentina)

38. At its November 2007 meeting, the Committee examined allegations concerning the prohibition of workplace meetings by employees of the judiciary in the Province of Catamarca. On that occasion, the Committee requested the Government to invite the parties to negotiate with a view to achieving agreement on the modalities for the exercise of the right to hold meetings, including the place for such meetings, as well as on the granting of facilities provided for under Convention No. 151, and requested the Government to keep it informed in this regard [see 348th Report, para. 200].

39. In a communication of 29 September 2008, the Government states that on 19 June, the Catamarca provincial court established a liaison bureau involving court employees with a view to facilitating and speeding up meetings with unions. Accordingly, a meeting was held with representatives of the Catamarca branch of the Union of Employees of the National Judiciary (UEJN), at which a range of subjects was discussed including the development of the role of unions. As regards the exercise of the right to hold meetings, the court ruled that trade union meetings at the workplace should be allowed during evenings, provided that an application is made in advance and the union's reasons for the meeting are stated.

40. *The Committee notes this information with interest.*

Case No. 2326 (Australia)

41. The Committee last examined this case at its November 2007 meeting [see 348th Report, paras 35–42]. On that occasion, the Committee requested the Government to continue to initiate further consultations with the representative employers' and workers' organizations in the building and construction industry, with a view to building a common understanding over ways to ensure that the Building and Construction Industry Improvement Act 2005 (the BCII Act), is brought into full conformity with Conventions Nos 87 and 98 and to keep the Committee informed in this respect.

42. In a communication dated 3 December 2007, the Government indicated that a new Government had been elected on 24 November 2007 and would consider the various issues under consideration by this Committee and respond in due course. In its communication dated 30 September 2008, the Government indicates that a critical component of its legislative programme is to enact new laws governing workplace relations in Australia. The first stage of the Government's legislative programme is now in place following the commencement of the Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008 (the Transition Act), on 28 March 2008. The Transition Act amends the Workplace Relations Act and provides for measured transition arrangements to a new workplace relations system which will be fully operational from 1 January 2010. A key change introduced by the Transition Act is preventing the making of new Australian workplace agreements (AWAs). Legislation for the substantive reforms to the system will be introduced into the Australian Parliament late in 2008. The more substantive reforms are being developed in consultation with key stakeholders, including employer and worker representatives.

43. The Government adds that it will retain the Australian Building and Construction Commission (ABCC) until 31 January 2010. After this, the ABCC will be replaced by a specialist building and construction division of the inspectorate of a new body, Fair Work Australia. Fair Work Australia will be the industrial umpire overseeing the Government's new workplace relations system which will come into full operation in January 2010.

44. Finally, the Government indicates that, on 22 May 2008, the Australian Government commenced the process of extensive consultation with industry stakeholders in relation to the regulatory arrangements which will apply to the building and construction industry. The Government has appointed a retired judge of the Federal Court of Australia to undertake consultations with industry stakeholders and report to the Government by the end of March 2009.

45. *The Committee recalls that it has referred the legislative aspects of this case to the Committee of Experts on the Application of Conventions and Recommendations [see 342nd Report, para. 24] and that it has retained for examination only the issue of consultations between the Government and the social partners with a view to building a common understanding over ways to ensure that the BCII Act is brought into full conformity with Conventions Nos 87 and 98. The Committee notes with interest in this regard that extensive consultations have been launched by the new Government on the regulatory arrangements that will apply to the building and construction industry in the future and the outcome will be reported by the end of March 2009. The Committee expects that these consultations will build a common understanding over ways to ensure that the BCII Act is brought into full conformity with Conventions Nos 87 and 98.*

Case No. 2552 (Bahrain)

46. The Committee last examined this case, which concerns legislation and a ministerial decision setting out essential services in which the right to strike is prohibited, at its March

2008 meeting [see 349th Report, paras 408–424]. On that occasion, the Committee issued the following recommendations:

(a) The Committee reminds the Government 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 as an intrinsic corollary to the right to organize.

(b) The Committee requests the Government to take the necessary measures to amend section 21 of the Trade Union Law so as to limit the definition of essential services to essential services in the strict sense of the term – that is, services the interruption of which would endanger the life, personal safety, or health of the whole or part of the population – and to ensure that workers in services where the right to strike is restricted or prohibited are afforded sufficient compensatory guarantees. The Committee requests the Government to keep it informed of the steps taken in this regard.

(c) The Committee requests the Government to take the necessary measures to modify the list of essential services set out in the Prime Minister's Decision No. 62 of 2006 so that it includes only essential services in the strict sense of the term. With respect to services that are not essential in the strict sense of the term, but where the extent and duration of a strike might be such as to result in an acute national crisis endangering the normal living conditions of the population, the Committee points out that the Government may consider setting up a minimum service, with the participation of workers' organizations and employers in defining such a service.

(d) The Committee requests the Government to take measures to ensure that any determination of new essential services be made in full consultation with the representative workers' and employers' organizations and in accordance with the principles of freedom of association. The Committee also requests the Government to keep it informed of developments in this regard and, should a new decision of the Prime Minister setting out essential services be issued, to provide it with a copy of the same.

47. *The Committee notes with deep regret that the Government's communication of 25 August 2008 provides no information in respect of the above recommendations. Accordingly, recalling that the right to strike is an intrinsic corollary to the right to organize, the Committee once again requests the Government: (1) to take the necessary measures to amend section 21 of the Trade Union Law so as to limit the definition of essential services to essential services in the strict sense of the term – that is, services the interruption of which would endanger the life, personal safety, or health of the whole or part of the population – and to ensure that workers in services where the right to strike is restricted or prohibited are afforded sufficient compensatory guarantees; (2) to take the necessary measures to modify the list of essential services set out in the Prime Minister's Decision No. 62 of 2006, so that it includes only essential services in the strict sense of the term; and (3) to take measures to ensure that any determination of new essential services be made in full consultation with the representative workers' and employers' organizations and in accordance with the principles of freedom of association, as well as to provide a copy of any new decision of the Prime Minister setting out essential services. The Committee requests to be kept informed of developments in this regard.*

Cases Nos 2188 and 2402 (Bangladesh)

48. The Committee examined these cases which concern the alleged anti-union discrimination and intimidation of trade union members and leaders of the Bangladesh Diploma Nurses Association (BDNA) at its June 2008 meeting [see 350th Report, paras 31–34]. On that occasion, the Committee requested the Government to indicate the status of the appeal filed by the Government against the lower court order reinstating Ms Bhattacharjee and, should it be dismissed finally and definitely, to take all necessary measures for the immediate reinstatement of Ms Bhattacharjee with full payment of lost wages and to keep it informed of the progress made in this regard. The Committee further strongly urged the Government once again to institute independent investigations into the dismissal of

Ms Bhattacharjee, the disciplinary proceedings brought against seven trade union leaders of the BDNA (Manimala Biswas, Akikara Akter, Kohinur Begum, Khadabox Sarker, Delwara Chowdhury, Jasmin Uddin and Provati Das) and the transfer of Sabina Yaesmin and Md Sazzad Hossanin and ten senior trade union leaders of the BDNA without delay and to transmit detailed information on their outcome. The Committee urged the Government to take all necessary measures to redress the anti-union discrimination and to provide remedy for the damages suffered. In particular, the Committee requested the Government to indicate any impact that the transfers of Ms Krishna Beny Dey, Ms Israt Jahan, Mr Golam Hossain and Mr Kamaluddin had had on their capacity to carry out their trade union activities and the remedial measures taken and to confirm whether the warnings issued to ten union officials of the BDNA executive committee by the management of Shahid Sorwardi Hospital had been effectively withdrawn.

49. In its communication dated 10 July 2008, regarding the dismissal of Ms Bhattacharjee, the Government, referring to the report of the investigation, explains that she was a senior staff nurse and was suspended and subsequently removed from the government service on 26 February 2002. Ms Bhattacharjee then lodged a writ petition to the High Court against the order of her dismissal on 9 March 2002. The verdict of the writ petition was given on 19 August 2002 in favour of Ms Bhattacharjee. This verdict was contested by the Government at the Appellate Division of the Supreme Court. The Government was given three weeks to provide the requisites to give effect to its request. As no steps had been taken by the Government in this regard, this case was set aside as per directive given by the High Court on 25 September 2007. The Government confirms that Ms Bhattacharjee is working at the Shahid Sorwardi Hospital and is getting regular payment including other benefits she is entitled to. The Government states that no litigation is pending before the court regarding Ms Bhattacharjee's case.

50. Regarding the disciplinary proceedings brought against seven trade union leaders of the BDNA (Manimala Biswas, Akikara Akter, Kohinur Begum, Khadabox Sarker, Delwara Chowdhury, Jasmin Uddin and Provati Das), the Government refers to the outcome of the investigation and states that the seven trade union leaders are presently working in their respective departments and that there has never been any disciplinary proceedings brought against them.

51. With regards to the transfer of Sabina Yaesmin and Md Sazzad Hossanin, the investigation concluded the transfer was undertaken on administrative grounds and for the sake of public interest. The Government further explains that they were subsequently allowed to work in the National Institute of Diseases of the Chest Hospital, Dhaka and Chittagong Medical College Hospital, respectively, at their convenience. Moreover, Mr Hossain was allowed to do his MSc in Thailand, paid by the Government, where he lives since 30 May 2008. The Government further states that no disciplinary proceedings were drawn against them.

52. Regarding the transfer of the ten senior trade union leaders of the BDNA, the Government explains that it is impossible to make any comment in this regard since their names were not revealed in the report. Nevertheless, the responsible authorities confirm that those who were transferred at that time, were subsequently transferred to new posts at their convenience. Regarding the warning issued to ten trade union leaders of BDNA executive committee, the Government states that the Shahid Sorwardi Hospital administration confirms that no such warning was issued to the trade union leaders. It further states that the trade union leaders' activities have never been infringed.

53. With regard to the transfer orders of four staff nurses (Ms Krishna Beny Dey, Ms Israt Jahan, Mr Golam Hossain and Mr Kamaluddin), the Government explains that they were issued on administrative grounds and in the public interest. According to the government service rules, every public servant can be transferred for the sake of public interest. The

four nurses filed writ petitions before the High Court Division of the Supreme Court which stayed the transfer orders. The Appellate Division annulled the stay order. The Government states that the four nurses returned to their posts and were subsequently allowed to get new places of posting at their convenience.

54. *The Committee notes the information provided by the Government on all pending issues.*

Case No. 2371 (Bangladesh)

55. The Committee last examined this case, which concerns a refusal to register the Immaculate (Pvt.) Ltd Sramik Union and the dismissal of seven of its most active members, at its March 2008 meeting. On that occasion, the Committee, deeply regretting that the Government had again failed to give any follow-up action to its recommendations, once again urged the Government to take steps immediately for the prompt registration of the Immaculate (Pvt.) Ltd Sramik Union. The Committee also once again requested the Government to convene an independent inquiry to thoroughly and promptly consider the allegation that seven members of the union were dismissed by the company upon it learning that a union was being established, and to ensure that appropriate measures were taken in response to any conclusions reached in relation to these allegations of anti-union discrimination. The Committee further requested the reinstatement of the workers concerned without loss of pay, if it appeared in the independent inquiry that the dismissals did occur as a result of their involvement in the establishment of the union and, if reinstatement was not possible, to ensure that adequate compensation so as to constitute sufficiently dissuasive sanctions was paid to the workers [see 349th Report, paras 18–21].

56. In a communication dated 4 September 2008, the Government indicates that the appeal filed by the complainant union regarding the refusal of registration was dismissed on 30 September 2007 by the First Labour Court. It attaches a copy of the Court's decision, a one-page document indicating simply that the union's appeal was dismissed for default.

57. *The Committee takes note of the 30 September 2007 decision of the First Labour Court dismissing the union's appeal of the Registrar's refusal of registration. That judgement notwithstanding, the Committee recalls that throughout the period in which the appeal had been pending – a period of four years – it had repeatedly urged the Government to take steps for the immediate registration of the union, given the concerns it had raised over the obstacles posed to the formation of workers' organizations by the minimum membership regulation [see 337th Report, para. 237, and 340th Report, para. 40]. It had also requested the Government to rapidly convene an independent inquiry into the allegation that seven union members were dismissed by the company upon it learning that a union was being established. In these circumstances, the Committee can only express its deep regret that the Government has once again failed to give any follow-up action to its recommendations. Recalling once again that justice delayed is justice denied, the Committee urges the Government to institute an independent inquiry into the serious allegations of anti-union discrimination in this case and, if the allegations are proven true, to take all necessary steps to remedy the situation in relation to these allegations. The Committee requests to be kept informed in this regard.*

Case No. 2529 (Belgium)

58. The Committee last examined the substance of this case at its March 2008 session, when it recalled, with regard to the determination of the representative status of trade unions, that it had been requesting the Government for many years to set out clearly in law, and in practice, objective and pre-established criteria to avoid any risk of partiality or abuse. The Committee had also expressed the hope that the Government would take all the necessary

measures to reinforce dialogue within a mixed working group which was the only body in which the Professional Association of Maritime Pilots (BvL) could speak on behalf of the category of workers whose interests it defends in a context of consultation with the other partners [see 349th Report, paras 425–498].

59. In a communication dated 4 September 2008, the Government starts by stating that the conditions and criterion for representativeness established under sections 7 and 8 of the Act of 19 December 1974, must be considered as irrefutable pre-established criteria and therefore comply with the Committee's requirement. Furthermore, the Government acknowledges that the Committee rightly pointed out the existence of other de facto elements of determination which are taken into account when providing the basis for mutual recognition that is essential between partners in social dialogue, but which are not included in legislation and cannot therefore be considered as pre-established. The Government also points out that the legislation requiring trade unions to be affiliated to an organization belonging to the National Labour Council in order to have representative status, on the basis of which three trade unions participate in the work of general committees and other bargaining committees, is justified because of the objective links existing between the National Labour Council and the public services and because the general labour legislation covers both the private and public sectors. Similarly, the Government recalls that the authorities or a trade union organization might refer to the bargaining committees on a matter of legal provisions and regulations applicable to the private sector, collective agreements concluded within a joint body or proposals from the National Labour Council, with a view to making them applicable to the staff covered under the Act of 19 December 1974. Given the vast scope of measures discussed at the level of general committees and the considerable budgetary expenditure this might involve, the Government stresses the difficulty of settling matters concerning public service officials at this level without taking into account the policy applied to workers in the private sector.

60. As regards the Committee's recommendation concerning the need to guarantee a trade union barred from sitting on a bargaining body the other rights that it enjoys and ensure that the activities it can undertake in other fields must enable it effectively to further and defend the interests of its members, the Government points out that the legislation guarantees to any trade union organization, including the BvL, the right to bring a matter before the public authorities in the collective interest of the staff it is representing, without any preconditions. Such demands and their grounds might, by their very nature, influence the authority's standpoint during the bargaining stage. The Government stipulates that, in the case of the staff whose interests are defended by the BvL, the competent authority has demonstrated its goodwill in matters of social dialogue by setting up informal bargaining structures, although the Act of 19 December 1974 makes no provision for this. This attitude would seem to imply that this authority is willing to do all it can to promote social dialogue.

61. *The Committee notes the additional information provided by the Government. It recalls that matters concerning trade union representativeness in Belgium have already been raised in several previous cases, as well as in comments by the Committee of Experts on the Application of Conventions and Recommendations. Recalling that the determination of the most representative organization must be based on objective and pre-established criteria and clearly set out in law, the Committee is submitting the follow-up of this legal aspect of the case for examination by the Committee of Experts.*

62. *Concerning the informal structures set up by the competent authority, including the mixed working group in which the BvL speaks on behalf of the category of workers whose interests it defends in a context of consultation with the other partners, the Committee notes the Government's statement that this is evidence of the authority's goodwill, implying that social dialogue will always be promoted. The Committee trusts that the*

competent authority will continue to guarantee the BvL the effective exercise of its prerogative as a trade union authorized to promote and defend the interests of its members.

Case No. 2500 (Botswana)

63. The Committee last examined this case – which concerns allegations of the dismissal of 461 employees and union members for having engaged in strike action, the dismissal of four union officials, interference by the employer in the union's internal affairs, and the failure of the Government to provide adequate dispute resolution procedures and intervene in the dispute between the Botswana Mine Workers' Union (BMWU) and the Debswana Mining Company – at its May–June 2008 meeting. On that occasion the Committee, noting that the cases concerning the 461 dismissed employees and the four dismissed union officials were pending before the Industrial Court, reiterated its expectation that the Industrial Court would bear in mind the principles of freedom of association cited in its previous conclusions when considering the appeal of the four union officials [see 350th Report, paras 35–38].

64. In a communication of 22 August 2008, the Government transmits a copy of an 8 February 2008 decision of the Industrial Court, in which the Court denied the BMWU's application for condonation of the late filing of its statement of case regarding the dismissal of 461 of its members.

65. *The Committee takes due note of the 8 February 2008 Industrial Court decision. It notes in particular that, in denying the BMWU's application for condonation of the late filing of its statement of case, the Court found, inter alia, that the BMWU had failed to submit its application within a reasonable time period following the initial failure to submit the statement of case, and had also failed to demonstrate any prospect of success on the merits of the underlying case, e.g. the dismissal of 461 of its members. Noting that a case concerning the dismissal of four BMWU officials was still pending before the Industrial Court, the Committee once again expresses the expectation that the Industrial Court will bear in mind the principles of freedom of association cited in its previous conclusions when considering the appeal of the four union officials [see 346th Report, para. 331] and requests the Government to transmit the judgement as soon as it is rendered.*

Case No. 2430 (Canada)

66. The Committee last examined this case, which concerns the provisions of a statute (Colleges Collective Bargaining Act, RSO 1990, c.15) that denies all public colleges part-time employees the right to join a union and engage in collective bargaining, at its June 2008 meeting [350th Report, approved by the Governing Body at its 302nd Session, paras 41–43]. On that occasion, the Committee noted with interest the Government's announcement that it intended to amend the Colleges Collective Bargaining Act to extend collective bargaining rights to part-time academic and support staff workers at Ontario's colleges of applied arts and technology, and it requested the Government to keep it informed of any progress made in the adoption of legislation on the issue.

67. In a communication dated 15 August 2008, the Government indicates that on 30 August 2007, the Government of Ontario introduced a bill that, if passed, would extend collective bargaining rights to part-time academic and support staff workers at Ontario's 24 colleges, replace the Colleges Collective Bargaining Act and give part-time and "sessional" college workers the right to bargain collectively for the first time in Ontario. The Government further states that the proposed legislation would amend bargaining processes at colleges making them more consistent with the Labour Relations Act which covers most other Ontario workplaces and at the same time fulfil the Government's commitment to extend

collective bargaining to part-time college workers. The Act to Enact the Colleges Collective Bargaining Act of 2008 is scheduled for Legislative Standing Committee hearings in September and after the report of the Committee back to the House, the bill would move to the third reading and, if passed, receive Royal Proclamation.

68. *The Committee takes note with interest of the Government's announcement that the Government of Ontario introduced the Act to Enact the Colleges Collective Bargaining Act which would extend collective bargaining rights to part-time academic and support staff workers at Ontario's 24 colleges. It invites the Government to keep it informed of progress made in the adoption of this bill and expresses the hope that it will report in the near future that part-time academic and support staff in colleges of applied arts and technology in Ontario fully enjoy the rights to organize and to bargain collectively.*

Case No. 2046 (Colombia)

69. The Committee last examined this case at its meeting in June 2008 [see 350th Report, paras 47–54]. On the occasion, the Committee made the following recommendations on matters that remained pending.

- With regard to the allegations made by the Single Federation of Workers (CUT) dated 15 February 2006 concerning the closure of several Bavaria SA Plants, which led to a drastic decline in the number of union members, in relation to which, according to the Government, the Territorial Directorate of Cundinamarca, Inspectorate No. 10, had launched an inquiry [see 344th Report, para. 45]: *The Committee requests the Government to launch an independent inquiry into these allegations without delay so that it can be established whether the plant closures were based on anti-union grounds.*
- As regards the collection of union dues, on behalf of SINTRAFEC, from non-union workers employed by the National Federation of Coffee Growers of Colombia who benefit from the collective agreement: *The Committee observes that the allegations do not refer to the collection of union dues for the 1984–87 period but are new allegations to the effect that no dues are being collected at present from non-union members who benefit from the collective agreement. The Committee therefore requests the Government once again to take the necessary steps to ensure that, where the collection of dues is provided for under the collective agreement in force, this is effected without delay and requests the Government to keep it informed in this respect.*

70. In two communications dated 8 June 2008, the Colombian Union of Beverage Industry Workers (SINALTRAINBEC) alleges that in order to destroy the trade union organization, the company Cervunión SA dismissed the following trade union officials of the SINALTRAINBEC section of Itagüí; Luis Fernando Viana Patiño on 19 April 2004; Alberto de Jesús Bedoya Ríos on 29 April 2004; Edgar Darío Castrillón Múnera on 19 April 2004, José Everado Rodas Castrillón on 11 June 2004; Luis Alberto Acevedo on 11 June 2004 and Orlando Martínez Cuervo on 11 June 2004.

71. The complainant trade union and the Single Federation of Workers (CUT) referred to the dismissal of William de Jesús Puerta Cano. The trade union organization denied (contrary to what the Government had stated in a precious examination of the case), that the parties had been summoned to a conciliation hearing.

72. In communications dated 15 September and 21 October 2008, the Government states with respect to the collection of trade union dues from workers not belonging to SINTRAFEC who benefit from the collective agreement, national legislation provides, in order for union dues to be collected for a worker not belonging to a minority trade union organization, that he or she must express their will to benefit from the collective agreement. If this request is not made, the employer is unable to collect any dues without the risk of infringing the Substantive Labour Code, which bans any type of check-off of union dues without the

authorization of the worker or unless there are legal grounds. In this case, both SINTRAFEC and the Federation have acknowledged that SINTRAFEC is a minority trade union. In this respect and in accordance with section 470 of the Substantive Labour Code: "Collective agreements between employers and trade unions whose membership does not exceed one-third of the total of all workers in the undertaking (minority trade union) shall only apply to the members of the trade union that have signed these agreements, or to those belonging to or who subsequently joined the trade union". *The Committee notes this information.*

73. With respect to the communication sent to the SINALTRAINBEC, the Government states that the judicial authority handed down decisions concerning those dismissed.

74. As regards the case of Luis Fernando Viana Patiño, the judgement handed down by the High Court of Medellín on 5 October 2006 ruled that: "it is not possible to grant the complainant's request, because as clearly ascertained during the case, the plaintiff's labour contract had been terminated on just grounds, commensurate with the legal proceeding, and this action was therefore carried out in accordance with the law …".

75. As concerns the case of Alberto de Jesús Bedoya Ríos, the examining magistrate ruled that; "… the enterprise therefore took all the necessary steps leading to such disciplinary proceedings, in order to reach the decision already known by the plaintiff, given his failure to comply with his contractual obligations and abide by the regulations. Consequently, the enterprise was acquitted of the case brought against it …".

76. As regards the case of Edgar Darío Castrillón Múnera, the examining magistrate acquitted the enterprise, a ruling that was also upheld in the second instance by the Higher Court of Medellín in the following terms: "it was therefore established that there was a failure to comply with the legal requirements for setting up a trade union, in this case the Itagüí section of SINALTRAINBEC, which was initially registered. This decision was revoked and the section was finally refused registration …". In the present case, it was considered that the crucial factor in the proceedings, was the decision not to register the union executive committee, which shows that there was no trade union immunity.

77. *In this respect, noting that the Government has not referred to the dismissal of Luis Alberto Acevedo, Orlando Martínez Cuervo and William de Jesús Puerta Cano, the Committee requests the Government to inform it on the matter.*

Case No. 2469 (Colombia)

78. The Committee last examined this case at its March 2008 meeting [see 349th Report, paras 55–71]. On that occasion, the Committee requested the Government: (1) to keep it informed on any measures adopted to ensure that workers in the public sector and in the central public administration enjoy the right to collective bargaining in the light of Conventions Nos 151 and 154, which have been ratified by Colombia; and (2) with regard to the violation (arising from the adoption of Act No. 909 of 23 September 2004) of the collective agreement signed in 2003 between the Union of Public Officials of the "Evaristo García" University Hospital ESE (SINSPUBLIC) and the hospital, to take the necessary measures to ensure that the collective agreement signed between the public administration and SINSPUBLIC is duly applied and that, during the period of validity of the 2003 collective agreement, stability is guaranteed for the workers who were employed on a temporary basis and fulfilled the conditions of section 24 of the collective agreement.

79. The Committee takes note of the trade union's communication dated 30 September 2008, in which it states that, despite the amount of time that has elapsed, the Committee's recommendations have not been applied.

80. For its part, in a communication of 29 May 2008, received on 23 June 2008, the Government states that it has requested observations from the University Hospital.

81. The Committee regrets that, despite the time that has elapsed since this last communication, the Government has failed to take into account its recommendations and has not adopted the necessary measures to ensure compliance with the collective agreement signed between the public administration and SINSPUBLIC. *Under these circumstances, recalling that agreements are binding on the parties concerned, the Committee requests the Government to take the necessary measures to ensure that the collective agreement signed in 2003 is duly applied during its period of validity, thereby guaranteeing stability during this period for the workers who were employed on a temporary basis and fulfilled the conditions of section 24 (employment relationships) of the collective agreement.*

82. The Committee also notes with regret that the Government has failed to send any information regarding measures adopted with a view to guaranteeing the right to collective bargaining of workers in the public sector and in the central public administration. *The Committee recalls that under the terms of Conventions Nos 98, 151 and 154, which have been ratified by Colombia, workers in the public sector and in the central public administration must enjoy the right to collective bargaining, and requests the Government without delay to take measures to promote legislative provisions in this regard.*

Case No. 2481 (Colombia)

83. The Committee last examined this case at its March 2008 meeting [see 349th Report, paras 72–79]. On that occasion, the Committee requested the Government: (1) to take measures to guarantee the right of ACOLFUTPRO to collective bargaining in its capacity as an occupational organization representing football players, either directly with football clubs or with the employers' organization chosen by the clubs to represent them; and (2) with regard to the allegations of pressure, threats of dismissal and other acts of discrimination directed at workers because of their decision to resort to strike action, to take the necessary measures to ensure that an investigation is carried out in order to ascertain the existence of pressure, threats of dismissal and other acts of discrimination directed at workers because of their decision to resort to strike action and, should such allegations be shown to be true, to take measures to punish those responsible appropriately.

84. In its communication of 14 October 2008, ACOLFUTPRO states that it lodged an appeal requesting the intervention of the Attorney-General on 21 May 2008 with a view to preventing further violations of fundamental labour and collective bargaining rights. According to the complainant organization, on 22 September 2008, the Office of the Attorney-General issued a report on the alleged non-compliance with the rights of the football players. This report establishes the failure of the Ministry of Social Protection to comply with the recommendations of the Committee regarding collective bargaining, thus violating the right to collective bargaining of the workers of ACOLFUTPRO. The report also states that any measures which allow professional football players to conclude a definitive agreement which protects their labour rights must be adopted. In a communication of 25 February 2009, the Government denies the breach of any obligation on its part and contends that the nation's vice-presidency had convened seven meetings in which ACOLFUTPRO, the Colombian football federation, DIMAYOR, *Colfutbol* and other sports clubs participated, and during which employment contracts, social security and dispute resolutions were discussed. As concerns the resolution of the Attorney-General, the Government indicates that in its decision the Attorney-General considered that ACOLFUTPRO had presented its demands to entities lacking the status of employers. *The Committee observes that it is clear, from the report of the Attorney-General, that the latter found violations of the right to collective bargaining due to the Ministry of Social*

Protection's endorsement of the procedure prescribed in the Labour Code concerning collective disputes, and that the Ministry of Social Protection must take all legal means and actions to enable workers in professional football to conclude an agreement that is final, fair and effectively protects their labour rights. In these conditions, the Committee requests the Government, in accordance with the ruling handed down by the Attorney-General, to take the necessary measures to guarantee the right of ACOLFUTPRO to collective bargaining.

85. As to the allegations regarding pressure and threats of dismissal and other acts of discrimination directed at workers because of their decision to resort to strike action, in a communication dated 15 September 2008, the Government requests the complainant organization to provide information regarding the workers concerned, in order that it may launch the corresponding investigations. *The Committee requests the complainant organization, without delay, to provide this information, so that the Government can carry out the corresponding investigations.*

Case No. 2554 (Colombia)

86. The Committee last examined this case at its June 2008 meeting [see 350th Report, paras 487–507]. On that occasion, with regard to the transfer from their posts of a number of officials and members of the Trade Union Association of Teachers of Norte de Santander (ASINORT), without regard to the process established in law, the Committee requested the Government to annul the transfer of Carlos Orlando Vera Arias until such time as the courts had ruled on the question of trade union immunity, and invited it to carry out consultations with a view to seeking a negotiated settlement. As regards the other transfers, concerning Carlos Orlando Veria Arias (leader with trade union immunity which was not respected), Nydia Rene Gafado Rojas, Jairo Pavón Capacho, Jairo Manuel Leal Parada, Rodolfo Bello Merchán (who received threats for refusing to accept the transfer), Hermelina Jaimes de Guerrero, Ana Rosa Valencia Granados and Blanca Inés García (members), the Committee requested the Government to carry out an investigation to determine whether the established transfer procedure had been respected or whether the measure was of an anti-union nature. In this regard, the Committee notes the communication dated 15 September 2008, in which the Government states that the Ministry of Education of Santander reported to have acted in accordance with domestic legislation. The Government further states that it requested further information from the Territorial Directorate of Norte de Santander of the Ministry of Social Protection regarding the administrative investigation into the abovementioned Ministry for alleged violations of freedom of association and the right to organize, and that it will report to the Committee as soon as it receives a reply. *The Committee takes note of this information, and awaits the further information referred to by the Government.*

Case No. 2227 (United States)

87. The Committee last examined this case – which concerns the effects that the inadequacy of the remedial measures left to the National Labor Relations Board (NLRB) in cases of illegal dismissals of undocumented workers, as a result of the decision of the Supreme Court in the case of *Hoffman Plastic Compounds* v. *NLRB* – at its November 2007 meeting [see 348th Report, paras 79–89]. On that occasion, the Committee requested the Government to take steps, within the context of the ongoing debate on comprehensive immigration reform, to consult the social partners concerned on possible solutions aimed at ensuring effective protection for undocumented workers against anti-union dismissals.

88. In a communication dated 11 September 2008, the Government indicates that the *Hoffman* decision continues to be applied narrowly, and has not been interpreted to diminish

freedom of association rights for undocumented workers. Since the United States last reported on Case No. 2227, there has been only one case that considered the *Hoffman* decision in the context of freedom of association. In *Agri Processor Co., Inc.* v. *NLRB*, the US Court of Appeals for the District of Columbia held that undocumented workers were employees protected by the National Labor Relations Act (NLRA) and shared a community of interest warranting placement in a bargaining unit with co-workers. The decision followed Supreme Court precedent in *Sure-Tan* v. *NLRB*, and the NLRB in *Concrete Form Walls, Inc.* (described in the Government's previous report to the ILO), both of which had held that undocumented workers were employees protected under the NLRA. Thus, there is still not a single case that evinces that the rights of workers to form or join a union have been adversely affected by the *Hoffman* decision.

89. Federal courts have also continued to limit the *Hoffman* decision's impact in connection with other federal and state labour laws. For example, in *King* v. *Zirmed, Inc.*, the Court rejected an attempt to expand *Hoffman* to deprive undocumented workers' basic contract rights. In *Incalza* v. *Fendi North America, Inc.*, the Ninth Circuit Court of Appeals refused to apply *Hoffman* in a situation where an employee would be able to resolve a work authorization problem expeditiously, and determined that the Immigration Reform and Control Act (IRCA) did not require the employer to terminate the worker. The US District Court in Minnesota held that even if the plaintiff was undocumented, the worker still had standing to pursue her sexual harassment and retaliation claim under Title VII of the Civil Rights Act of 1964. See *EEOC* v. *Restaurant Co*. Finally, in *Perez-Farias* v. *Global Horizon, Inc.*, the US District Court for the Eastern District of Washington refused to read the IRCA or the *Hoffman* decision as allowing defendants to question plaintiff class members about their immigration status in a suit alleging violations of their work agreements under state and federal law.

90. State courts have been just as consistent in refusing to extend the *Hoffman* decision beyond its limited scope. In *Reyes* v. *Van Elk, Ltd*, the California Court of Appeal held that *Hoffman* did not prohibit the undocumented plaintiffs from having standing to raise their prevailing wage claim. In *Pineda* v. *Kel-Tech Constr., Inc.*, the New York Supreme Court in New York County held that a worker who submits false documents to gain employment is not barred from recovering unpaid prevailing wages for work already performed. In another case, involving lost wages due to workplace injuries, the same Court denied the defendant's attempts to inquire into the plaintiff's immigration status. See *Gomez* v. *F & T Int'l*, *LLC.*, Lastly, in *Coma Corp.* v. *Kansas Dept of Labour*, the Kansas Supreme Court held that neither the IRCA nor the *Hoffman* case pre-empted the application of the Kansas Wage Payment Act to earned, but unpaid, wages of an undocumented worker.

91. Consistent with case law and long-standing practice, US federal agencies responsible for labour protections, including the NLRB and the Department of Labor, continue to enforce their laws without regard to a worker's immigration status. In addition, US government agencies continue to educate workers, including undocumented workers, about their right under US labour laws. For example, over half of the NLRB's regional offices have produced regional newsletters and a significant number of those have been translated to Spanish, which have been posted on the NLRB web site. The NLRB Outreach Program has Outreach business cards that have been translated into Spanish and Ilocano and Tagalog (two prominent languages in the Philippines). The NLRB is also in the final stages of production of a DVD entitled "The NLRB Conducts a Union Representation Election" that provides basic information about representation cases and protected concerted activities, which will be translated into Spanish. The DVD will be distributed to community groups through the field offices' Outreach Program. With the NLRB's General Counsel's outreach initiative, emphasizing "non-traditional" outreach, all of the field offices have made it a point to reach out to non-English speaking groups and attended fairs and conferences that have a tendency to involve immigrant workers. In addition, the

Department of Labor has now translated its Wage and Hour Division Fact Sheet (No. 48), on the effect of the *Hoffman* decision on labour laws enforced by the Department into five major languages spoken by immigrant communities in the United States. The fact sheet is therefore now available in Spanish, Korean, Chinese, Thai and Vietnamese at the Department's Wage and Hour web site.

92. Federal agencies also meet regularly, usually every two to three months, with immigrant worker representatives as part of the Immigration Worker Round Table hosted by the Department of Homeland Security (DHS). The meetings are an opportunity for agencies such as the DHS's Immigration and Customs Enforcement, the Department of Labor's Wage and Hour Division, the NLRB, the Office of Special Counsel for Immigration-related Unfair Employment Practices in the Civil Rights Division of the Department of Justice, and the Department of Health and Human Services to discuss and share information about issue that affect immigrant workers, including the *Hoffman* decision, with groups such as Change to Win, the Services Employees International Union, the Mexican American Legal Defense and Education Fund, the American Bar Association, Catholic charities and the National Immigration Forum.

93. In conclusion, the Government indicates that, since the *Hoffman* decision was issued in 2002, there is no empirical evidence to support the Committee on Freedom of Association's theory, as expressed in its November 2007 report, that post-*Hoffman* remedies are "likely to afford little protection to undocumented workers". Although federal and state courts continue to define the parameters of the *Hoffman* decision in a variety of labour and employment contexts, six years of case law have yet to result in any cases that have interpreted the decision to prevent undocumented workers from exercising freedom of association. As a result, there has been no need on the part of the US Government to initiate discussions with the social partners to address "possible solutions" to the *Hoffman* decision. However, US government agencies continue to educate workers, regardless of their immigration status, and their representatives, about their rights under US labour laws. Furthermore, worker and employer representatives continue to be actively engaged in all aspects of the ongoing immigration policy debate in the US Congress.

94. *The Committee takes due note of the detailed information provided by the Government with regard to the impact of, and reference to, the Hoffman decision in subsequent jurisprudence, largely concerning issues other than freedom of association. The Committee also notes in particular, that in one case concerning freedom of association (Agri Processor Co., Inc.* v. *NLRB), the US Court of Appeals for the District of Columbia held that undocumented workers were employees protected by the NLRA and shared a community of interest warranting placement in a bargaining unit with co-workers, a matter that was not called into question in the Hoffman case. Furthermore, the Committee notes the activities described by the Government which aim at educating workers, including undocumented workers, about their rights under US labour laws, including freedom of association rights.*

95. *The Committee observes, nevertheless, that the above does not alter the fact that, as a result of the Hoffman decision, the remedies available in cases of illegal dismissals of undocumented workers have been limited to: (1) a cease and desist order in respect of violations of the NLRA; and (2) the conspicuous posting of a notice to employees setting forth their rights under the NLRA and detailing the prior unfair practices, with a possible sanction in the case of contempt. The Committee once again notes that "such remedies do not sanction the act of anti-union discrimination already committed, but only act as possible deterrents for future acts. Such an approach is likely to afford little protection to undocumented workers who can be indiscriminately dismissed for exercising freedom of association rights without any direct penalty aimed at dissuading such action" [see 332nd Report, para. 609]. In light of the above, the Committee once again requests the*

Government to consult the social partners concerned on possible solutions aimed at ensuring effective protection for undocumented workers against anti-union dismissals. It requests the Government to keep it informed of developments in this regard.

Case No. 2506 (Greece)

96. The Committee last examined this case, which concerns a "civil mobilization order" (requisition of workers' services) of indefinite duration which put an end to a legal strike of seafarers on passenger and cargo vessels, at its March 2008 meeting [see 349th Report, paras 115–125]. On that occasion, the Committee noted with interest the entry into force of Act No. 3536/2007 concerning "Special Regulations of Migration Policy Issues and other issues under the competence of the Ministry of the Interior, Public Administration and Decentralization", which provides in section 41 that the requisition of personal services is possible only in a "sudden situation requiring the taking of immediate measures to face the country's defensive needs or a social emergency against any type of imminent natural disaster or emergency that might endanger the public health"; it also noted that Legislative Decree No. 17/1974, on the basis of which the civil mobilization order had been issued in the present case, will from now on only apply in times of war. The Committee encouraged the adoption of legislation on the establishment of an independent authority to bear the responsibility for suspending a strike on the grounds of national security or public health, and requested to be kept informed of any development in this respect. It invited once again the Government and the complainant Pan-Hellenic Seamen's Federation (PNO) to engage in negotiations as soon as possible over the determination of the minimum service to be made available in case of strikes in the maritime sector, in conformity with national legislation on security personnel and freedom of association principles. Finally, it requested the Government to specify whether negotiations took place over the list of demands presented by the PNO and the relevant outcome.

97. In a communication dated 2 September 2008, the Government expresses its satisfaction at the fact that the Committee took sufficiently into account the Government's observations especially with regard to Greece's particular geographic features, which no doubt necessitate the continuous provision of maritime transport services among islands and between islands and the mainland in order to meet the vital needs of the population that lives in the islands.

98. The Government recalls that the national legislation in force, as stressed in the past, provides that, in case of a strike called by workers providing services of vital importance, the trade union organization concerned makes the necessary safety personnel available, with a view to meeting emergency or fundamental needs of society. The minimum number of crew and the seafarers' specialities for the operation of the vessel cannot become subject of consultations and agreement, but is a matter of application of the legislation (based on the guidelines and requirements of international bodies, including the Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180), and the Maritime Labour Convention, 2006), to safeguard the vessel's and its passengers' safety in terms of staffing. Moreover, the cases of emergency or the vital needs of islanders cannot be determined easily beforehand, since they vary not only according to the season of the year, but also according to the surface of each island, the structure of the local economy and the distance of the island from large inland urban centres. Nevertheless, the Government notes the Committee's recommendations and acknowledges that they emanate from its interest in safeguarding the meeting of vital needs of the islanders on a continuous basis, even in cases when seafarers exercise their constitutional right to call a strike. In this context, the said recommendations can become the subject of consultations with the seafarers' trade unions, in case of general strike on maritime transport services among islands and between islands and the mainland, which will take place between the dates from the notification of such mobilizations to their possible realization.

99. As far as the list of demands submitted by the PNO is concerned, the Government indicates that, as previously mentioned, their vast majority has already been satisfied. The existing labour peace constitutes proof of the above and any other issue is being dealt with by means of cooperation and consultation among the maritime social partners, so that it might be settled in accordance with the abilities and obligations of the country. The Government provides detailed information in this regard to a number of employment enhancement measures, increases in relevant workers' funds, etc., many of which have been the subject of long consultations with the PNO.

100. With regard to the issue of civil mobilization, the Government is certain that recent Act No. 3536/2007 (section 41) sufficiently guarantees the safeguarding of the interest of both the seafarers on strike and the citizens, and awaits proof of its effectiveness in practice. In any event, the Government is indeed positive towards the establishment of an independent authority, which will have the competence and responsibility to review whether the preconditions for the application of the provisions of section 41 of Act No. 3536/2007 exist. The Government reassures the Committee that the competent Ministry of Interior will address both the encouragement of the Committee concerning the adoption of the relevant legislation and its wish to remain informed about all relevant developments on this matter.

101. *The Committee notes with interest from the Government's reply that the issue of minimum services will be addressed in case of general strike in the maritime transport sector from the time of notification of a strike, to its staging; this is due to the fact that it is difficult to predict the extent of the minimum service which largely depends on the season of the year and other factors. The Committee requests to be kept informed of developments in this regard. With regard to the Government's indication that the manning of ships is subject to international regulations and cannot be limited to a minimum service, the Committee recalls that the minimum service may relate to the number of crossings carried out per day, instead of the number of staff manning the ship.*

102. *With regard to the negotiations over the list of demands submitted by the PNO, the Committee notes that according to the Government the vast majority of these demands has been met and the current social peace constitutes proof of the above. Noting the details provided by the Government as well as the fact that the complainant has not provided additional information in this regard, the Committee will not pursue its examination of this issue any further.*

103. *With regard to the issue of establishing an independent authority to review whether the preconditions for the application of the provisions of section 41 of Act No. 3536/2007 exist, the Committee notes the Government's positive stance towards such a possibility, reiterates its encouragement in this regard and requests the Government to keep it informed of any developments.*

Case No. 1890 (India)

104. The Committee last examined this case, which concerns dismissal, transfer and suspension of members of the Fort Aguada Beach Resort Employees' Union (FABREU) following a strike and the employer's refusal to recognize the most representative union for collective bargaining purposes, at its November 2007 session [see 348th Report, paras 116–118]. On that occasion, it requested the Government to indicate whether the FABREU was recognized by the enterprise management as a collective bargaining agent and could participate, through negotiation of collective agreements, in regulation of terms and conditions of employment at the Fort Aguada Beach Resort.

105. In its communication dated 6 October 2008, the Government indicates that the Government of Goa (provincial government) has informed that the FABREU ceased to exist at Fort Aguada Beach Resort, Sinquerim, as the workers have formed their own union, the Fort Aguada Beach Resort Workers Association and have signed the settlements with the management on the Charter of Demands.

106. *The Committee notes the information provided by the Government.*

Case No. 2236 (Indonesia)

107. The Committee last examined this case, which concerns allegations of anti-union discrimination by the Bridgestone Tyre Indonesia Company against four trade union officers suspended without pay, at its March 2008 meeting [349th Report, paras 139–144]. On that occasion, the Committee once again requested the Government to institute an independent investigation at the enterprise and with the workers concerned to determine whether they have been the subject of anti-union discrimination and, if the allegations are found to be true, but the trade union officers have already received formal notification of their dismissals, to ensure, in cooperation with the employer concerned, that the trade union officers are reinstated or, if reinstatement is not possible, that they are paid adequate compensation such as to constitute sufficiently dissuasive sanctions, taking into account the damage caused and the need to avoid the repetition of such acts in the future. In addition, with regard to the two proceedings regarding anti-union discrimination and dismissal of four trade union officers, the Committee requested the Government to keep it informed of the decision of the Supreme Court with respect to the appeal made by these trade union officers on the decision of the National Administrative High Court, and to transmit all relevant texts. Finally, noting the Government's indication that a collective labour agreement had been entered into between a new bargaining team and the company, the Committee requested the Government to transmit a copy of the agreement without delay, as well as a copy of the decision of the Central Committee for Labour Dispute Settlement which had apparently replaced the union's old bargaining team.

108. In a communication of 18 September 2008, the Government indicates that, as previously indicated, the P4P lodged an appeal against the decision of the State Administrative High Court of Jakarta before the Supreme Court but the case of the dismissal of the four trade union officers has not been examined so far, despite efforts from the Ministry of Manpower to speed up the examination as a priority.

109. *The Committee once again notes with regret that the Government provides no substantially new information in reply to the Committee's previous requests.*

110. *The Committee recalls once again that there is no real prospect of having the complainant's grievance of anti-union discrimination examined by the courts; more than six years have elapsed since this complaint was first brought to the courts, without any reported progress in light of the apparent impasse in these proceedings due to the absence of the former Director-President. The Committee once again emphasizes that respect for the principles of freedom of association clearly requires that workers who consider that they have been prejudiced because of their trade union activities should have access to means of redress which are expeditious, inexpensive and fully impartial [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth edition, 2006, para. 820]. The Committee once again requests the Government to institute an independent investigation at the enterprise and with the workers concerned to determine whether they have been the subject of anti-union discrimination and, if the allegations are found to be true, but the trade union officers have already received formal notification of their dismissals, to ensure, in cooperation with the employer concerned, that the trade union officers are reinstated or, if reinstatement is not possible, that they are paid*

adequate compensation such as to constitute sufficiently dissuasive sanctions, taking into account the damage caused and the need to avoid the repetition of such acts in the future. The Committee requests to be kept informed of developments in this respect.

111. *With respect to the proceedings concerning the dismissal of the four trade union officers, the Committee notes once again that the Government approached the Supreme Court informally to ensure that a decision will be rendered soon but the issue is still pending. The Committee once again expresses the firm hope that the Supreme Court will issue its decision without further delay and requests the Government to keep it informed in this respect, and to transmit all relevant texts. The Committee also recalls that it has expressed regret at the fact that the two court proceedings – on anti-union discrimination and dismissal – went ahead simultaneously and once again requests the Government to confirm that no decision in favour of dismissal will be enforced prior to the resolution of the question of anti-union discrimination.*

112. *Finally, the Committee notes with regret that the Government once again fails to provide any further information on the decision of the Central Committee for Labour Dispute Settlement to replace the union's old bargaining team, which led to the adoption of a new collective labour agreement. The Committee once again requests the Government to transmit a copy of the collective bargaining agreement and the Central Committee decision without delay.*

Case No. 2336 (Indonesia)

113. The Committee last examined this case, which concerns several freedom of association violations at the Jaya Bersama Company such as its refusal to recognize the plant-level trade union affiliated to the Federation of Construction, Informal and General Workers (F–KUI), the anti-union dismissal of 11 trade union members, including all the officials, and acts of intimidation against employees, at its March 2008 meeting. On that occasion, the Committee noted with regret that more than three years had elapsed since the decision of the Central Committee for Labour Dispute Settlement ordering the payment of severance pay to the 11 dismissed workers without any progress made in securing its execution and urged the Government to take the necessary measures to ensure by all appropriate means that the decision is complied with. Noting moreover the Government's indication that the Manpower Office of the district of North Jakarta was in the process of investigating the status of the company so that the Government may be in a position to secure the execution of the decision of the Central Committee for Labour Dispute Settlement, the Committee urged the Government to take the necessary measures to ensure by all appropriate means the rapid conclusion of the investigation over the status of the company and to secure the execution of the Central Committee's decision [see 349th Report, paras 145–147].

114. In a communication dated 18 September 2008, the Government indicates that despite its efforts, the decision of the Central Committee for Labour Dispute Settlement ordering the payment of severance pay to the 11 dismissed workers has not been enforced. The company has ceased operations and there is no reliable information on the whereabouts of the dismissed workers.

115. *The Committee deeply regrets this development. It recalls that the basic regulations that exist in the national legislation prohibiting acts of anti-union discrimination are inadequate when they are not accompanied by procedures to ensure that effective protection against such acts is guaranteed [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth edition, para. 818]. Noting with regret that more than three years have elapsed since the decision of the Central Committee without any progress made in securing its execution and that justice delayed is justice denied, the*

Committee urges the Government to undertake negotiations with the workers concerned with the aim of finding a mutually acceptable solution to their situations and to keep it informed of developments in this regard.

Case No. 2441 (Indonesia)

116. The Committee last examined this case, which concerns anti-union dismissal, harassment of and threats of violence against trade union leaders, and shortcomings in the legislation at its March 2008 meeting, where it requested the Government to: take necessary measures to reinstate Mr Sukamto without loss of wages or benefits; review section 158(1)(f) of the Manpower Act of 2003 to ensure that the term "gross misconduct" is not interpreted so as to include legitimate trade union activities; and conduct an independent investigation without delay into the allegations of harassment, threats and defamatory statements with a view to clarifying the facts, determining criminal responsibility, if any, and punishing those responsible. The Committee requested the Government to keep it informed of developments in this regard, including any court decisions handed down with regard to Mr Sukamto [see 349th Report, paras 148–151].

117. In a communication dated 18 September 2008, the Government indicated that the decision of the P4D of 21 June 2005 which gave permission to terminate Mr Sukamto without severance pay is a final decision with legal effect. All appeals filed to the P4D, State Administrative High Court of Jakarta and Supreme Court were turned down (Supreme Court Decision No. 93 K/TUN/2007).

118. *The Committee expresses its profound regret at the fact that the appeals filed by Mr Sukamto were rejected. It recalls once again the circumstances surrounding Mr Sukamto's dismissal, which have never been contested by the Government. Mr Sukamto was dismissed due to the recommendation he made to the workers in respect of the employer's proposal on a wage increase. It was in this context that the Committee had requested the Government to ensure his reinstatement and to review the Manpower Act in force so as to ensure that the term "gross misconduct" may not be interpreted so as to include legitimate trade union activities [see 342nd Report, para. 620]. The Committee recalls that when a State decides to become a Member of the Organization, it accepts the fundamental principles embodied in the Constitution and the Declaration of Philadelphia, including the principles on freedom of association [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fourth edition, 1996, para. 15.] One of these fundamental principles 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. Furthermore, although the holder of trade union office does not, by virtue of his or her 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., paras 799 and 40].*

119. *In these circumstances and recalling once again the seriousness of the matters raised in the present case, the Committee strongly urges the Government to take immediate steps to comply with fundamental principles of freedom of association by implementing all of its previous recommendations and, in particular, to reinstate Mr Sukamto without loss of wages or benefits or to ensure that he receives adequate compensation to act as a sufficiently dissuasive sanction against anti-union discrimination; review section 158(1)(f) of the Manpower Act of 2003 to ensure that the term "gross misconduct" is not interpreted*

so as to include legitimate trade union activities; and conduct an independent investigation into the allegations of harassment, threats and defamatory statements with a view to clarifying the facts, determining criminal responsibility, if any, and punishing those responsible. The Committee requests the Government to keep it informed of developments in this regard.

Case No. 2585 (Indonesia)

120. The Committee examined this case, which concerns alleged violations of fundamental human rights during the arrest and detention of trade union leader Mr Sarta bin Sarim (arrest without judicial warrant for normal trade union activities, prolonged preventive detention by the police in degrading conditions, physical abuse during custody, refusal to inform him of the charges, obstacles in communicating with his lawyer and family, denial of conditional release by the police and not a court of law) and the possibility of him facing further adverse consequences (dismissal) in case he is found guilty of the charges placed upon him ("instigation" and "unpleasant acts" under sections 160 and 335 of the Criminal Code, the respectively) at its March 2008 meeting [see 349th Report, paras 872–899]. On that occasion, the Committee formulated the following recommendations:

(a) The Committee requests the Government to carry out an independent investigations into the allegations of grave human rights violations against Mr Sarta bin Sarim (arrest without judicial warrant for normal trade union activities, prolonged preventive detention by the police in degrading conditions, physical abuse during custody, refusal to inform him of the charges, obstacles in communicating with his lawyer and family, denial of conditional release by the police and not a court of law) and, if the allegations are found to be true, to take the necessary measures to compensate Mr Sarta bin Sarim for any damage suffered and to punish those responsible so as to prevent the repetition of such acts. The Committee requests to be kept informed of developments in this respect.

(b) Recalling that while persons engaged in trade union activities or holding trade union office cannot claim immunity in respect of the ordinary criminal law, trade union activities should not in themselves be used by the public authorities as a pretext for the arbitrary arrest or detention of trade unionists, the Committee urges the Government to:

(i) issue appropriate instructions to prevent the danger of trade unionists being arrested by the police for normal trade union activities, such as, for instance, peaceful May Day processions and, moreover, without judicial warrants having been issued;

(ii) repeal or amend sections 160 and 335 of the Criminal Code on "instigation" and "unpleasant acts" so as to ensure that these provisions cannot be used abusively as a pretext for the arbitrary arrest and detention of trade unionists; and

(iii) take all the necessary measures to educate the police in relation to its action in industrial relations contexts.

The Committee requests to be kept informed of developments in this respect.

(c) The Committee requests the Government to keep it informed of the outcome of the appeal lodged by the Confederation of Indonesian Prosperity Trade Union (KSBSI) against the decision of the District Court of Tangerang having found Mr Sarta bin Sarim guilty of committing "unpleasant acts", and to communicate the text of the ruling handed down on appeal.

(d) The Committee requests the Government to provide information on the current employment condition and trade union status of Mr Sarta bin Sarim.

121. In a communication dated 18 September 2008, the Government indicates that the case has been properly settled according to the Indonesian regulations and system. Mr Sarta bin Sarim received the decision of the Tangerang District Court and did not lodge an appeal. Both parties agreed on all matters and signed a collective agreement dated 15 December 2007 on the basis of which Mr Sarta bin Sarim received severance pay (the Government attaches a copy of the agreement and the receipt of the severance pay). Since he had already served his sentence, he has since worked actively as an official of the Tangerang Branch Office of the Indonesian Prosperity Trade Union (SBSI).

122. *The Committee takes note of the Government's information in relation to the outcome of Mr Sarta bin Sarim and his current status. It regrets the fact that the Government has not provided any new information on the issue of investigating the allegations of human rights abuses, nor in respect of its other recommendations. It therefore trusts that the Government will:*

(i) issue appropriate instructions to prevent the danger of trade unionists being arrested by the police for normal trade union activities;

(ii) repeal or amend sections 160 and 335 of the Criminal Code on "instigation" and "unpleasant acts" so as to ensure that these provisions cannot be used abusively as a pretext for the arbitrary arrest and detention of trade unionists;

(iii) continue to take all the necessary measures to educate the police in relation to its action in industrial relations contexts.

123. *The Committee refers the legislative aspects of this case to the Committee of Experts on the Application of Conventions and Recommendations.*

Case No. 2589 (Indonesia)

124. The Committee last examined this case at its June 2008 meeting (302nd Session) [see 350th Report, paras 930–951] and on that occasion:

(a) Requested the Government to institute an independent investigation into the allegations that the closure of the PT Cigading Habeam Centre Company and its subsequent reopening as a joint operation with a cooperative run by the army, were aimed at preventing the staging of a strike and putting a unilateral end to an industrial dispute, notably by dismissing all the 481 workers of the company. If the allegations are confirmed, it requests the Government to take all necessary measures to reinstate the 481 dismissed workers as primary remedy; if the judicial authority determines that reinstatement of trade union members is not possible for objective and compelling reasons, adequate compensation should be awarded to remedy all damages suffered and prevent any repetition of such acts in the future, so as to constitute a sufficiently dissuasive sanction against acts of anti-union discrimination.

(b) The Committee, deeply regretting the allegations of extensive involvement of the army in the industrial dispute at PT Cigading Habeam Centre Company, and the alleged acts of intimidation and violence towards the dismissed workers, requested the Government to institute an independent investigation into the allegations and, if they are confirmed, to punish those responsible and issue appropriate instructions so as to prevent the repetition of such acts.

125. In a communication dated 18 September 2008, the Government indicates that this case has been settled according to the Indonesian regulations and industrial relations system. In

particular, the appeal lodged by the workers at the Supreme Court has been rejected and the settlement of this industrial dispute was carried out on the basis of the P4P Decision No. 1547/557/24-8/X/OHK/9-2005 of 29 September 2005. The Decision has been enforced and both parties agreed and signed the collective agreement. The workers have approved the termination and have received the severance pay. The Government attached a copy of the collective agreement. As for the allegations of military intervention, the Government indicates that there was no military intervention in the settlement of the case. The deputy director of the company indicated on 5 November 2007 that, since 1990, the company has been working with the Baladika cooperative owned by group 1 of the special armed forces but only in the context of training/giving guidance to new employees.

126. *With regard to the allegations of anti-union discrimination, the Committee notes with regret that, once again, the Government does not provide any substantially new information. The Committee recalls that, during the previous examination of this case, it deeply regretted that the Government had not provided a reply to the allegations that: (i) the company's closure and subsequent reopening the next day as a joint operation with a cooperative run by the army, using some 420 outsourced workers provided by the cooperative, were aimed at preventing an impending strike and putting a unilateral end to an industrial dispute, notably by dismissing all the 481 workers of the company; and (ii) in authorizing the dismissals of the 481 workers of PT Cigading Habeam Centre Company, the P4P apparently did not examine the allegations of the anti-union nature of the dismissals nor does it appear that the allegations that an army commander along with the company director had intimidated several workers into signing statements of resignation at the army barracks were examined. In these conditions, and recalling once again 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, the Committee once again requests the Government to institute an independent investigation into the allegations that the closure of the PT Cigading Habeam Centre Company and its subsequent reopening as a joint operation with a cooperative run by the army were aimed at putting a unilateral end to an industrial dispute and preventing the staging of a strike, notably by dismissing all 481 workers of the company. If the allegations are confirmed, it requests the Government to take all necessary measures to reinstate the 481 dismissed workers as primary remedy; if the judicial authority determines that reinstatement of trade union members is not possible for objective and compelling reasons, adequate compensation should be awarded to remedy all damages suffered and prevent any repetition of such acts in the future, so as to constitute a sufficiently dissuasive sanction against acts of anti-union discrimination.*

127. *With regard to the allegations of army involvement, the Committee notes that according to the Government, since 1990, the company has been working with the Baladika cooperative owned by group 1 of the special armed forces but only in the context of training/giving guidance to new employees. The Committee recalls that, during the previous examination of this case, it had noted with deep regret that the Government had not provided a reply to the allegations that: (i) military staff from the special forces of Serang Banten were present during negotiations between the trade union and the company prior to its closure; (ii) since February 2005 the military has guarded the company premises to keep away the 481 dismissed workers; (iii) the Special Forces Group I Vice-Commander Letkol Sumardi intimidated members of the complainant trade union into resigning from the company leading to an average of 250 resignations under duress until 1 August 2007; and (iv) on 21 March 2006, in the framework of a military exercise taking place within the company premises, approximately 60 soldiers with two military vehicles and one helicopter shot blanks at workers protesting in front of the company, causing them shock and injuring two persons. Noting with regret that the Government once again fails to reply to these allegations, the Committee once again requests the Government to institute an independent investigation into the allegations of extensive involvement of the army in the industrial dispute at PT Cigading Habeam Centre Company, and the alleged acts of intimidation and*

violence towards the dismissed workers and, if they are confirmed, to punish those responsible and issue appropriate instructions so as to prevent the repetition of such acts. The Committee requests to be kept informed of developments in relation to this case.

Case No. 1991 (Japan)

128. The Committee last examined this case, which concerns allegations of anti-union discrimination arising out of the privatization of the Japanese National Railways (JNR) taken over by the Japan Railway Companies (the JRs), at its March 2008 meeting. The Committee once again recalled that it had dealt with this case in some depth since 1998, with two detailed examinations on the merits [318th and 323rd Reports] and five follow-ups [325th, 327th, 331st, 334th and 343rd Reports]. Since its first examination, and on each occasion throughout its treatment of this case, the Committee had consistently urged the parties concerned to engage in serious and meaningful consultations with a view to reaching a satisfactory solution to the underlying dispute. In light of its previous recommendations, and moreover in view of the complainants' expressed desire to seek a settlement to the matters concerned, the Committee, while recognizing the divergence of views between the complainant National Railways' Workers' Union (KOKURO) and the JRTT (the Japan Railway Construction Transport and Technology Agency – the legal successor to the JNR), observed that it was apparently not currently possible to bring the parties together with a view to rapidly finding a negotiated solution to these matters that have been pending for two decades. Noting that six cases on the issues concerned were pending, the Committee trusted that the courts would bring a rapid resolution to this long-standing dispute and requested the Government to keep it informed of developments in this respect, and to transmit copies of the court judgements in the various pending cases as soon as they were handed down [see 349th Report, paras 152–164].

129. In its communication of 1 September 2008, the Government provides information on two of the abovementioned cases on the issues concerned. The Government refers, firstly, to the unfair labour practices lawsuit brought by members of the complainant All National Railway Locomotive Engineers' Union (ZENDORO) against the JRTT. In respect of this case, the complainants had previously indicated that in its decision of 23 January 2008 the Tokyo District Court had recognized that unfair labour practices had been committed by the JRTT, in particular by discriminating against the plaintiffs in drafting lists of candidates for hiring, and had ordered the JRTT to pay 5.5 million yen to each of the plaintiff ZENDORO members as compensation for damages incurred. The complainants further stated that the Tokyo District Court's decision was nevertheless a problematic one, as the Court had rejected ZENDORO's core demands of compensation for lost wages and pension benefits, and that the JRTT has appealed the decision to the Tokyo High Court. In its 1 September 2008 communication the Government confirms that, on 23 January 2008, the Tokyo District Court had found that the JRTT discriminated against the plaintiffs in drafting lists of candidates for hiring. The Tokyo District had ordered damages of 5.5 million yen to be paid to each plaintiff, for psychological distress, as well as delay damages of 5 per cent per year as of 1 April 1987, but dismissed the plaintiffs' claims for compensation for lost wages; the decision had been appealed and was pending before the Tokyo High Court.

130. The Government also refers to the lawsuit brought by KOKURO members against the JRTT. Under the facts of that case, at the time of the reform of the JNR the plaintiffs were not hired by the JNR's successor companies, the JRs, but instead became employees of the JNR Settlement Corporation (JNRSC). Measures to promote the plaintiffs' re-employment were undertaken, but after three years had passed without their re-employment, they were dismissed. The plaintiffs assert that their failure to be selected by the JNR as candidates for hiring by JR companies constitutes discrimination on the basis of their membership in the union; they also requested that their dismissal by the JNRSC be declared invalid, that they

be recognized as employees of the defendant JRTT, and that the latter pay compensation for unpaid wages. The Government states that on 13 March 2008 the Tokyo District Court dismissed all of the plaintiffs' claims, finding, inter alia, that: (1) the reform of the JNR did not violate the Constitution; (2) neither the JNRSC nor the defendant JRTT possessed an obligation to ensure the plaintiffs' employment with the JR companies, and their dismissal by the JNRSC was valid; and (3) the plaintiffs' right to seek damages for the above discrimination had expired, whether or not the plaintiffs' failure to be selected by the JR companies as candidates for hiring did not constitute anti-union discrimination. The Government additionally indicates that the plaintiffs have appealed the Tokyo District Court's decision to the Tokyo High Court.

131. In its communication of 16 September 2008, the Government attaches copies (in Japanese) of the Tokyo District Court's 23 January and 13 March 2008 decisions.

132. *The Committee takes note of the above information. Recalling from its previous examination of the case that a total of six cases on the issues raised were pending before the courts, the Committee observes that although the Tokyo District Court has issued decisions in two of those cases, those decisions have been appealed and are pending before the Tokyo High Court. Recalling once again that it has dealt with this case in some depth since 1998, the Committee once again expresses its hope that the courts will bring a rapid resolution to this long-standing dispute. It once again requests the Government to keep it informed of developments in this respect, and to transmit copies of the court judgements in the various pending cases as soon as they are handed down.*

Case No. 2301 (Malaysia)

133. This case concerns the Malaysian labour legislation and its application which, for many years, have resulted in serious violations of the right to organize and bargain collectively, including: discretionary and excessive powers granted to authorities as regards trade unions' registration and scope of membership; denial of workers' right to establish and join organizations of their own choosing, including federations and confederations; refusal to recognize independent trade unions; interference of authorities in internal unions' activities, including free elections of trade unions' representatives; establishment of employer-dominated unions; arbitrary denial of collective bargaining. The Committee formulated extensive recommendations at its March 2004 meeting [see 333rd Report, para. 599] and last examined the follow-up to this case at its March 2008 meeting. On that occasion the Committee, noting that the proposed amendments to the Industrial Relations Act of 1967 and the Trade Unions Act of 1959 were waiting to be tabled in the Senate, once again urged the Government to fully incorporate its long-standing recommendations with respect to the legislation. As concerned the nine court challenges filed by several employers after the authorities had ruled in favour of the unions in cases concerning collective bargaining rights, the Committee requested the Government to provide copies of the judgements handed down, so that it may examine the grounds on which the said decisions were made, and to take the necessary measures to ensure that final decisions in the cases still pending may be reached without further delay. Finally, in respect of the 8,000 workers in 23 companies whose representational and collective bargaining rights were denied, the Committee once again urged the Government to rapidly take appropriate measures and give instructions to the competent authorities so that these workers may effectively enjoy rights to representation and collective bargaining, in accordance with freedom of association principles [see 349th Report, paras 165–173].

134. In its communication of 19 September 2007, the Government states that it does not believe national labour laws seriously violate the rights to organize and bargain collectively. Although Malaysia has not ratified Convention No. 87, the principles of the right to organize have been provided for in the legislation, which also forbids interference by

employers in the formation or organization of workers' organizations. The Government also reiterates that checks and balances are built into the system, as all powers vested in the authorities derive from laws formulated through tripartite consultation and passed by a democratically elected parliament; furthermore, the judicial system provides for the right of aggrieved parties to seek redress from the courts.

135. As concerns the legislation, the Government indicates that the amendments to the Trade Unions Act, 1959, and the Industrial Relations Act, 1967, have been passed by Parliament and came into effect on 28 February 2008. The amendments to the Industrial Relations Act provide, inter alia, for a fast and efficient procedure for recognition for collective bargaining purposes.

136. As regards the nine court cases concerning collective bargaining rights, to which the Committee had previously referred, the Government states that they have all been resolved, with written judgements handed down in two cases and oral judgements issued in respect of the others.

137. *The Committee notes the above information. It recalls that it has commented upon the extremely serious matters arising out of fundamental deficiencies in the legislation on many occasions, over a period spanning 17 years. It can only deplore that, in spite of its most recent request that the ongoing process of amending the industrial relations legislation take fully into account its recommendations, the proposed amendments to the Industrial Relations Act of 1967 and the Trade Unions Act of 1959 have now been passed by Parliament and have entered into force, without addressing the issues raised by the Committee. In these circumstances, the Committee once again urges the Government to take the necessary measures to fully incorporate its long-standing recommendations concerning the need to ensure that:*

– *all workers, without distinction whatsoever, enjoy the right to establish and join organizations of their own choosing, both at primary and other levels, and for the establishment of federations and confederations;*

– *no obstacles are placed, in law or in practice, to the recognition and registration of workers' organizations, in particular through the granting of discretionary powers to the responsible official;*

– *workers' organizations have the right to adopt freely their internal rules, including the right to elect their representatives in full freedom;*

– *workers and their organizations enjoy appropriate judicial redress avenues over the decisions of the minister or administrative authorities affecting them; and*

– *the full development and utilization of machinery for voluntary negotiation between employers or employers' and workers' organizations, with a view to regulating terms and conditions of employment by means of collective agreements is encouraged and promoted by the Government.*

138. *The Committee requests the Government to transmit copies of the amended legislation and once again reminds the Government that it may avail itself of the ILO's technical assistance so as to bring its law and practice into full conformity with freedom of association principles. Noting further that the legislative amendments referred to above include provisions on trade union recognition for collective bargaining purposes, the Committee requests the Government to provide copies of the legislation to the Committee of Experts on the Application of Conventions and Recommendations to the legislative aspects of the case.*

139. *The Committee notes the information regarding the nine court cases filed by several employers after the authorities had ruled in favour of the unions in cases concerning collective bargaining rights. The Committee notes in particular that in the two cases pending as of its previous examination of the case, judgements had been handed down granting the unions concerned recognition for collective bargaining purposes.*

140. *Finally, the Committee notes with regret that, once again, the Government provides no information concerning the 8,000 workers in 23 companies whose representational and collective bargaining rights were denied. The Committee once again urges the Government to rapidly take appropriate measures and give instructions to the competent authorities so that these workers may effectively enjoy rights to representation and collective bargaining, in accordance with freedom of association principles.*

Case No. 2317 (Republic of Moldova)

141. The Committee last examined this case at its June 2008 session [see 350th Report, paras 1409–1422] and made the following recommendations:

(a) The Committee regrets that the Government failed to provide information on most of the outstanding issues and once again requests the Government to instigate the necessary inquiries into the alleged acts of interference in the internal affairs of the CSRM and its affiliate organizations and the other allegations of government interference in the establishment and functioning of workers' organizations and to keep it informed in this regard.

(b) The Committee also once again requests the Government to actively consider, in full and frank consultations with social partners, legislative provisions expressly sanctioning violations of trade union rights and providing for sufficiently dissuasive sanctions against acts of interference in trade union internal affairs. The Committee draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to the legislative aspects of this case and recalls that the Government may avail itself of the technical assistance of the Office in this regard.

(c) The Committee expects that the Government will transmit the judgements relating to Mr Molosag without delay and further requests the complainants in this case to transmit these judgements so that the Committee may examine the allegation of wrongful dismissal of Mr Molosag from the post of president of the SINDASP in full knowledge of the facts.

142. In a communication dated 29 May 2008, the Union of Public Authorities and Public Services Unions of the Republic of Moldova (USASP) provide the following information. Since 2003, interference by the public authorities in trade unions affairs affiliated to the Confederation of Trade Unions of the Republic of Moldova (CSRM) has intensified, especially with regard to the Federation of Trade Unions of Public Service Employees (SINDASP). As a result, a number of district-level unions have broken away from the SINDASP and a trade union federation under the same name has been established within the "Solidaritate" Confederation (organization supported by the Government) and registered by the Ministry of Justice under the same registration number. In 2006, the SINDASP Federation (with Mr Molosag as its president), member of the CSRM, comprised over 400 primary organizations and a total membership of around 10,000. In August 2006, Mr Molosag, in violation of the Federation's statutes, transferred the assets and all documentation of the SINDASP Federation to the "parallel" SINDASP Federation. Mr Molosag's actions caused an outrage among trade union activists and rank and file members of the SINDASP Federation affiliated to the CSRM. A decision was made to set up an organizing committee with a view to establishing a new branch trade union centre. The new trade union, the USASP, was established on 3 February 2007. On 6 February 2007, its founding members submitted the documents for registration to the Ministry of

Justice. On 17 March 2007, an employee of the registration department of the Ministry of Justice urged the union to request a suspension of the registration to allow time for the necessary establishment of federations of trade union organizations in the regions. This process was carried out throughout March and April 2007 and on 2 May 2007, all the necessary documents were lodged with the Ministry. The Ministry raised no objections regarding these documents and a draft registration certificate was drawn up. However, this process was discontinued by the Deputy Minister of Justice on 5 June, who, in the presence of the USASP president, instructed the chief of the administration department to write a letter of refusal to register the USASP. The complainant alleges that it received this notification of refusal dated 4 June on 13 June 2007.

143. In the light of the fact that one of the reasons for the denial of registration was the provision contained in article 1 of the USASP statutes to the effect that it was the legal successor of the SINDASP Federation, on 1 July 2007, the National Council of the USASP decided to exclude this provision from the text of its statutes. On 3 July 2007, an application for the registration was sent to the Ministry. However, the registration was once again denied. On 8 August 2007, the USASP petitioned the Court of Appeal of Chisinau. On 3 December 2007, after several sittings, the Appeal Court ordered registration. However, the Ministry of Justice lodged an appeal with the High Court of the Republic of Moldova, which in its decision of 5 March 2008 referred the case back to the Court of Appeal. On 19 May 2008, the court examined the case and concluded the hearing process. It rejected the Ministry of Justice application to call the SINDASP Federation (formerly "Solidaritate") as its witness and indicated that it would hand down a ruling on the case on 26 May 2008. On 26 May, however, the court resumed hearings on the case and this time upheld the application to allow the SINDASP to appear for the Ministry of Justice. According to the complainant, there is sufficient evidence that the court changed its position as a result of pressure from the Ministry of Justice, the SINDASP Federation and the Confederation of Trade Unions of the Republic of Moldova.

144. The complainant organization states that it requested the Prosecutor General of the Republic to examine the legality of the refusal of registration on the grounds that the Ministry of Justice had falsified the date of its refusal to register the statutes of the USASP (on 5 June 2007, the date of the meeting with the Deputy Minister of Justice, that document did not yet exist, but on 13 June the USASP received it under the registration No. 17.1 of 4 June 2007). The complainant alleges that it received the dismissive responses from the Office of the Public Prosecutor in breach of the legal deadline for replying.

145. In its communication dated 4 September 2008, the Government indicates that all information concerning this case has been already provided to the Committee. With regard to the allegation of refusal to register the USASP, the Government indicates the following. On 19 February 2007, the USASP applied for registration as a national branch trade union centre. Having examined the documents, on 17 March 2007, the Ministry of Justice informed the applicants about the suspension of their request and explained that for the registration of a national branch trade union centre, the establishment of the territorial trade union organization was necessary. After this task was fulfilled during March–April 2007, on 5 May 2007, the national branch trade union centre reapplied for registration. On 4 June 2007, the Ministry of Justice issued the decision to refuse registration of the USASP for the following reasons:

– According to section 1 of the Trade Unions Law of 7 July 2000, the National Branch Trade Union Centre is a free (voluntary) association of trade unions which, as a rule, belong to the same branch. For the registration of these organizations as a national branch trade union centre it is required that the founders must be registered organizations having a status of a legal personality, which should be attested by the relevant documents.

– The statute of the USASP does not correspond to the requirements of section 186(2) of the Civil Code, as it does not contain the data about its founders, the mode and conditions of its reorganization, as well as the information about the mode of establishment and liquidation of its subsidiaries.

– The fact that the USASP declares itself a successor of the Public Services Trade Unions Federation of the Republic of Moldova is a serious violation of the legislation in force.

146. On 3 July 2007, the USASP addressed a letter to the Ministry of Justice in which it requested to repeal the decision of 4 June 2007 and to register its statute. By the answer of the Ministry of Justice of 27 July 2007, the applicant was informed that it will be registered after presentation of the establishing acts which satisfy the requirements of the legislation in force. On 8 August 2007, the USASP instituted legal proceedings in the Court of Appeal against the Ministry of Justice, demanding registration of its statute, an amendment of the registration procedure under the Trade Unions Law and a reimbursement of the material and moral damage caused by refusal of the registration. On 3 December 2007, the Court of Appeal partially satisfied the claim, obliging the Ministry of Justice to register the statute of the USASP. On 24 December 2007, the Ministry of Justice submitted to the Supreme Court of Justice a writ of appeal. On 5 March 2008, the Supreme Court of Justice admitted the Ministry of Justice claim and returned the case for a retrial to the Court of Appeal. On 2 June 2008, the Court of Appeal once again obliged the Ministry of Justice to register the statute of the USASP. On 13 June 2008, the Ministry of Justice appealed the decision of the Court of Appeal and the case is now pending before the Supreme Court of Justice. The Government states that it will observe and execute every lawful decision issued by the courts.

147. *The Committee notes the information contained in the Government's and the complainant's communications. It recalls that in its previous examinations of this case, it had expressed its concerns that the merger of the Confederation "Solidaritate", allegedly supported by the Government, and the main central complainant organization, the CSRM, had taken place within the framework of persistent allegations of interference and pressure on trade unions to change their affiliation to become members of the Confederation "Solidaritate".*

148. *The Committee deeply regrets that the Government once again failed to provide any information on whether it had conducted inquiries into the alleged acts of interference in the internal affairs of the CSRM and its affiliate organizations and the other allegations of government interference in the establishment and functioning of workers' organizations.*

149. *The Committee takes note of the detailed information submitted by the USASP, an organization created by the trade union members of the SINDASP, which was previously affiliated to the CSRM. The Committee understands that the USASP was established following a disagreement with the decision taken by the then president of the SINDASP, Mr Molosag, to transfer the SINDASP under the umbrella of the Confederation "Solidaritate". The Committee notes that the registration of the newly created union was denied and that the case of registration is once again pending before the Supreme Court of Justice.*

150. *The Committee considers that the Government's failure to seriously investigate the numerous and grave allegations of interference in the Moldova trade union movement is all the more disturbing in view of these latest allegations relating to the refusal to register a trade union that apparently chose to voluntarily constitute itself outside of the single*

united structure that has been allegedly under the Government's control. Indeed, the question of the rightful successor to the SINDASP – one of the initial reasons for refusing registration – should be a question for the courts and not the government authorities.

151. *The Committee trusts that the Supreme Court will be seized of all the information relating to USASP's creation, including the history of this case, and that it will render a judgement consistent with freedom of association principles. It requests the Government to keep it informed of the outcome of the court proceedings and to provide a copy of the final ruling. Finally, the Committee reiterates its previous request to the Government to initiate independent inquiries into all outstanding allegations in this case in relation to the Government's interference in the trade union movement.*

Case No. 2394 (Nicaragua)

152. At its November 2007 meeting, the Committee took due note of the Government's information that, as a result of the judgement issued by the Trade Union Associations Directorate on 21 May 2007, the executive committee of the Trade Union of Employees in Higher Education "Ervin Abarca Jimenes" (SIPRES-UNI, ATD) was registered, and that, on 4 June 2007, the parties were notified. The Committee requested the Government to take the necessary measures to ensure that the union dues were paid over to the trade union in question, and to promote collective bargaining and keep it informed in that respect [see 348th Report, paras 130–132].

153. In a communication of 7 August 2008, the SIPRES-UNI, ATD states that the Trade Union Associations Directorate in June 2008 registered the executive committee in the light of the ruling given by the Civil Chamber of the Supreme Court of Justice, but some weeks ago revoked the registration, citing a judicial order which it claims was issued by the Constitutional Chamber of the Supreme Court to suspend the union's registration in order to deprive the union of its leadership and render it powerless to exercise its rights, the ruling in question not being subject to further appeal. As regards trade union membership dues, the Labour Affairs Chamber of the Managua Appeals Court, instead of ensuring that the dues in question were paid in accordance with the ruling of the First Civil Affairs Judge, overturned that ruling and disallowed any further appeal. As a result of this, the dues in question have to date still not been paid to the union. As regards the negotiation of a collective agreement, the Ministry of Labour authorities refuse to resume collective bargaining despite a number of requests to do so.

154. In a communication of 2 December 2008, the Government states that this case, since 2000, has resulted in a number of administrative and judicial actions on the part of the two unions in dispute. Both unions have sought recourse to the authorities, which in some cases has led to disputes regarding competence that have had to be resolved by the Constitutional Chamber of the Supreme Court. The most recent of these rulings was given on 30 June 2008 by the Constitutional Chamber. The Trade Union Associations Directorate and the Labour Relations Directorate of the Ministry of Labour were informed in a writ of the following decision resulting from the application for constitutional protection *(amparo)* (No. 557-07) filed by Mr Silvio Joel Araica Aguilar: "The court considers that: (i) the effect of suspension blocks or suspends the decision claimed by the petitioner to be unconstitutional, which must in consequence not be implemented; (ii) once an order has been given to suspend an official decision, the authorities concerned must refrain from further action of whatever nature to implement that decision, as failure to do so will constitute disregard for the explicit decision of the authority ordering the suspension which has the effect of prohibiting any action by the responsible authorities to carry out the action

in question. Consequently this Chamber hereby decides: that in accordance with section 49 of the Act on constitutional protection *(amparo)* in force, the current Director of Trade Union Associations of the Ministry of Labour, Mr Roberto José Rodríguez Arias, is required to comply with the suspension of the decision issued by Civil Chamber 1 of Managua Appeals Court; and (iii) the registration of the executive board of the Trade Union of Employees in Higher Education "Ervin Abarca Jimenes" (SIPRES-UNI, ATD), comprising the General Secretary, Mr Julio Noel Canales, and other members, is suspended and has no legal force until such time as the Constitutional Chamber give a ruling on the substance of the claim".

155. This decision by the Constitutional Chamber of the Supreme Court of Justice is of crucial importance for the Ministry of Labour, as it is legally binding. Article 184 of Nicaragua's Political Constitution states that the following are constitutional laws: the Electoral Act *(Ley Electoral)*, the Emergencies Act *(Ley de Emergencia)* and the Act regarding constitutional protection *(Ley de Amparo)*. In other words, the Act on constitutional protection has constitutional status and is an integral part of the fundamental framework of Nicaraguan law. Article 188 of the Nicaraguan Constitution stipulates that an application for constitutional protection can be made "against any provision, act or decision and in general against any action or omission by any official, authority or agent thereof, that violates or is intended to violate the rights and guarantees enshrined in the Political Constitution". According to article 164 of the Political Constitution, it is the function of the Supreme Court of Justice: "… (3) to examine and resolve applications for constitutional protection arising from violations of rights established in the Constitution, in accordance with the Act concerning constitutional protection". Lastly, article 167 of the Constitution stipulates that "Rulings and decisions of courts and judges must be implemented by the state authorities, organizations and natural or legal persons concerned by them "

156. Given this legal framework, Ministry of Labour officials are required to implement Supreme Court rulings. It is not within the competence of the state authorities to qualify such rulings; they are required to comply with them or face criminal proceedings for contempt. That means that, according to the ruling in question, no department of the Ministry of Labour may carry out any act that could be interpreted as non-compliance with what has been decided by the Constitutional Chamber of the Supreme Court. The parties to the dispute similarly must comply with what has been ordered by the Constitutional Chamber until such time as the latter has ruled on the substance of the dispute. Lastly the Government indicates that the certification given by the Directorate for Trade Union Associations on 10 June 2008, concerning the SIPRES-UNI, ATD was issued following a recommendation by the ILO's Committee on Freedom of Association, but also pursuant to the aforementioned ruling of the Constitutional Chamber; the latter is the "final ruling of the Constitutional Chamber, which will rule on the substance of the matter", and orders a suspension of further action on this case. The Directorate of Trade Union Associations suspended the certification of the executive body in question until such time as the application for constitutional protection could be resolved. The parties concerned have, to their credit, availed themselves of the remedies provided for by national legislation, both administrative and legal.

157. *The Committee takes note of this information. It trusts that the judicial authorities will hand down a ruling very soon regarding the registration of the executive board of SIPRES-UNI, ATD and that the necessary measures will be taken to ensure that the trade union membership dues are paid to the union in question and to promote collective bargaining. The Committee requests the Government to keep it informed in this regard.*

Case No. 2590 (Nicaragua)

158. The Committee last examined this case at its November 2008 meeting and on that occasion urged the Government once again to take the necessary steps to ensure that Mr Chávez Mendoza was reinstated in his post without loss of pay until the judicial authority had ruled on his dismissal, and asked the Government to keep it informed in that regard and to send a copy of the final ruling as soon as it was handed down. The Committee requested the Government to take the necessary steps to ensure that an independent investigation was carried out to determine whether there was in fact an anti-union policy against trade unions that were not in agreement with the Government and, if these allegations were shown to be true, to put an immediate end to such anti-union measures and to guarantee free exercise of the trade union activities of those organizations and their officials [see 351st Report, paras 151–153].

159. In a communication dated 22 December 2008, the Government reiterates the statements made in its communication of 12 May 2008, when it indicated that workers in Nicaragua have at their disposal two possible ways of enforcing their rights, namely, administrative, through the Ministry of Labour, and judicial, through the labour courts. In this case, Mr Donaldo José Chávez Mendoza chose the second option, and proceedings are under way before the competent court.

160. *The Committee regrets that the Government has not communicated the information requested, which suggests that the Government has not taken the measures it had requested; it therefore reiterates its previous recommendations.*

Case No. 2006 (Pakistan)

161. The Committee last examined this case concerning a ban on trade union rights and activities at the Karachi Electric Company Ltd Supply Corporation (KESC) at its March 2008 meeting [349th Report, paras 197–199]. On that occasion, it requested the Government to keep it informed of the outcome of the referendum for determining the collective bargaining agent (CBA) due to take place at KESC.

162. In a communication dated 28 June 2008, the complainant states that the Government has not taken any action to resolve the present case. The Ministry of Labour, Manpower and Overseas Pakistanis should have passed the case on to the Chairperson of the National Industrial Relation Commission (NIRC) to decide the matter after notice was given to the concerned parties, but has failed to do so.

163. In its communication dated 1 November 2008, the Government indicates that the referendum was scheduled for 25 November 2006, with the consent of all the unions taking part in the referendum. However, the referendum could not be held due to the issuance of a prohibitory order by the Chairperson of the NIRC. According to the Government, another hurdle in the referendum was that the KESC Democratic Mazdoor Union moved an application before the Chairperson of the NIRC to grant the right to vote to the contract employees. The Chairperson of the NIRC allowed the contract workers to take part in the referendum. The management of the KESC filed an appeal against the order of the Chairperson of the NIRC before the full bench of the NIRC. On 15 May 2008, the appeal was dismissed and the management of the KESC filed a writ petition before the Honourable Sindh High Court at Karachi. Therefore, the referendum is still pending, given the aforementioned reasons.

164. *The Committee takes note of the information provided by the complainant and the Government. It recalls that it has been requesting the Government to restore collective bargaining to the KESC Democratic Mazdoor Union since this case was examined for the*

first time in 2000, that for over eight years, there has been no collective bargaining agent at the KESC and that for at least the past three years, the question of holding a collective bargaining agent referendum has been pending before the various courts and the NIRC. The Committee recalls that justice delayed is justice denied [see ***Digest of decisions and principles of the Freedom of Association Committee****, fifth edition, 2006, para. 105]. It further recalls that the ultimate responsibility for ensuring respect for the principles of freedom of association lies with the Government [see* ***Digest****, op. cit., para. 17] and that this responsibility must be respected by all state authorities including the judicial authorities. The Committee therefore urges the Government, who is also one of the KESC shareholders, to ensure that a referendum for determining the CBA can take place without further delay and to keep it informed in this respect.*

Case No. 2096 (Pakistan)

165. The Committee last examined this case at its June 2008 meeting [see 350th Report, paras 130–132]. On that occasion, it requested the Government to transmit a copy of the passages in the report of the Banking Law Review Commission relating to the draft Banking Law and to keep it informed of the progress made in respect of the law amending the Banking Companies Act. The Committee deplored that since 2005, the Government had failed to submit its comments on other outstanding issues and therefore urged the Government to provide information with regard to: (1) the decision taken by the High Court with respect to the prevalence of the 2002 Industrial Relations Ordinance (IRO) over the Banking Companies Act; (2) the measures the Government had taken to ensure in practice that trade unions can carry out their activities in the banking sector, including the right to elect their representatives in full freedom and the right to collective bargaining and more specifically, the measures it had taken to ensure that the United Bank Limited (UBL) employees' unions can negotiate the terms and conditions of employment of its members with the managers of the UBL branches concerned; and (3) on the outcome of the independent inquiry into the allegations of anti-union dismissals at the UBL, as well as on measures taken in response to any conclusions reached in relation to the allegations of anti-union discrimination (reinstatement without loss of pay or compensation, constituting sufficiently dissuasive sanctions).

166. In a communication dated 23 December 2008, the complainant denounces that the Government has not taken any action with regard to the Committee's recommendations since the case was last examined: trade union leaders in the UBL have not been reinstated and no progress has been made regarding section 27-B of the Banking Companies Act so as to ensure that trade unions can carry out their activities.

167. In a communication dated 1 November 2008, the Government explains that the State Bank of Pakistan is now working on the draft Banking Law and it will inform the Committee accordingly when the new legislation will be finalized. Regarding the High Court decision in respect of the prevalence of the IRO 2002 over the Banking Companies Act, the Government states that the High Court is of the view that section 27-B of the abovementioned legislation has precedence over the provisions of the IRO. Regarding the allegations of anti-union dismissals at UBL, the Government explains that an independent inquiry took place and revealed that none of the ex-employees had been dismissed nor their employment contract terminated on account of trade union activity.

168. *The Committee takes note of the information provided by the complainant and the Government. Regarding the decision taken by the High Court in respect of the prevalence of the IRO over the Banking Companies Ordinance, the Committee requests the Government to provide a copy of the judgement rendered. The Committee notes that the State Bank of Pakistan is still working on the draft Banking Law. The Committee expects that this process will be soon finalized and that the new legislation will ensure that trade*

unions can carry out their activities in full freedom and the right to collective bargaining, and draws the legislative aspect of this case to the Committee of Experts on the Application of Conventions and Recommendations.

169. *Regarding the allegations of anti-union dismissals at the UBL, the Committee notes the Government's indication that an independent inquiry took place and revealed that none of the ex-employees had been dismissed for anti-union motives. The Committee requests the Government to provide a copy of the report of the inquiry and to specify the members of the inquiry and whether the trade union (UBL employees' trade union), the members of which have been dismissed, was appropriately consulted.*

Case No. 2169 (Pakistan)

170. The Committee last examined this case, which concerns allegations of illegal detention of trade union leaders, violations of the right to collective bargaining, acts of intimidation, harassment and anti-union dismissals in the Pearl Continental Hotels, at its meeting in June 2008 [see 350th Report, paras 133–139]. On that occasion, it requested the Government to clarify whether the Pearl Continental Hotels' Employees Trade Union Federation was one of the three registered trade unions functioning within the enterprise and to transmit copies of the judgements on the status of collective bargaining agents (CBAs) as soon as they were handed down. The Committee further requested the Government to report on the outcome of an independent inquiry into the alleged beatings of Messrs Aurangzeg and Hidayatullah on 6 July 2002 at the police station. In this respect, the Committee requested the Government to ensure that appropriate measures, including compensation for damages suffered, sanctioning those responsible and appropriate instructions to the police forces are taken to guarantee that no detainee is subjected to such treatment in the future. The Committee further requested the Government to report on the outcome of the investigation of the anti-union dismissals at the Karachi Pearl Continental Hotel and, if it had been found that there has been anti-union discrimination, to ensure that the workers concerned are reinstated in their posts, without loss of pay and, if reinstatement is not possible, that they are paid adequate compensation so as to constitute sufficiently dissuasive sanctions.

171. In a communication dated 1 November 2008, the Government states that according to the management of the Karachi Pearl Continental Hotel, the Pearl Continental Hotels' Employees Trade Union Federation is one of three trade unions working in the hotel. The Government emphasizes that the management is providing every facility as per policy to all its workers without any discrimination and that the hotel fulfils all international requirements.

172. Furthermore, the Government reiterates its comments made previously with regard to the CBA status: (1) the issue of status of CBA is sub judice before the Sindh High Court; (2) there are a number of cases pending before various courts: the Supreme Court of Pakistan, the Sindh High Court, the Fifth Sindh Labour Court and the National Industrial Relations Commission; (3) there has been no change in the situation since last year; and (4) it is not possible for any authority to intervene in the cases pending before the courts. The Government adds once again that further developments will be communicated to the ILO as soon as these cases are decided.

173. *The Committee takes note of the information provided by the Government. With regard to the various cases on the status of CBAs pending before the courts, the Committee once again recalls that the facts of this case date as far back as 2001 and emphasizes that justice delayed is justice denied [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth edition, 2006, para. 105]. The Committee trusts that all proceedings will be concluded without further delay and once more requests the Government to transmit copies of the judgements as soon as they are handed down.*

174. *The Committee deeply regrets that no information was provided by the Government regarding the alleged beatings of Messrs Aurangzeg and Hidayatullah on 6 July 2002 at the police station. The Committee reiterates that in cases of alleged ill-treatment while in detention, governments should carry out inquiries into complaints of this kind so that appropriate measures, including compensation for damages suffered and sanctioning those responsible, are taken to ensure that no detainee is subject to such treatment. The Committee therefore urges the Government to carry out an independent inquiry without delay into the alleged beatings of Messrs Aurangzeg and Hidayatullah on 6 July 2002 at the police station, to keep it informed of the results of that inquiry and to ensure that appropriate measures, including compensation for damages suffered, sanctioning those responsible and appropriate instructions to the police forces are taken so as to prevent the repetition of such acts.*

175. *The Committee regrets that no information has been provided by the Government on the outcome of an in-depth investigation of the anti-union dismissals at the Karachi Pearl Continental Hotel. It once again requests the Government to report on its outcome and, if it has been found that there has been anti-union discrimination, to ensure that the workers concerned are reinstated in their posts, without loss of pay and, if reinstatement is not possible, that they are paid adequate compensation so as to constitute sufficiently dissuasive sanctions. It requests the Government to keep it informed in this respect.*

Case No. 2242 (Pakistan)

176. The Committee last examined this case, which concerns the suppression of trade union rights of workers in Pakistan International Airlines Corporation (PIAC) and the failure of the legal system to restore these rights, at its November 2008 meeting. On that occasion, the Committee, deeply regretting that no information had been provided by the Government with regard to the measures taken to repeal executive and administrative orders so as to ensure trade union rights at PIAC, urged the Government to repeal Chief Executive Order No. 6 of 2001 and Administrative Orders Nos 14, 17, 18 and 25, so as to restore full trade union rights to PIAC workers without further delay, and to keep it informed in this respect [see 350th Report, paras 140–142].

177. In a communication of 1 November 2008, the Government states that Chief Executive Order No. 6 of 2001 has been repealed by virtue of the adoption of the Pakistan International Airline Cooperation (Suspension of Trade Unions and Existing Agreements) Order (Repeal) Act, 2008. In its communication of 29 December 2008, the Government further indicates that Administrative Orders Nos 14, 17, 18 and 25 have been cancelled, and that union activities have been restored at PIAC. A secret ballot for the determination of a collective bargaining agent for the employees in PIAC establishments was held on 4 December 2008; out of several participating unions, the People's Unity of PIAC Employees obtained the highest number of votes and was declared the collective bargaining agent. A copy of the Pakistan International Airline Cooperation (Suspension of Trade Unions and Existing Agreements) Order (Repeal) Act, 2008, which repeals Chief Executive Order No. 6 of 2001, is attached to the communication.

178. *The Committee notes the above information with satisfaction.*

Case No. 2273 (Pakistan)

179. The Committee last examined this case, which concerns the refusal to register the Army Welfare Sugar Mills Workers' Union (AWSMWU), at its June 2008 meeting. On that occasion, the Committee noted with regret that the question of registration of the AWSMWU, first raised in 2003, had not yet been solved, and that the Government had not

provided any information as to the reasons for adjournment of the AWSMWU's case pending before the Supreme Court. The Committee expressed its expectation that the Supreme Court would make a final ruling on this matter in the near future, bearing in mind that civilians working in the services of the army should have the right to form trade unions, and requested the Government to provide a copy of the Supreme Court's decision as soon as it was handed down. Also noting that the Government had previously indicated that the AWSMWU could operate and perform its activities, the Committee requested the Government to confirm whether that was still the case and expected that the union would be registered without further delay [see 350th Report, paras 143–145].

180. In a communication dated 1 November 2008, the Government states that the AWSMWU's case is sub judice before the Supreme Court of Pakistan and will inform the Committee as soon as the judgement is rendered.

181. *The Committee regrets that the Government once again reiterates that the AWSMWU's case is pending before the Supreme Court without providing any information as to the reasons for adjournment of the case, which has not been solved since it was first raised in 2003. Recalling once again that justice delayed is justice denied [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth edition, 2006, para. 105], the Committee once again expressed its expectation that the Supreme Court will make a final ruling on this matter in the near future, bearing in mind that civilians working in the services of the army should have the right to form trade unions, and once again requests the Government to provide a copy of the Supreme Court judgement as soon as it is handed down. Recalling that the Government had previously indicated that the AWSMWU could operate and perform its activities, the Committee once again requests the Government to confirm whether that is still the case and expects that the union will be registered without further delay.*

Case No. 2399 (Pakistan)

182. The Committee last examined this case, concerning allegations of the systematic refusal to register the Liaquat National Hospital Workers' Union (LNHWU), dismissals and harassment of trade union members, at its November 2008 meeting [see 350th Report, paras 146–150]. On that occasion the Committee expressed its expectation that the necessary measures had been taken to investigate all allegations of torture and harassment against trade union members ordered by the management of the Liaquat National Hospital, as well as the abduction, beating and threats carried out against the LNHWU General Secretary, Mr Shahid Iqbal Ahmed, by the police, and of dismissals and suspension at the hospital. It requested the Government to report on the outcome and, if the allegations of ill-treatment were confirmed, to prosecute and punish the guilty parties and take all necessary measures in order to prevent the repetition of similar acts. If it was found that the workers were dismissed for the exercise of their trade union activities, the Committee requested the Government to ensure that they were reinstated in their posts with back pay and, if reinstatement was not possible, that they were paid adequate compensation so as to constitute sufficiently dissuasive sanctions. Finally, the Committee requested the Government to keep informed the Committee of Experts on the Application of Conventions and Recommendations, to which it had referred the legislative aspects of the case, in respect of the measures taken or envisaged to amend the Industrial Relations Ordinance (IRO) of 2002 so as to ensure that all workers without distinction whatsoever, including those working in charitable institutions, may freely establish organizations of their own choosing.

183. In a communication of 1 November 2008, the Government states that it had already replied to the dismissals of trade unionists in its previous communication. As concerns the allegations of torture and harassment against trade union members ordered by the

management of the Liaquat National Hospital, the Government indicates that according to the report of the Inquiry Officer, the judicial Magistrate had acquitted the concerned office-bearers of the union. The management of Liaquat National Hospital filed an appeal before the High Court, Sindh, against these acquittals, and the acquitted workers also filed suits for damages before the High Court. Both cases were currently sub judice. The Government further states that the Bill to repeal the IRO-2002 has been passed by the Senate (Upper House) of Pakistan and is now under the consideration of the National Assembly (Lower House). The law would be promulgated following its adoption by the latter body.

184. *The Committee notes with deep regret that the Government provides no indications that it has taken measures to implement its previous recommendations. Recalling that the present case involves allegations of the torture, harassment and dismissal of trade unionists, the Committee notes that in respect of these serious allegations the Government, without further elaboration, refers simply to a case concerning the acquittal of union officials that was presently before the High Court on appeal. The Committee recalls that in its examination of the case in March 2007, it had noted the Government's indication that pursuant to the Committee's recommendations, the government of Sindh had been asked to conduct an inquiry into the matter of the Liaquat National Hospital and to send a comprehensive report to the Ministry of Labour and Manpower. The Committee deeply regrets that two years later, no information has yet to be provided as to the outcome of the investigation. In these circumstances the Committee reiterates its expectation that the necessary measures have been taken to investigate all allegations of: (1) torture and harassment against trade union members ordered by the management of the Liaquat National Hospital; (2) the abduction, beating and threats carried out against the LNHWU General Secretary, Mr Shahid Iqbal Ahmed, by the police; and (3) the dismissals and suspensions at the hospital. The Committee urges the Government to report on the investigation's outcome and, if the allegations of ill-treatment are confirmed, to prosecute and punish the guilty parties and take all necessary measures in order to prevent the repetition of similar acts. In respect of the dismissals and suspensions, moreover, if it is found that the workers were dismissed for the exercise of their trade union activities, the Committee requests the Government to ensure that they are reinstated in their posts with back pay and, if reinstatement is not possible, that they are paid adequate compensation so as to constitute sufficiently dissuasive sanctions. The Committee requests the Government to be kept informed of developments in this regard.*

185. *The Committee notes the information concerning the Bill to amend the IRO of 2002. It requests the Government to continue to inform the Committee of Experts on the Application of Conventions and Recommendations, to which it refers the legislative aspects of the case, in respect of the measures taken or envisaged to amend the IRO of 2002 so as to ensure that all workers without distinction whatsoever, including those working in charitable institutions, may freely establish organizations of their own choosing.*

Case No. 2520 (Pakistan)

186. The Committee last examined this case, which concerns allegations of the cancellation of the registration of the Karachi Shipyard Labour Union (KSLU) and of obstacles to collective bargaining faced by the union concerned, at its March 2008 meeting [see 349th Report, paras 204–208]. On that occasion the Committee requested the Government to take the necessary measures to revoke the Sindh Registrar's Cancellation Order so as to reinstate the registration of the KSLU, and of any other unions that may have been dissolved due to the administrative control of the employer concerned by the Ministry of Defence Production. It further requested the Government to initiate an investigation into the obstacles to collective bargaining encountered by the KSLU during the period 2003–06 and to promote future collective bargaining with the union, if it was still found to be

representative of the workers at the Karachi Shipyard and Engg Works Ltd. Finally, the Committee requested the Government to inform the Committee of Experts on the Application of Conventions and Recommendations, to which it referred the legislative aspects of the case, of developments regarding the amendment of section 12(3) of the Industrial Relations Ordinance (IRO) 2002, so that the failure to seek or obtain collective bargaining agent status does not constitute grounds for the cancellation of a trade union's registration.

187. In a communication of 1 November 2008, the Government states that several unions have filed pending constitutional petitions before the Sindh High Court, Karachi, challenging the cancellation order of the Sindh Registrar. In respect of the legislation, the Government indicates that the Bill (IRA – 2008) to repeal the IRO 2002 has been passed by the Senate (Upper House) of Pakistan and is now under consideration by the National Assembly (Lower House). The law would be promulgated following its adoption by the latter body.

188. *The Committee deeply regrets that the Government reiterates that several trade unions have filed constitutional petitions before the Sindh High Court in Karachi challenging the Sindh Registrar's cancellation order, while again providing no indication that it has taken steps to implement its previous recommendations. Recalling once again that civilian workers in the manufacturing establishments of the armed forces should have the right to establish organizations of their own choosing without previous authorization, in conformity with Convention No. 87 [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth edition, 2006, para. 227], the Committee once again requests the Government to take the necessary measures to revoke the Registrar's order, so as to reinstate the registration of the KSLU and of any other unions that may have been dissolved due to the administrative control of the enterprise concerned by the Ministry of Defence Production. Furthermore, it once again requests the Government to initiate an investigation into the obstacles to collective bargaining encountered by the KSLU during the period 2003–06 and to promote future collective bargaining with the union, if it was still found to be representative of the workers at the Karachi Shipyard and Engg Works Ltd. The Committee requests the Government to inform it of developments in this regard and strongly urges the Government to be more cooperative in the future.*

189. *The Committee notes the information concerning the Bill to amend the IRO 2002. The Committee reminds the Government that the ILO's technical assistance is at the Government's disposal, if it so wishes, and requests it to continue to inform the Committee of Experts on the Application of Conventions and Recommendations, to which it had referred the legislative aspects of the case, in respect of the measures taken or envisaged to amend section 12(3) of the IRO 2002 so that the failure to seek or obtain collective bargaining agent status does not constitute grounds for the cancellation of a trade union's registration.*

Case No. 2286 (Peru)

190. At its November 2007 meeting, the Committee requested the Government: (1) to provide information regarding the outcome of the appeal lodged by Petro-Tech Peruana SA against the decision of the Criminal Court of Piura to dismiss the complaint against Mr Leónidas Campos Barrenzuela for allegedly forging documents; and (2) to inform it whether, subsequent to the special visit to inspect Petro-Tech Peruana SA, legal or administrative action was taken in relation to the alleged dismissals of workers belonging to the trade union [see 348th Report, para. 149].

191. In its communications dated 12 March 2007 and 11 October 2008, the Government states that the second-instance Second Criminal Court of Sullana confirmed the definitive shelving of the proceedings relating to the alleged forgeries which had been instigated by

Petro-Tech Peruana SA against the union's General Secretary, Mr Leónidas Campos, thereby closing proceeding in this matter. Nevertheless, the company lodged an appeal *(recurso de queja)*. The union and the company have in addition concluded a collective agreement, and there is no current file on any application by the union for intervention by the labour inspection authority.

192. *The Committee takes note of the Government's information and requests it to communicate the outcome of the company's appeal against the ruling of the second-instance court ordering the closure of the company's complaint against the union official, Mr Leónidas Campos in connection with alleged forgerie* .

193. *At the same time, the Committee notes that, since the previous examination of the case, the union has not sought any intervention by the labour inspection authority and thus appears to accept the outcome of a previous intervention by that authority in which, with regard to the dismissal of a number of union members, it was left to the parties involved to defend their rights through administrative or judicial proceedings [see 348th Report, paras 148 and 149]*.

Case No. 2386 (Peru)

194. The Committee last examined this case at its March 2008 meeting [see 349th Report, paras 216–222] when it requested the Government to take the necessary measures to promote collective bargaining between The Unified Trade Union of Electricity Workers of Lima and Callao (SUTREL) and the Compañia Americana Multiservicios Peru (CAM-PERU SRL). Similarly, the Committee noted the Government's statement that arrangements had been made for inspection activities with regard to: ensuring that CAM-PERU SRL was deducting trade union dues as ordered by the judicial authority; the failure by EDELNOR SAA to deduct trade union dues and the payment of a bonus to workers who withdrew from SUTREL; and the alleged threats by EDELNOR SAA to restrict the activity of the trade union branch of SUTREL with regard to the distribution of its newspaper. The Committee requested the Government to continue keeping it informed of the outcome of the investigations conducted into these allegations.

195. In its communications dated 3 March and 11 September 2008, the Government states that inspection activities were carried out both in the EDELNOR SAA company and in the CAM-PERU SRL company, pursuant to Inspection Orders No. 5555 in the case of the EDELNOR SAA enterprise and No. 5557 in the case of the CAM-PERU SRL company. In the first case, concerning the inspection activities in the EDELNOR SAA company, the labour inspectors in charge of the case allegedly stated that the enterprise in question had not complied with the social and labour standards in force, because it had committed acts of hostility and had infringed constitutional rights such as the freedom of expression, bound up with freedom of association, against SUTREL. They had also found that the EDELNOR SAA enterprise had allegedly failed to take steps to comply adequately with the social and labour standards in force; consequently, the Finding of Violation No. 1530-2007 was submitted to the Second Sub-directorate of the Labour Inspectorate. Given the violations committed by EDELNOR SAA, defined as very serious with respect to labour relations and the obstacles put in the way of labour inspections, the labour inspectors in charge of the case proposed that EDELNOR SAA should pay a fine of 7,969.50 new soles for having committed acts of hostility against the trade union. It also proposed another fine of 7,969.50 new soles for having failed to comply in time with the injunction issued, making a total fine of 15,939 new soles.

196. However, the Second Sub-directorate of the Labour Inspectorate, after examining the documentary evidence submitted by the enterprise and analyzing the Finding of Violation, ruled that, according to its analysis and interpretation of the social and labour standards in

force, the alleged violations committed by EDELNOR SAA determined by the labour inspectors in charge, should not be identified as such and, consequently, did not justify penalties on the part of the labour administrative authority.

197. Pursuant to Inspection Order No. 5557-2007, labour inspectors in charge of the case had carried out the necessary inspection visits which gave rise to the Finding of Violation No. 1734-2007; as a result of these visits, they ruled that the CAM-PERU SRL enterprise had neither complied with the social and labour standards in force nor respected rights connected with freedom of association and freedom of discrimination, because they had effectively failed to deduct the trade union dues of members of SUTREL and had not granted trade union licenses to the trade union officials; it had further committed acts of discrimination by only granting wage increases and further bonuses to workers not belonging to the trade union branch of SUTREL. Furthermore, the enterprise CAM-PERU SRL had not adequately fulfilled the requirements to adopt measures to comply with the social and labour standards in force, which resulted in the respective Finding of Violation No 1734-2007 being submitted to the Third Sub-directorate of the Labour Inspectorate. Given the violations committed by CAM-PERU SRL, found to be extremely serious, with respect to labour relations and labour inspections, the labour inspectors in charge of the case proposed fining the enterprise 3,312 new soles for not having deducted the trade union dues of workers belonging to SUTREL; it proposed another fine of 3,312 new soles for not granting trade union licenses, another fine of 6,072 new soles for discriminating against members belonging to SUTREL with respect to pay, and a further fine of 6,072 new soles for not having complied in time with the injunction issued, making a total of 24,840 new soles.

198. The Government adds that the Third Sub-directorate of the Labour Inspectorate started administrative disciplinary proceedings in accordance with section 45 of Act No. 28806 and notified the enterprise that had been inspected of the abovementioned Finding of Violation, granting it a period of 15 working days in which to submit evidence it considered relevant. In these proceedings, The Third Sub-directorate of the Labour Inspectorate ruled, on the basis of its analysis and interpretation of the social and labour standards in force, that the labour inspectors had not written down the full names of the workers who had been victims of each breach of social and labour standards; consequently, the Sub-directorate could not be sure as to their real identity and was therefore unable to hand down the corresponding ruling in accordance with section 48, paragraph 481, of Act No. 28806. Furthermore, given that the enterprise inspected did not have the names of the workers concerned, their right to defence would have been infringed, which was tantamount to a breach of due process. The Sub-directorate could not therefore comply with section 40 of Act No. 28806 because the Finding of Violation in question was null and void. As regards the proceedings of the Sub-directorate on Collective Bargaining in which both EDELNOR SAA and CAM-PERU SRL were involved, the Government points out that it has requested updated information on these cases, which it will communicate as soon as it has received this.

199. With regard to the proceedings under way before the Collective Bargaining Sub-directorate in which both the EDELNOR SAA and the CAM-PERU SRL companies are involved, the Government indicates that it has requested updated information which it will forward as soon as it is obtained.

200. *The Committee takes note of this information. The Committee requests the Government to inform it whether the decisions of the Second Sub-directorate of the Labour Inspectorate mentioned above, which considered that there were no grounds for the penalties proposed by the labour inspectorate against EDELNOR SAA and CAM-PERU SRL for violations of trade union rights, had been challenged with an appeal by the trade union SUTREL. If no such appeal has been lodged, the Committee also requests the Government to indicate*

whether, in view of the fact that some violations had not been penalized on procedural grounds, it is possible to carry out a new inspection on the alleged violations of trade union rights. Furthermore, the Committee requests the Government once again to inform it of the measures taken to promote collective bargaining between SUTREL and CAM-PERU SRL

Case No. 2400 (Peru)

201. The Committee last examined this case at its June 2008 meeting and made the following recommendations [see 350th Report, para. 153]:

> The Committee requests the Government to inform it of the outcome of the appeals lodged by unionists Mr Felipe Fabián Fernández Flores and Mr Miguel Moreno Avila relating to the wrongful dismissal proceedings. The Committee also requests the Government to inform it of any developments in the judicial proceedings relating to Mr Paholo Trujillo Ramírez (Gloria SA enterprise). The Committee further requests the Government to take measures to enable the Labour Inspectorate to continue to conduct inspections of the Banco del Trabajo with a view to determining whether SUTRABANTRA is a representative organization and, if it is confirmed as such, to encourage the enterprise to recognize the union for the purposes of collective bargaining and any other measure that promotes collective bargaining.

202. In its communications dated 3 March and 10 September 2008, the Government states that according to information supplied by the 24th Labour Court of the Lima Higher Court of Justice, in the proceedings initiated by Mr Felipe Fabián Fernández Flores against his dismissal by the company Gloria SA, a decision has been taken and an appeal against that decision has been lodged by the company.

203. The Government also states that, according to information from the 21st Labour Court of the Lima Higher Court of Justice, a ruling was given on 29 March 2008 in the appeal proceedings initiated by Mr Miguel Moreno Avila against his dismissal by the Gloria SA company, but an appeal was lodged against that ruling with suspensive effect before the First Labour Court of Lima.

204. As regards the judicial proceedings involving Mr Fernando Paholo Trujillo Ramírez and the Gloria SA company, the Government is awaiting information from the court and will pass on that information to the Committee.

205. As regards the judicial proceedings that have been concluded concerning the appeal lodged by Mr Arnoldo Efraín Calle against his dismissal by the Banco del Trabajo before the First Labour Court of the Supreme Court, the appeal lodged by the bank was quashed, the bank was fined and ordered to pay costs, as well as the costs derived from processing the appeal and the decision was published in the *Official Daily El Peruano*. The worker in question was reinstated in his post through an interim injunction; information on this was given previously.

206. As regards the inspection visits recommended by the Committee, the Government states that the Minister of Labour will continue to insist on compliance with the relevant labour standards. More specifically, with regard to the complaint lodged by the Unified Trade Union of Workers of the Banco del Trabajo (SUTRABANTRA) and the Single Union of Employees of the Banco del Trabajo (SUDEBANTRA) concerning possible violations of workers' rights at the Banco del Trabajo, the Government states that, according to the Lima–Callao Regional Labour Directorate, inspection visits were carried out at the bank in order to identify instances of employees registering as members both of SUTRABANTRA and SUDEBANTRA, which the employer had cited to justify its opposition to negotiation of the list of demands for 2005–06. The inspection visit of 7 February 2007 failed to

confirm any cases of simultaneous membership of the two unions as the employer had not made the necessary deductions of union membership dues. Subsequently, in February, July and November 2007, meetings were held at the request of the Ministry of Labour authorities, as the employer organization still refuses to recognize the existing union. The labour inspection directorate has been asked to make further inspection visits.

207. As regards the questioning of the validity of the existing unions SUTRABANTRA and SUDEBANTRA, to both of which the employer objected on the grounds that they did not abide by the labour regulations in force, judicial proceedings are currently under way to close down SUDEBANTRA following an application presented by the Banco del Trabajo to the 17th Labour Court of Lima, which will rule on the legitimacy of that union.

208. *The Committee takes note of this information, and in particular the information concerning the reinstatement of the trade unionist Arnoldo Efraín Calle following a court decision fining the Banco del Trabajo and ordering it to pay procedural costs; this issue was not, however, among those that remained pending in the previous examination of the case. The Committee requests the Government to keep it informed of the outcome of the appeals lodged by Gloria SA against the decision to overturn the dismissals of trade unionists Felipe Fabián Fernández Flores and Miguel Moreno Avila.*

209. *The Committee notes the Government's statement to the effect that the Labour Inspectorate will continue to insist on compliance with labour standards concerning representativeness with regard to SUTRABANTRA, and on recognition of that union by the company for the purposes of collective bargaining (if its representativeness is confirmed).*

210. *The Committee also notes, however, that, according to the Government, the Banco del Trabajo has claimed that some individuals are registered as members of both unions and uses this to justify its opposition to collective negotiations, and that judicial proceedings have been started to close down the union SUDEBANTRA. The Committee notes its concern at this legal application to close down a union following the dismissal of trade unionists employed by the Banco del Trabajo. The Committee requests the Government to provide clarification on this matter and to inform it of any ruling handed down. Lastly, the Committee awaits news of any ruling that may be given on the dismissal of the trade unionist Mr Fernando Paholo Trujillo Ramírez by the Gloria SA enterprise.*

Case No. 2527 (Peru)

211. In its previous examination of the case in November 2007, the Committee made the following recommendations on questions that remained pending [see 348th Report, para. 1112]:

(a) The Committee requests the Government to indicate whether trade union officer Mr Armando Enrique Bustamante Bustamante has been regularly employed by the San Martín Mining Company SA since September 2006.

(b) The Committee requests the Government to inform it of the outcome of the proceedings (which are currently before the court of appeal) to nullify the dismissal filed by trade union officers Mr César Augusto Elías García and Mr José Arenaza Lander and expects that the judicial authority will take the principles mentioned in the conclusions fully into account. The Committee expects that the judicial authority will hand down a ruling in the near future.

212. In its communication of 3 March 2008, the Autonomous Confederation of Peruvian Workers (CATP) sent new information in connection with this case. According to the CATP, the General Secretary, the Press and Propaganda Secretary, and the Legal Affairs Secretary of the Trade Union of Workers of the San Martín Mining Company SA

(César Augusto Elías García, Armando Bustamante and José Arenaza Lander) were evicted from their accommodation on 20 August 2006 by order of the company's human resources general manager, who stated that they no longer belonged to the company. According to the CATP, the union officials in question have received death threats and threats of assault from hired thugs with direct links to company managers.

213. In its communications dated 3 March and 10 September 2008, the Government states that an application to overturn the dismissals is now being considered by the 19th Labour Court, the respondents in the case being the San Martín Mining Company SA and Peru LNG SRL, and the petitioner being José Antonio Arenaza Lander. The court handed down a ruling on 27 June 2008 upholding the application to overturn the dismissal. On 10 July 2008, the company lodged an appeal against that ruling and, on 6 August 2008, the appeal was found to be admissible. The Government states that it will continue to provide information on developments.

214. The Government states further that, in the 7th Labour Court, dismissal annulment proceedings are underway between the San Martín Mining Company SA and Peru LNG SRL, as the respondents, and César Augusto Elías García, as the petitioner. On 3 June 2008, a ruling was given upholding the application to annul the dismissal, and the parties were duly informed. On 20 July 2008, an appeal was lodged against that ruling and, on 26 June 2008, that appeal was found to be admissible. The Government states that it will continue to provide information on developments.

215. *The Committee takes note of the lower court rulings in favour of the trade union officials César Augusto Elías García and José Arenaza Lander (who had been dismissed), and of the fact that the company has lodged appeals. The Committee recalls that this case was presented in September 2006, and emphasizes that an excessive delay in the administration of justice is tantamount to a denial of justice. The Committee trusts that the appeals now under way will be concluded within a short time, and requests the Government to communicate the results of those proceedings.*

216. *The Committee regrets that the Government has not indicated whether since September 2006 the trade union leader Armando Enrique Bustamante has been hired regularly by the company, and once again requests it to provide this information.*

217. *Lastly, the Committee requests the Government without delay to send its observations on the allegations contained in the CATP's communication dated 3 March 2008.*

Case No. 1914 (Philippines)

218. The Committee last examined this case at its March 2008 meeting [see 349th Report, paras 223–227]. The case concerns approximately 1,500 leaders and members of the Telefunken Semiconductors Employees' Union (TSEU) who after being dismissed for their participation in strike action from 14 to 16 September 1995 and failing to obtain their reinstatement, are now trying to obtain the payment of retirement benefits for the period they worked in the enterprise. During the last examination of this case the Committee requested the Government to intercede with the parties with a view to reaching without further delay, a settlement for the payment of retirement benefits to the dismissed workers.

219. In a communication dated 23 May 2008, the complainant indicates that despite using all legal means at their disposal, the workers concerned have been unable to obtain justice before the courts and have seen their appeals denied at the final instance. The complainant expresses dismay at the injustice after almost 13 years of pursuing their case before the courts.

220. *The Committee must once again express its profound regret at the manifest absence of equity in this case, due to the excessively long period of time over which the issue of reinstatement was pending (five years), the final decision which reversed a series of earlier rulings in favour of the workers, including from the Supreme Court, and the particularly large number of workers dismissed (some 1,500) as well as the denial of these workers' vested rights in terms of pensions. The Committee observes that according to the complainants, they are entitled to the retirement plan which was included in their collective bargaining agreement and they had already reached the requisite age and length of service even prior to the strike of 14 September 1995 which led to their dismissal.*

221. *The Committee recalls from the previous examination of this case its conclusion to the effect that "there is no doubt in the Committee's mind that the 1,500 or so TSEU members were dismissed and not reinstated subsequently to having participated in strike action ... the Committee reminds the Government that it is responsible for preventing all acts of anti-union discrimination and that cases concerning anti-union discrimination should be examined rapidly, so that the necessary remedies can be really effective. An excessive delay in processing cases of anti-union discrimination, and in particular a lengthy delay in concluding the proceedings concerning the reinstatement of the trade union leaders 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 308th Report, para. 667].*

222. *Recalling that the issue is linked to freedom of association to the extent that these workers are denied their retirement benefits as a result of their dismissal pursuant to the strike staged in September 1995, the Committee urges once again the Government to intercede with the parties, with a view to reaching without further delay a mutually satisfactory solution for the payment of retirement benefits to the dismissed workers. The Committee requests to be kept informed of steps taken in this regard.*

Case No. 2488 (Philippines)

223. The Committee last examined this case at its June 2008 meeting [350th Report, paras 180–202]. The case concerns the dismissal of all 15 officers of the University of San Agustin Employees' Union – FFW (USAEU) in retaliation for the staging of a strike which lasted for nine hours, was initially found legal by the Department of Labor and Employment (DOLE) and subsequently declared illegal by the courts. The complainant also alleges partiality on behalf of the judicial authorities including the Supreme Court, leading to decisions which are alarmingly dangerous for the rights of the workers to collectively bargain, strike and obtain protection against anti-union discrimination, thus encouraging other employers (Eon Philippines Industries Corporation and Capiz Emmanuel Hospital) to engage in further acts of anti-union discrimination.

224. During the last examination of this case, the Committee made the following recommendations:

– Given that the legal action had been pending before the courts on various aspects of this case since 2003, the Committee once again requests the Government to take measures for an independent review of the dismissal of the entire committee of the USAEU (Theodore Neil Lasola, Merlyn Jara, Julius Mario, Flaviano Manalo, Rene Cabalum, Herminigildo Calzado, Luz Calzado, Ray Anthony Zuñiga, Rizalene Villanueva, Rudante Dolar, Rover John Tavarro, Rena Lete, Alfredo Goriona, Ramon Vacante and Maximo Montero) and to take active steps to ensure a conciliation with the university regarding their reinstatement. The Committee requests to be kept informed of all developments in this respect, including any judicial decisions rendered.

– To take all necessary steps without delay to ensure the resumption and fruitful continuation of negotiations over the terms and conditions of employment of workers at the San Agustin University not only for the period 2003–05 but also for the future.

– To ensure that an independent inquiry is carried out immediately into the allegations of anti-union discrimination in the Eon Philippines Industries Corporation and the Capiz Emmanuel Hospital in Roxas City so that full light may be shown upon these allegations. If the acts of anti-union discrimination are confirmed, it requests the Government to take measures to ensure that the workers concerned are reinstated in their posts without loss of pay.

225. The complainant provided follow-up information in communications dated 16 May, 21 August, 30 September, 23 December 2008 and 11 January 2009. In its communication of 16 May 2008, the complainant indicates that through further irregular decisions, the National Labour Relations Commission (NLRC) decided on 24 April 2008 that the dismissal of the entire USAEU committee (both officers and departmental representatives who had been previously found to have been unfairly dismissed as they did not constitute officers) was legal as this dismissal had already been declared legal by the Supreme Court in its 28 March 2006 decision. The complainant indicates that this contradicts the Government's statement to the Committee that the Supreme Court decision did not foreclose litigation on the validity of the dismissals. Moreover, on 5 May 2008, the Bureau of Labor Relations of the Department of Labor issued a resolution denying the USAEU petition to nullify the illegal and separate election of union officers facilitated by the management of the University of San Agustin. In particular, on 2 August 2006, the separate and illegal election of officers was conducted at the university auditorium and the department heads of the university had verbally directed the employees to go to the auditorium for the election with the promise that they would be given their salary increase if they changed their union officers. While the legitimate union leadership (the dismissed chairperson Neil Lasola and his group) were holding the union general assembly at another place near the university, the other group instigated by the university management was holding an illegal election.

226. In its communications of 21 May, 21 August and 1 September 2008, the complainant makes allegations related to corruption and bribery, including of certain justices of the Supreme Court and Appeals Court. The complainant attaches hundreds of pages of press clippings and judicial decisions concerning the union's case. In its communication of 23 December 2008, the complainant indicates that the appeals filed by the dismissed trade unionists were once again rejected on the ground that the issue had been decided by the Supreme Court. The complainant alleges that certain decisions by judicial or quasi-judicial bodies contained a copy-paste of the documents submitted by the university and a verbatim reiteration of the university's arguments.

227. In its communication of 11 January 2009, the complainant indicates that in a circular dated 6 January 2009, the university president indicated that there are no longer any legal impediments in recognizing the union committee elected with management support on 2 August 2006 given the Supreme Court decision of 28 March 2006 and the NRLC decision of 24 April 2008 which confirmed that the dismissal of the officers cannot be examined as the Supreme Court has already decided the matter. The complainant adds that in an official communication dated 6 January 2009, the university tells the illegal union committee to put an end to the strike and demolish the strike area outside the university's gate. The illegal union committee told union members at a meeting on 9 January 2009, that the university president wanted the union to demolish the strike area as a condition for giving to the employees their share of the tuition fee increase that the university implemented as of 2003. This share of the tuition fee increase is mandated in Republic Act No. 6728 which provides that 70 per cent of the tuition fee increase shall go to the

employees. The promise of giving the share to the employees as mandated in the law, had already been made in obvious bad faith by the university in May 2005 so that union members would resign from the union during a strike and in August 2006 in order to vote for the illegal trade union committee which is now poised to take action for the demolition of the strike area. The complainant concludes that the union is now close to four years of suffering the pain, humiliation and financial difficulties without any help from the Government.

228. The Government provided its observations in communications dated 30 September 2008 and 11 February 2009. The Government assures the ILO that the country's judicial and quasi-judicial processes and remedies are fully functional and adhere to fair, just and expeditious resolution of cases based on existing laws and after hearing and evaluating the evidence adduced by the parties. Both judicial and quasi-judicial reliefs were availed of by the union officers. If they lost their case, it is simply because the law did not favour their cause. The Philippine Supreme Court, the highest court of the country, has already issued its decision on the said case. Being the highest court of the country, and its decision having attained finality, it is entitled to utmost respect. Thus, in resolving the petition initiated by Lasola et al. to nullify the 2 August 2006 election of officers (an intra-union dispute in USAEU) the Supreme Court decision and the following facts were considered: (i) on 2 August 2006 the election of the new set of trade union officers was held; (ii) on 27 September 2006, Theodore Neil Lasola filed a petition to nullify the election; (iii) on 20 July 2007 the mediator-arbiter dismissed the petition due to Lasola's lack of legal personality to institute the subject petition for having been validly terminated from this employment; (iv) records show that as early as 5 April 2005, Lasola received a notice of termination from employment, based on the 4 March 2005 Court of Appeal decision. This decision, as partially amended on 23 August 2005, was affirmed in all respects by the 28 March 2006 Supreme Court decision, reiterating the dismissal of the union officers from employment. At the time of filing the petition to nullify the election, on 27 September 2006, Lasola had not challenged the legality of his dismissal. The absence of a pending challenge to the dismissal at the time of the institution of this case stripped Lasola of any pretence to claim the "employee" status.

229. The Government adds that the dismissed USAEU officers appealed against the dismissal of their petition to nullify the election of the new officers and on 24 April 2008, the Bureau of Labor Relations (BLR) affirmed the order of the mediator-arbiter. Lasola et al. moved for the reconsideration of the 24 April 2008 BLR resolution. They explained that USAEU–FFW has not at the time challenged the legality of the dismissals because USAEU had filed a pending motion before the Supreme Court to refer the case to the Supreme Court en banc. Moreover, it argued that the resolution contradicts the official position submitted by the Philippine Government in its 25 December 2006 communication to the ILO; in this regard, the Government clarifies that its reply actually indicated that the Supreme Court decision of 28 March 2006 had become final, considering that its authenticity had already been affirmed in the Supreme Court resolution of 14 June 2006.

230. Moreover, the Government considers that since the Supreme Court has already decided the case with finality, the case should be dismissed from the calendar of the Committee on Freedom of Association. It adds that the allegations according to which the aforementioned Supreme Court decision is "fabricated" are baseless and malicious.

231. *The Committee notes with regret that the Government indicates no measures taken with regard to the Committee's recommendation for the review of the dismissals of the entire committee of the USAEU (Theodore Neil Lasola, Merlyn Jara, Julius Mario, Flaviano Manalo, Rene Cabalum, Herminigildo Calzado, Luz Calzado, Ray Anthony Zuñiga, Rizalene Villanueva, Rudante Dolar, Rover John Tavarro, Rena Lete, Alfredo Goriona, Ramon Vacante and Maximo Montero) so as to ensure a conciliation with the university*

and the reinstatement of the 15 trade union officers. The Committee recalls that these officers were dismissed for not having ensured immediate compliance with an assumption of jurisdiction order issued under section 263(g) of the Labour Code which has been repeatedly found to be contrary to freedom of association principles. The Committee once again recalls in this regard that it has always considered that sanctions for strike action should be possible only where the prohibitions in question are in conformity with the principles of freedom of association [see 350th Report para. 199; see also Case No. 2252 concerning the Philippines, 332nd Report, para. 886; and 350th Report, para. 171].

232. *The Committee further notes that the Court of Appeal and the Supreme Court repeatedly refused to examine the complainants' contention that their dismissal was illegal since it was carried out while a motion for reconsideration was pending, something which is contrary to Rule 52(4) of the Rules of Court according to which "the pendency of the motion for reconsideration timely filed by both parties shall stay the execution of the decision". The Committee recalls that, as noted during the previous examination of this case, the Government had indicated in its communication of 31 August 2007 that "[t]he termination of the service of the union officers is an issue that the courts (the Supreme Court and the Court of Appeal) did not specifically discuss or resolve simply because it was a new matter or an issue that cropped up after judicial proceedings – on the core issues of the legality of the strike and bargaining deadlock – were already under way. ... Thus, how the declared illegality of the strike would apply to the union officers and members is a new and live issue that the courts have not ruled upon. The Philippines Rules of Court that govern court proceedings preclude determination of new issues at appellate levels; ... As the new information furnished by the [complainant] shows, the union is now litigating the termination of service of its officers. ... Given the standing Supreme Court ruling on the parties' dispute, they can raise and litigate on matters which were not litigated or decided on appeal that are not barred under the universally accepted principle of res adjudicata" [see also 350th Report, paras 186–187]. The Committee notes from the latest information brought to it, however, that pursuant to an illegal dismissal complaint filed by the complainant, the NLRC found on 24 April 2008 that the dismissal of the USAEU committee was legal as the issue had already been examined with finality by the Supreme Court. The Committee notes that in its latest communication the Government indicates that the issue had been decided in the final instance by the Supreme Court on 28 March 2006 and the case before the Committee should be closed.*

233. *The Committee regrets the contradictions which have prevented the dismissed officers and members from having access to an examination of their grievances by a competent body. The Committee emphasizes that the basic regulations that exist in the national legislation prohibiting acts of anti-union discrimination are inadequate when they are not accompanied by procedures to ensure that effective protection against such acts is guaranteed [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth edition, 2006, para. 818]. The Committee recalls in this respect from the previous examination of this case that three cases currently at the follow-up stage with regard to acts of anti-union discrimination in the Philippines [Cases Nos 1914, 2252 and 2488] illustrate the considerable difficulties faced by workers in their efforts to have their grievances examined and recalls once again that the Government is responsible for preventing all acts of anti-union discrimination and that it must ensure that complaints of anti-union discrimination are examined in the framework of national procedures which should be prompt, impartial and considered as such by the parties concerned [see* ***Digest****, op. cit., para. 817].*

234. *In these circumstances, the Committee once again requests the Government to take measures for an independent review of the dismissal of the entire committee of the USAEU (Theodore Neil Lasola, Merlyn Jara, Julius Mario, Flaviano Manalo, Rene Cabalum, Herminigildo Calzado, Luz Calzado, Ray Anthony Zuñiga, Rizalene Villanueva, Rudante*

Dolar, Rover John Tavarro, Rena Lete, Alfredo Goriona, Ramon Vacante and Maximo Montero) and to take active steps to ensure a conciliation with the university regarding their reinstatement. The Committee requests to be kept informed in this respect.

235. *The Committee also notes with regret that according to the complainant, the employer facilitated on 2 August 2006 the election of a parallel trade union committee by giving financial and other incentives to workers to attend the election which was taking place at the same time as the General Assembly hosted by the legitimate committee. According to the complainant moreover, in a circular dated 6 January 2009 the university president indicated that there are no longer any legal impediments in recognizing the union committee elected with management support on 2 August 2006 given the Supreme Court decision of 28 March 2004 and the NLRC decision of 24 April 2008 (see above). The Committee finally notes the complainant's allegation that the university is giving financial incentives to demolish the strike area that the complainant has been occupying at the university gate for almost four years now. The Committee notes that in reply to these allegations, the Government indicates that Theodore Neil Lasola, Chairperson of the USAEU filed a petition on 27 September 2006 to nullify the trade union election of 2 August 2006; however, the petition was rejected on the ground that Mr Lasola did not have standing to institute the petition in question because he had not filed an appeal against the notice of termination from employment which he had received on 5 April 2005 and which had been confirmed by the decision of the Supreme Court of 28 March 2006. The Committee nevertheless notes that, as specified by the Government, the complainant had not filed an appeal because it had filed a motion to refer the case to the Supreme Court en banc and this motion was pending at the time.*

236. *The Committee deeply regrets the fact that the USAEU was effectively denied the right to have its allegations of employer interference heard by the appropriate instances. The Committee emphasizes that Article 2 of Convention No. 98 establishes the total independence of workers' organizations from employers in exercising their activities [see **Digest**, op. cit., para. 855] and that Article 3 requires the establishment of an effective mechanism of protection in this regard. Respect for the principles of freedom of association requires that the public authorities exercise great restraint in relation to intervention in the internal affairs of trade unions. It is even more important that employers exercise restraint in this regard. They should not, for example, do anything which might seem to favour one group within a union at the expense of another [see **Digest**, op. cit., para. 859].*

237. *The Committee therefore requests the Government to institute an independent inquiry into the allegations of employer interference (financial incentives for trade union members to vote for another committee) and if they are confirmed, to take all necessary measures of redress including sufficiently dissuasive sanctions. The Committee requests to be kept informed of all developments in this respect.*

238. *With regard to its previous request for steps for the resumption and fruitful continuation of negotiations over the terms and conditions of employment of workers at the San Agustin University not only for the period 2003–05 but also for the future, the Committee recalls the importance of the independence of the parties in collective bargaining and emphasizes that negotiations should not be conducted on behalf of employees or their organizations by bargaining representatives appointed by or under the domination of employers or their organizations [see **Digest**, op. cit., para. 868.]*

239. *Noting finally with regret that the Government does not provide any information on the requested independent inquiry into the allegations of anti-union discrimination in the Eon Philippines Industries Corporation and the Capiz Emmanuel Hospital in Roxas City, the Committee once again urges the Government to take all necessary measures in this respect*

and if the acts of anti-union discrimination are confirmed, to take measures to ensure that the workers concerned are reinstated in their posts without loss of pay. The Committee requests to be kept informed in this respect.

Case No. 2546 (Philippines)

240. The Committee last examined this case, which concerns discriminatory acts (attempts to curtail freedom of expression, suspension without pay, work transfers, termination of employment, withholding of financial incentives and filing a libel lawsuit against a trade union leader) against trade union members in retaliation for having participated in anti-corruption proceedings and protests targeting the Technical Education and Skills Development Authority (TESDA) at its March 2008 meeting [see 349th Report, approved by the Governing Body at its 301st Session, paras 1181–1221]. On that occasion, the Committee formulated the following recommendations:

(a) Recalling that the right to organize public meetings constitutes an essential element of freedom of association, the Committee requests the Government to transmit a copy of Memorandum Circular No. 6, series of 1987 regulating the right of government officials to engage in strikes and mass actions.

(b) The Committee requests the Government to confirm that the transfer orders of Annie Geron, Mitzi Barreda and Rafael Saus have been effectively annulled and that they have been reinstated in their previous posts, in line with the decision of the Civil Service Commission, and to ensure that they are fully compensated for both the 90-day period of suspension and the period during which they were dropped from the TESDA payroll, as well as any other damages incurred as a result of the invalidated transfers. With regard to Luz Galang and Conrado Maraan Jr, the Committee requests the Government to repeal their transfer orders and reinstate them in their previous posts, if they so wish, and compensate them for any wages lost in relation to the transfer. The Committee requests the Government to keep it informed of developments in this regard.

(c) The Committee requests the Government to institute an independent inquiry without delay in respect of the allegations relating to the non-payment of the 10,000 peso incentive to several union members and, if it is found that they were denied the incentive because of their trade union membership or activities, to ensure that they are fully paid the same incentive bonus as other workers. It requests the Government to keep it informed of the outcome of the inquiry.

(d) The Committee requests the Government to keep it informed of developments regarding the libel action initiated by Mr Syjuco against Ms Annie Geron for statements made to the press, and to transmit a copy of the Court's judgement as soon as it is handed down.

(e) The Committee requests the Government to institute an independent inquiry without delay into the matter of the dismissal of Ramon Geron and, if it has been found that he was dismissed unfairly, to ensure that he is reinstated in his post with full compensation for lost wages and benefits. It requests the Government to keep it informed of the outcome of the inquiry.

241. The complainant Public Services Labor Independent Confederation (PSLINK) provided additional information in communications dated 2 and 26 June and 12 December 2008. In its communication of 2 June 2008, the complainant indicates that the TESDA director seems determined to frustrate the Committee's decision and use the power of his office to continue to deny the union officials their work and income and to break up the local union SAMAKA TESDA PSLINK, thereby sowing fear in the other members and the rank and file employees of TESDA. In particular, despite writing two letters to draw TESDA's attention to the need to implement the Committee's recommendations, the agency failed to do so. In its communication of 26 June 2008, the complainant forwards the response of the Civil Service Commission (CSC) to the union's letter requesting the CSC to uphold and implement the recommendations of the Committee as well as Resolution No. 080945 of the CSC issued on 22 May 2008. It emerges from the documents forwarded by the

complainant that, following a motion for reconsideration of the CSC Resolution No. 07-1607 of 28 August 2007 – which declared invalid the TESDA orders reassigning the trade union officials to different TESDA provincial and district offices and declared invalid the memorandum of 23 February 2007 dropping Annie Geron from the rolls – the execution of Resolution No. 07-1607 was stayed. Moreover, CSC Resolution No. 08-0945 of 22 May 2008 resolved the motion for reconsideration by modifying the previous CSC Resolution to the effect that while the reassignment of the trade union officials is still declared invalid, the decision to drop Annie Geron along with other officials from the rolls is upheld. The union has apparently filed a motion for reconsideration along with TESDA.

242. *The Committee regrets the decision to drop from the payroll Annie Geron, Mitzi Barreda, Rafael Saus, Luz Galang and Conrado Maraan Jr as well as the absence of information from the Government on measures taken pursuant to the Committee's recommendations and in reply to the follow-up information provided by the complainant. The Committee once again recalls that no person shall be prejudiced in employment by reason of trade union membership or legitimate trade union activities, whether past or present, and that protection against anti-union discrimination should cover not only hiring and dismissal, but also any discriminatory measures during employment, in particular transfers, downgrading and other acts that are prejudicial to the worker. The compensation for acts of discrimination, moreover, should be adequate, taking into account both the damage incurred and the need to prevent the repetition of such situations in the future [see* ***Digest****, op. cit., paras 770, 781 and 844]. The Committee reiterates its previous recommendations and urges the Government to take the relevant steps without further delay to ensure that the transfer orders of the abovementioned individuals have been effectively annulled and that they have been reinstated in their previous posts, in line with the decision of the CSC, and to ensure that they are fully compensated for both the 90-day period of suspension and the period during which they were dropped from the TESDA payroll, as well as any other damages incurred as a result of the invalidated transfers. The Committee requests to be kept informed of developments. With regard to Luz Galang and Conrado Maraan Jr, the Committee further requests the Government to indicate the measures taken to repeal their transfer orders and reinstate them in their previous posts, if they so wish, and compensate them for any wages lost in relation to the transfer.*

243. *Further, given the absence of any information from the Government, the Committee once again requests the Government to institute an independent inquiry without delay in respect of the allegations relating to the non-payment of the 10,000 peso incentive to several union members and, if it is found that they were denied the incentive because of their trade union membership or activities, to ensure that they are fully paid the same incentive bonus as other workers. It requests the Government to keep it informed of the outcome of the inquiry.*

244. *The Committee also reiterates its previous recommendations concerning the right of government officials to organize public meetings, the libel action taken against Ms Annie Geron and the need for an independent inquiry into the dismissal of Ramon Geron and requests the Government to keep it informed of the steps taken in this regard and to provide it with a copy of Memorandum Circular No. 6, series of 1987, regulating the right of government officials to engage in strikes and mass actions. The Committee further requests the Government to provide its observations to the communication from PSLINK dated 12 December 2008.*

Case No. 2291 (Poland)

245. The Committee last examined this case which concerns numerous acts of anti-union intimidation and discrimination, including dismissals, by the management of two companies (Hetman Limited and SIPMA SA), lengthy proceedings and non-execution of

judicial decisions, at its March 2008 meeting [see 349th Report, paras 228–235]. On that occasion, the Committee: (1) noted with interest that the court ordered the reinstatement of both trade unionists, Mr Zenon Mazus and Mr Marek Kozak and requested the Government to indicate the current status of their employment; (2) requested the Government to keep it informed of the progress of the proceedings against 19 senior managers of SIPMA SA enterprise; (3) requested the Government to keep it informed of the outcome of the appeal proceedings in the case of Mr Jan Przezpolewski, the President of Hetman Ltd Management Board, found guilty of malicious and repeated violations of employees' rights, and to transmit a copy of the judgement; and (4) once again requested the Government to carry out an investigation and communicate the findings on the industrial relations climate between SIPMA SA enterprise and the NSZZ "Solidarność" Inter-Enterprise Organization in the Middle East Region and, if the findings demonstrated a need, to intercede with the parties so that the union may exercise its activities without any interference or discrimination by the employer against its members or delegates.

246. In its communication dated 8 September 2008, with reference to the case of the trade unionist Mr Zenon Mazus, the Government recalls that, the regional court in Lublin by its decision of 14 June 2005 dismissed the appeal filed by the respondent (SIPMA SA entreprise) against the decision of the district court in Lublin and adjudged in favour of the plaintiff. On 29 June 2005, SIPMA SA entreprise paid Mr Zenon Mazus the amount of 45,487.83 Polish Zlotych (PLN) gross, corresponding to the full amount of remuneration adjudged by courts of both instances (district court and regional court in Lublin) for the term of unemployment. The employer, however, relieved the worker from his obligation to work until 23 June 2005 while maintaining his right to remuneration and obliging him to remain available under an indicated telephone number on working days and then subsequently, the employer terminated the employment contract of Mr Mazus. The Government underlines that the termination was preceded by a notification of the Employees and Supervision Trade Union of SIPMA SA, which replied that it had no grounds for defending an employee who was not a member of its union. On 30 June 2005, the employer relieved Mr Mazus from the obligation to work as from 14 July 2005 until the end of the termination period, subject to the right to remuneration. By virtue of a judgement of 29 September 2006, the district court in Lublin dismissed the complaint of Mr Mazus regarding reinstatement to work and adjudged an amount of PLN4,245 as a compensation to be paid to the employee by SIPMA SA. This amount was paid by 28 November 2006. The Government confirms that Mr Zenon Mazus is currently not an employee of SIPMA SA.

247. The Government further recalls the history of the case concerning Mr Marek Kozak and adds that on 23 November 2005, Mr Kozak submitted to the employer an offer to terminate his employment contract on terms agreed upon by the parties. An agreement was concluded on 25 November 2005 stipulating that the employment contract would be terminated on 30 November 2005 and that an amount of PLN11,500 would be paid to Mr Kozak, exhausting all claims of the employee in relation to the employer. This amount was paid out by the employer on the date of termination of the employment contract. The Government confirms that Marek Kozak is currently not an employee of SIPMA SA.

248. With regard to the case against 19 senior managers of SIPMA SA, the Government indicates that the proceedings are under way before the district court in Lublin and are subject to continuous administrative supervision by the president of the regional court in Lublin. The Government further explains that 34 court sessions with regard to this case were held in the second half of 2007 and the first half of 2008, during which the court considered the relevant evidence, that 30 witnesses are still to be questioned and that the sequence of the evidence process is not terminated yet. The Government considers that the proceedings are conducted without an unnecessary delay.

249. With regard to Mr Jan Przezpolewski, who was fined and sentenced for one-and-a-half years of suspended custodial sentence by the district court for malicious and persistent infringement of employees' rights at the Hetman Limited entreprise, the Government indicates that this judgement was upheld by the regional court in Elblag.

250. In connection with the recommendation of the Committee to examine the industrial relations climate between SIPMA SA enterprise and the NSZZ "Solidarność" Inter-Enterprise Organization in the Middle Eastern Region, the Government indicates that between 29 July and 1 August 2008, the State Labour Inspectorate (an organ subordinate to the Sejm of the Republic of Poland) conducted an inspection. According to the inspection report, out of 480 employees, 21 are members of the trade union of SIPMA and three are members of the trade union "Solidarność". In respect of the latter organization, the Government refers to the reinstatement case of its member Mr Henryk Jedrejek, who argued to have a right to special protection of the employment relationship under article 32 of the Trade Unions Act and pursuant to the resolution of the Inter-company Committee. While it disagreed with the plaintiff on the question of special protection, by virtue of its judgement of 10 March 2008, the district court in Lublin reinstated Henryk Jedrejek in his functions based on the previous terms of employment without loss of pay. In particular, the court found that on 30 March 2004, due to the decreasing number of its members, the NSZZ "Solidarność", which operated at SIPMA SA, together with organizations operating at the premises of other employers, concluded an agreement on establishing a single organizational structure called the Inter-Entreprise Organization of the NSZZ "Solidarność" for the Central and Eastern Region. Pursuant to this agreement, the current company organizations were turned into circles (the lowest unit of an inter-company organization). The court considered that while pursuant to its statute, the NSZZ "Solidarność" could legally establish such circles, no provision of the union statute provided that circle members shall be protected under article 32 of the Trade Unions Act. According to the court, the union statute did not stipulate that the circle – as the lowest organizational unit – shall have the rights of an executive body of a trade union. Further arguments of the labour court imply that even though the number of three members does not deprive a trade union from the right to conclude an agreement on establishing an inter-company organization to exist as a company organization, it still deprives it of the rights resulting from the Trade Unions Act. The court therefore did not agree with the plaintiff on the question of special protection of the employment relationship. The court reinstated the plaintiff in his functions, given the fact that it had legal doubts on the rights of the structure of the NSZZ "Solidarność" operating at SIPMA SA. In addition, the court already had these doubts when the company organization was still in operation. This was expressed in the suit filed by SIPMA SA to determine if there was an obligation to cooperate with this organization. On 8 March 2005, the regional court discontinued the proceedings in the aforementioned case due to the company organization of the NSZZ "Solidarność" losing its capacity to take part in a civil case. The Government further indicates that SIPMA SA appealed the ruling of 10 March 2008.

251. *The Committee notes the information submitted by the Government with regard to the legal dispute between SIPMA SA enterprise and two trade unionists, Mr Zenon Mazus and Mr Marek Kozak. The Committee notes that on 14 June 2005, the regional court confirmed the decision of the district court ordering reinstatement of Mr Mazus. The Committee further notes that the employer relieved Mr Mazus from the obligation to work justifying that the dismissal was due to a lack of possibility to provide work, and provided a financial compensation. The trade union of SIPMA SA did not find any ground to defend Mr Mazus since he was not a member of this union. On 29 September 2006, the district court in Lublin dismissed the complaint of Mr Mazus regarding his reinstatement to work. The Committee recalls that Mr Mazus was a leader of the NSZZ "Solidarność" trade union in the SIPMA SA enterprise prior to its amalgamation with the NSZZ "Solidarność" Inter-Enterprise Organization of the Middle East Region. 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 edition, 2006, para. 770]. The Committee regrets that SIPMA SA enterprise offered Mr Mazus a financial compensation instead of ensuring his reinstatement in his functions and recalls that no one should be subjected to anti-union discrimination because of legitimate trade union activities and the remedy of reinstatement should be available to those who are victims of anti-union discrimination [see **Digest**, op. cit., para. 837]. With regard to the case of Mr Kozak, the Committee notes that an agreement providing for termination of employment compensation of PLN11,500 was concluded between the worker and the entreprise.*

252. *With regard to the case against 19 senior managers of SIPMA SA, the Committee notes the information provided by the Government indicating that the proceedings are under way before the district court in Lublin and subject to continuous administrative supervision by the president of the regional court in Lublin. The Committee recalls that this case has been pending since 14 October 2003 and once again emphasizes that justice delayed is justice denied [see **Digest**, op. cit., para. 105]. The Committee firmly trusts that the proceedings will be concluded without any further undue delay and requests the Government to keep it informed of the progress made and to transmit a copy of the judgement once handed down.*

253. *With regard to the disputes in the Hetman Limited enterprise, the Committee notes the Government's indication that the regional court in Elblag upheld the district court regarding the case of Mr Jan Przezpolewski who was fined and sentenced to a one-and-a-half year suspended sentence for malicious and persistent infringement of employee rights.*

254. *The Committee notes the information provided by the Government with regard to the findings of the investigation on the industrial relations climate between SIPMA SA enterprise and the NSZZ "Solidarność" Inter-Enterprise Organization in the Middle East Region, conducted by the State Labour Inspectorate (an organ subordinate to the Sejm of the Republic of Poland) between 29 July and 1 August 2008. The Committee requests the Government to keep it informed of the final ruling in the case concerning the dismissal of Mr Henryk Jedrejek, member of the NSZZ "Solidarność" Inter-Enterprise Organization from SIPMA SA enterprise and to keep it informed of his current employment status.*

Case No. 2395 (Poland)

255. The Committee last examined this case, which concerns several freedom of association violations at the Hydrobudowa-6 SA company (decision to discontinue the deduction of trade union fees of the NSZZ "Solidarność" trade union in the enterprise and anti-union dismissals of its chairperson and a member of the executive committee in violation of the relevant legislation and the serious delays in the proceedings concerning their reinstatement) at its March 2008 meeting [349th Report, paras 236–241]. On that occasion, the Committee requested the Government: (1) to indicate the exact grounds justifying the unilateral termination of the check-off facility at the Hydrobudowa-6 SA; (2) to keep it informed of the progress of the legal proceedings concerning the two dismissed trade union leaders, Mr Henryk Kwiatkowski and Mr Sylwester Fastyn and to transmit the decision of the Appellate Court in the case of Mr Fastyn and the Decision of the Supreme Court in the case of Mr Kwiatkowski; and (3) to keep it informed of the outcome of the discussions on developing rapid and impartial procedures providing effective protection to trade union members and leaders by the team for the labour code and collective bargaining.

256. In its communications dated 1 and 8 September 2008, with regard to the decision of the Supreme Court in the case of Mr Kwiatkowski, the Government states that by its decision of 29 January 2007, the Supreme Court rejected the appeal filed by Mr Kwiatkowski

against the decision of the Appellate Court (the Regional Court Warsaw – Praga), which reversed the decision of the District Court for Warsaw Praga reinstating Mr Kwiatkowski. Pursuant to article 398(9), paragraph 2, of the Code of Civil Procedure in force at the time, the ruling of the Supreme Court contains no reasons justifying its decision. The Government explains that this article was repealed on 30 May 2007 by the Constitutional Tribunal.

257. With regard to the case of Mr Fastyn, the Government indicates that the Regional Court Warsaw – Praga dismissed the appeal of the respondent against the judgement of the District Court for Warsaw Praga North in Warsaw in the case concerning the petition for reinstatement to work addressed against a former employer Hydrobudowa-6 SA. Therefore, this case is legally settled. However, the respondent still has the right to file a last resort appeal to the Supreme Court.

258. *The Committee notes that the Supreme Court rejected the appeal filed by Mr Kwiatkowski against the decision of the Appellate Court which reversed the decision of the District Court ordering his reinstatement. The Committee notes that the Supreme Court decision transmitted by the Government is not motivated. Referring to its March 2008 examination of this case [see 344th Report, para. 190], the Committee therefore once again requests the Government to transmit the decision of the Appellate Court.*

259. *With regard to the case of Mr Fastyn, the Committee understands that the District Court for Warsaw Praga North seems to have pronounced the reinstatement of Mr Fastyn (plaintiff) in his functions; this decision was appealed by the employer (respondent), but the appeal was dismissed by the Regional Court Warsaw – Praga. Thus, the Committee requests the Government to indicate whether Mr Fastyn has been reinstated pursuant to the decision of the District Court and whether an appeal was filed by the employer to the Supreme Court.*

260. *Noting with regret that no other information has been provided with regard to recommendations (1) and (3) above, the Committee once again requests the Government to indicate the exact grounds justifying the unilateral termination of the check-off facility at the Hydrobudowa-6 SA and refers the matters relating to the need to develop rapid and impartial procedures providing effective protection to trade union members and leaders to the Committee of Experts on the Application of Conventions and Recommendations.*

Case No. 2474 (Poland)

261. The Committee last examined this case at its March 2008 session [see 349th Report, paras 242–252]. On that occasion, the Committee expressed the regret that no decision had yet been reached in the case of the termination of the employment contract of Mr Zagrajek, trade union leader at Frito Lay Ltd, filed in December 2005. Expecting that this case would be decided without further delay, the Committee requested the Government to keep it informed of the final outcome. The Committee further requested the Government to provide the decisions of the District Prosecutor's and District Court for the Capital City of Warsaw, which had both concluded that there was an absence of any violation of trade union rights at Frito Lay Ltd. It also requested the Government to continue providing information on concrete measures taken to ensure that the principles of freedom of association and collective bargaining are applied adequately, particularly as regards the effective recognition of unions and the provision of adequate protection against acts of anti-union discrimination and interference, as well as to provide information on any progress reached with regard to the development of an impartial and independent method for verifying trade union representativeness, in consultation with the social partners.

262. In its communication dated 1 September 2008, with reference to the case filed by Mr Zagrajek, the Government indicates that in 2008, the District Court in Pruszków held three evidentiary hearings. The last session set for 3 July 2008 did not take place, due to illness of the reporting judge. It is expected that this case will be settled before the first instance Court before the end of 2008. The Government transmits copies of the decisions of the District Prosecutor and of the District Court for the Capital City of Warsaw concerning the alleged violations of trade union rights at the Frito Lay Ltd.

263. *The Committee notes the information provided by the Government and the abovementioned decisions. With regard to the case of Mr Zagrajek, once again, regretting a lengthy delay in concluding the proceedings in this case, the Committee expects that the Government will be in the position to provide information on its final outcome in the very near future.*

264. *Noting with regret that no information has been provided with regard to its other outstanding recommendations, the Committee observes that similar matters are being raised by the Committee of Experts on the Application of Conventions and Recommendations and refers the follow-up of those legislative aspects to it.*

Case No. 2380 (Sri Lanka)

265. The Committee last examined this case at its March 2008 meeting. On that occasion, the Committee, recalling that justice delayed was justice denied, once again requested the Government to keep it informed of developments with regard to the case concerning 202 workers dismissed following a strike and the four cases of individual dismissal before the labour tribunal, all of which were still pending, and to transmit copies of the decisions as soon as they were handed down. It further requested the Government to transmit a copy of the labour tribunal's decision to dismiss Ms Chathurika's application on grounds of long absenteeism, and to ensure that the branch of the Free Trade Zones and General Services Employees' Union at Workwear Lanka (Pvt.) Ltd may exercise its activities, even if it did not represent 40 per cent of the workers concerned [see 349th Report, paras 279–284].

266. In its communication of 28 July 2008, the Government states that the case before the Commissioner concerning the dismissal of 202 workers was about to be concluded when the Free Trade Zones and General Services Employees' Union withdrew the case in relation to 127 employees, without giving any valid reason. The Government states that at the time the case was brought before the Commissioner, the union had also applied to the labour tribunal on behalf of the same employees concerning their termination of employment. After having withdrawn the case, which was brought under the Termination of Employment of Workmen Act, the union now wished to pursue the matters contained therein before the labour tribunal; however, the Government possessed no information as to whether an action before the labour tribunal had been initiated.

267. The Government provides a translated copy of the labour tribunal's 15 August 2008 decision to dismiss the application of one dismissed worker, Ms Chathurika, due to long absenteeism. The decision indicates that its dismissal of Ms Chathurika's application was due to the latter's failure to appear before the labour tribunal on three separate occasions.

268. As concerns the Committee's previous comments concerning the branch of the Free Trade Zones and General Services Employees' Union at Workwear Lanka (Pvt.) Ltd, the Government states that no branch of the above union presently exists at the workplace. Over 90 per cent of the workforce in Workwear Lanka (Pvt.) Ltd are members of the Workwear Lanka (Pvt.) Ltd Workers Council Trade Union, and the remainder do not belong to any trade union. Finally, as concerns the Committee's previous comments on the legislation, the Government indicates that the question of a 40 per cent threshold for recognition for collective bargaining purposes was placed before the National Labour

Advisory Council (NLAC) and the Labour Law Reform Committee. In the deliberations that took place in these forums the employers' organizations came out against a reduction of the existing 40 per cent requirement, while the trade unions were not unanimous in their opinions.

269. *The Committee notes the above information, and in particular that the case before the Commissioner concerning the dismissed workers had been withdrawn by the union, which intended to pursue the matters raised in that case before the labour tribunal. Noting that four other cases of individual dismissal were pending before the labour tribunal, the Committee once again recalls that the use of extremely serious measures, such as dismissal of workers for having participated in a strike and refusal to re-employ them, implies a serious risk of abuse and constitutes a violation of freedom of association [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth edition, 2006, para. 666]. Further recalling that, where cases of alleged anti-union discrimination are involved, the competent authorities dealing with labour issues should begin an inquiry immediately and take suitable measures to remedy any effects of anti-union discrimination brought to their attention [see* ***Digest****, op. cit., para. 835], the Committee expects that the labour tribunal will process these cases without delay and that, if the allegations of anti-union discrimination are confirmed, to ensure that the workers dismissed as a result of their legitimate trade union activities are reinstated without loss of wages and without delay or, if reinstatement in one form or another is not possible, that they are paid adequate compensation so as to constitute sufficiently dissuasive sanctions. The Committee requests to be kept informed of developments in this regard.*

270. *The Committee notes the Government's indication that the branch of the Free Trade Zones and General Services Employees' Union at Workwear Lanka (Pvt.) Ltd no longer exists. The Committee recalls, in this respect, that since its first examination of the case in March 2005, it had urged the Government to take without delay the necessary steps to ensure that a procedure on the allegations of anti-union discrimination be opened and be brought to a speedy conclusion [see 336th Report, para 795], and had on several occasions since urged the Government to ensure that the competent authorities immediately begin an inquiry and take suitable measures to remedy any effects of anti-union discrimination brought to their attention [see, 344th Report, para 197]. In view of the fact that no such investigations had yet been initiated, the Committee regrets that the absence of the union concerned from the employer's workplace may indeed be due to acts of anti-union discrimination. It requests the Government to indicate whether the Workwear Lanka (Pvt.) Ltd Workers Council Trade Union, which represents over 90 per cent of the workers in the workplace concerned, has concluded a collective bargaining agreement with the employer and, if so, to transmit a copy of the said agreement.*

Case No. 2419 (Sri Lanka)

271. The Committee last examined this case at its March 2008 meeting. On that occasion the Committee regretted that, although the workers concerned were either dismissed or locked out in January 2005 and arbitration procedures commenced in June 2005, the latter had yet to be concluded. It once again expressed the hope that the arbitration procedure would be concluded without delay and, if the allegations of anti-union discrimination were confirmed, that the arbitration award would include suitable measures to remedy any effects of anti-union discrimination including, in light of the closing of the factory, ensuring full compensation such as to constitute a dissuasive sanction against any recurrence of such acts. The Committee further requested the Government to keep it informed in this respect [see 349th Report, paras 285–287].

272. In a communication of 21 July 2008, the Government states that the arbitration procedure was concluded on 14 March 2008 and that the 86 workers concerned were each granted compensation comprising six months' wages – 40,500 rupees. A copy of the arbitration award is attached to the Government's communication. The Government further indicates that the company's management staff are expatriates and had left Sri Lanka; steps have been taken however to determine their location in order to execute the award.

273. *The Committee takes note the above information. Noting the difficulties arising from the fact that the company's management have left Sri Lanka, the Committee trusts that the Government will take all necessary measures to ensure the execution of the arbitration award.*

Case No. 2171 (Sweden)

274. The Committee last examined this case at its March 2008 session [see 349th Report, paras 288–290]. On that occasion, the Committee noted with deep regret that, in spite of its recommendation for a negotiated solution to be found in the near future with regard to the statutory amendment of collective agreement clauses on compulsory early retirement, the Government had declared its categorical intention not to take any further action in this respect. In this regard, the Committee once again strongly urged the Government to pursue in a meaningful manner negotiations with the social partners concerned so as to determine a solution acceptable to all concerned, particularly as regards the application of those agreements which may still be in force and which are not in conformity with the statutory retirement age and to keep it informed of all the steps taken in this respect.

275. In a communication dated 10 March 2008, the complainants state that the legislated mandatory retirement age, which came into force by virtue of the amended Swedish Employment Protection Act (LAS) of May 2001, has affected collective bargaining because it does not contain any provisions regarding a compulsory retirement age other than 67. According to the complainants, most collective agreements, covering almost the entire private and public sectors, have come to abide by the Government's reasoning. In reality, the social partners have not had much choice, as they otherwise would run the risk of a court finding the collective agreement retirement provisions to be void.

276. Furthermore, the complainants state that there are still some collective agreements that contain provisions establishing a different compulsory retirement age; for example, the retirement age for blue-collar workers in the paper and forest industries and the wood processing industry is set at 65. The complainants indicate that the Government's reluctance to remedy the situation had led to unacceptable legal uncertainties for the trade union, employers and employees. They conclude that the Government's intervention has come to limit the scope of collective bargaining and undermined the trust in the collective bargaining system.

277. In communications dated 10 April 2008 and 24 February 2009, the Government states that it does not wish to make any further comments in addition to those expressed in earlier communications to the ILO regarding this case.

278. *The Committee notes with deep regret that, in spite of its recommendation for a negotiated solution to be found in the near future with regard to the statutory amendment of collective agreement clauses on compulsory early retirement, the Government has not provided any further information on efforts made in this respect. The Committee recalls that at its first examination of the case, it had concluded that a legislatively imposed measure such as the amendment challenged in the present case, which had been imposed against the will of all social partners, amounted to reversing unilaterally a system accepted by the social partners and substantially restricted the scope of bargaining.*

279. *Emphasizing the importance it attaches to the promotion of dialogue and consultations on matters of mutual interest between the public authorities and the most representative occupational organizations of the sector involved [see **Digest**, op. cit., para. 1067], the Committee once again strongly urges the Government to pursue in a meaningful manner negotiations with the social partners so as to determine a solution acceptable to all concerned, particularly as regards the application of those agreements which may still be in force and which are not in conformity with the statutory retirement age. The Committee requests to be kept informed of all steps taken in this respect.*

Case No. 2466 (Thailand)

280. The Committee last examined this case, which concerns acts of anti-union discrimination – including dismissal, threats of termination to pressure employees to resign from the union, and other acts intended to frustrate collective bargaining – at its June 2008 meeting. On that occasion, the Committee, while noting with interest that union President Paiyasen and Treasurer Jarusuwanwong had been reinstated with back pay, regretted that the Government provided no information on the two other union officials dismissed by the employer, or any information concerning those employees who had resigned from the union upon pain of termination. It once again requested the Government to secure without delay the reinstatement with back pay of the two other dismissed union officials and ensure that those employees who had resigned from the union may resume their membership in the union free of the threat of dismissals or any other form of reprisal. Further noting that the employer's appeal to the Supreme Court of the Central Labour Court's March 2006 decision (upholding Order No. 54–55/2006 of the Labour Relations Committee, which found that the union President and Treasurer had been unfairly dismissed) was still pending, the Committee requested the Government to submit a copy of the Supreme Court decision once it was handed down [see 350th Report, paras 208–210].

281. In a communication of 23 September 2008, the Government indicates that the employer had withdrawn its appeal to the Supreme Court of the Central Labour Court's March 2006 decision. As concerns the two other dismissed union officials, the Government indicates that they had been informed by the labour inspector to submit an unfair labour practices complaint, but decided not to exercise their right to do so.

282. *The Committee notes the Government's indication that the employer had withdrawn its appeal of the Central Labour Court's March 2006 decision (which in turn upheld Order No. 54–55/2006 of the Labour Relations Committee ruling that the union President and Treasurer had been unfairly dismissed). However, the Committee regrets that, as concerns its previous recommendations respecting the two other dismissed union officials, the Government confines itself to stating that the latter were invited to file a complaint, but declined to do so. Noting that it has now been over four years since the dismissals occurred, the Committee, recalling once again that justice delayed is justice denied, urges the Government to ensure the reinstatement of the two union officials without loss of wages, if they still so wish. If reinstatement is not possible, the Committee requests the Government to ensure that the two union officials are provided with adequate compensation so as to constitute sufficiently dissuasive sanctions against acts of anti-union discrimination. Finally the Committee, regretting that the Government has again failed to provide any information respecting those employees who were pressured to resign from the union, once again requests the Government to ensure that those employees who had resigned from the union may resume their membership in the union free of the threat of dismissals or any other form of reprisal. The Committee requests to be kept informed of developments in this regard.*

Case No. 2537 (Turkey)

283. The Committee last examined this case at its March 2008 meeting [see 349th Report, paras 291–297]. On that occasion, the Committee requested the Government to take all necessary measures to ensure that the lost membership of Yapi-Yol Sen (due to the closure of the Directorate General of Rural Services and the transfer of its staff to the municipalities of Istanbul and Kocaeli, which led to a change of the branch under which trade unions may be legally established and the automatic termination of trade union membership and the check-off system) is immediately restored and the check-off system reinstated. The Committee also expressed the hope that the Council of State, further to the appeal lodged by the complainant organization in the present case, would take into consideration the principles of freedom of association embodied in Convention No. 87 when it issues its decision.

284. In a communication dated 1 September 2008, the Government indicates that the list of branches of service of public servants' trade unions has been amended (amendment published in the *Official Gazette* of 2 August 2005, No. 25894, and annexed to the "Regulation on the Determination of Branches of Services of Public Organizations and Agencies covered by the Public Servants' Unions Act") so that the phrase "Directorate General of Rural Services" was deleted. Consequently, the personnel of the Directorate General of Rural Services, who are transferred to municipalities and provincial administrations, may join a union established in the branch of service of "Local Services" and the membership fees shall not be deducted for a union which no longer has any members. The Government adds that, pursuant to the appeal filed by the complainant Yapi-Yol Sen to the General Assembly of the Administrative Dispute Chamber of the Council of State, this body issued a decision on 13 March 2008 which annulled the decision previously rendered by the Tenth Chamber of the Council of State on the ground that the previous decision rejecting the complainant's appeal endangered the rights and interests of the appellant. The judicial process is still under way and information will be provided on the developments.

285. *The Committee notes with interest that the General Assembly of the Administrative Dispute Chamber of the Council of State annulled the decision previously rendered by the Tenth Chamber of the Council of State and which had rejected the appeal filed by the complainant Yapi-Yol Sen, and that the judicial process is still under way. The Committee requests the Government to keep it informed of the outcome and trusts that, in rendering its decision, the General Assembly of the Administrative Dispute Chambers of the Council of State will take into consideration the principles of freedom of association embodied in Convention No. 87 so that the lost membership of Yapi-Yol Sen is immediately restored and the check-off system reinstated.*

Case No. 2501 (Uruguay)

286. The Committee last examined this case, involving allegations of anti-union persecution against members of the Montevideo Teachers' Association (ADES), at its November 2007 meeting [see 348th Report, paras 1147–1165]. On that occasion, the Committee expected that the investigations under way would determine why the management of Liceo No. 4 in Montevideo had imposed sanctions and taken various measures against the members of ADES mentioned by name in the complaint, and requested the Government, if they were found to have occurred for anti-union reasons, to take measures to lift them immediately. Furthermore, the Committee hoped that the proceedings would be concluded very soon, and asked the Government to keep it informed of the final result of the investigations under way and of any related appeals lodged.

287. In a communication dated 26 August 2008, the Government states the following regarding the actions carried out before the Secondary Education Council (CES) as a result of the complaints lodged against the teachers Dinorah Siniscalchi, Pedro Balbi, Adriana Romano, Winston Mombrú and Fernando Moreno, which led to them being "prejudiced in their employment as a consequence of the normal exercise of trade union activities", the legal basis of which is provided by Article 4(1) and (2) of ILO Convention No. 151:

– *Administrative investigation carried out at Liceo No. 4, in the light of the events involving Dinorah Siniscalchi*: (a) the procedure followed was in accordance with Ordinance No. 10; (b) cause: the head teacher of Liceo No. 4 issued a verbal warning to the teacher in question after she made statements of a political nature in her classroom, commenting that the father of a female student (complainant) was a National Party candidate; (c) the CES annulled the warning issued by the head teacher and started an administrative investigation to determine responsibility; (d) as a result of that investigation, it was found that the teacher was responsible for a violation of the Teaching Staff Rules as regards the requirement to remain fit to perform her duties and carry out her duties in a dignified, effective and responsible manner, as well as complying and ensuring compliance with the legal provisions and rules of the teaching body and respecting the hierarchical order (section 3(a) and (g)); the CES disciplined the teacher by issuing a written warning, to be noted on her record (section 66(b) of the Teaching Staff Rules); and (e) it was not the head teacher who disciplined the teacher but rather the CES itself, following an administrative investigation.

– *Pre-trial proceedings against Pedro Balbi*: (a) these disciplinary proceedings were instituted in the light of certain incidents involving Mr Balbi, including physical and verbal aggression directed at the head teacher on the steps of Liceo No. 4 in front of teachers and students, this being proved during the first stage of the procedure; (b) Mr Balbi's behaviour was a clear violation of the duties of a teacher (section 3(a) and (g) of the Teaching Staff Rules) and he was consequently suspended by the CES for 15 days; and (c) the proceedings were conducted in accordance with the established rules and the teacher enjoyed all the guarantees of due process. He thus had recourse to the respective administrative channel through which he could have challenged the outcome of the proceedings.

– *Teaching performance scores awarded to teachers Adriana Romano, Dinorah Siniscalchi, Pedro Balbi, Winston Mambrú and Fernando Moreno*: (a) the complainant believes that the scores awarded to the teachers by the management for the 2004 and 2005 periods constituted a violation of freedom of association; the teachers were being victimized because their annual assessment scores had been reduced, and this clearly constituted persecution; (a) (1) when assessing teachers, the management use the same assessment form for all staff members. This form refers only to educational and pedagogical matters. Assessments carried out by the management cover issues regarding teaching performance and duties, and never refer to trade union membership or activity; (a) (2) the scores awarded did not in any way prejudice the teachers concerned. First, the assessment is preliminary in nature and may be challenged by the party concerned. Secondly, if the teacher objects to the assessment, the head teacher considers the objection and, if necessary, refers it to the relevant assessment board so that it can be evaluated and confirmed or adjusted. If the original score is upheld and confirmed by the CES, the party concerned has recourse to the relevant administrative channel and, if necessary, may take his case to the Administrative Tribunal. In the case of the teachers in question, none of them were prejudiced in terms of their position on the grade scale.

288. According to the Government, the sanctions imposed against Pedro Balbi and Dinorah Siniscalchi were the result of a disciplinary procedure provided for under the regulations governing the administration and adopted by the CES, in accordance with the powers granted by the constitution and by law. The scores awarded to the teachers by the head teacher were determined by their teaching performance, not their union membership, and their placement on the professional grade scale was in no way affected by their annual assessment scores. The secondary education authorities exercised due oversight over the management's disciplinary procedures, in accordance with the Teaching Staff Rules (the relevant and definitive ordinances within the constitutional order), and the teachers enjoyed all the guarantees afforded by the rule of law regarding their right to a defence should they have grievances concerning any decisions by the CES. Consequently, the trade union's claim that there is an institutional strategy aimed at limiting the exercise of freedom of association cannot be considered valid. On the contrary, the existence of trade union posters, the recognition of trade unions by the authorities, the "clear lines of trade union communication" between the central trade union body and branches in schools, the holding of teaching staff assemblies, and so on, are all proof of the constitutional guarantees in place. Furthermore, these elements also serve to show that the very highest authorities are doing all that they can to ensure that freedom of association is respected. Moreover, the complainants have recourse to legal remedies in defence of their rights.

289. The Government states that: (a) under the terms of the ruling issued by the General Inspectorate of Labour and Social Security, the trade union's claim that there is an institutional strategy in place aimed at limiting the exercise of freedom of association cannot be considered valid for the reasons given in the ruling; (b) however, the General Inspectorate of Labour and Social Security has informed the National Public Education Administration–Secondary Education Council (ANEP–CES) that, when the compulsory preliminary assessment system was implemented by management, no thought was given to the special situation that prevailed at Liceo No. 4 and, as a result, the fundamental rights of the teaching staff as a whole were undermined, especially those of employees who resorted to force, directly affecting the working environment; and (c) owing to this method of assessment, a high-ranking management team, which had to address critical situations that brought into question its approach, carried out assessments of the work of the teachers involved (in accordance with the Teaching Staff Rules) when it was clear that that team lacked the "technical objectivity" required for the task.

290. *The Committee takes note of this information.*

Case No. 2160 (Bolivarian Republic of Venezuela)

291. In its previous examination of the case in November 2007, the Committee made the following recommendations [see 348th Report, para. 181]:

> The Committee once again requests the Government to indicate whether trade unionist Mr Otiel Montero has initiated legal action in connection with his dismissal. The Committee reiterates its previous recommendations in which it stressed that the allegations date back to 2001 and that justice delayed is justice denied. The Committee firmly trusts once more that the judicial authorities will hand down their ruling on the dismissal of the trade unionists, Mr Guido Siviria and Mr Orlando Acuña, in the very near future and requests the Government to communicate the ruling as soon as it is handed down.

292. In its communication of 7 October 2008, the Government states that the Trade Union of Revolutionary Workers of the New Millennium of the INLACA Corporation (of which these trade unionists were members) submitted a list of members which did not contain the minimum number of 40 members' names required to form an association, and that the

labour inspection authority set a deadline of 30 days to remedy that situation and refused to register the union for failing to do so.

293. *The Committee wishes to recall that the questions which remained pending concern not the registration of the union but the dismissal of three trade union members, who had initiated legal proceedings against dismissal (Otiel Montero, Guido Siviria and Orlando Acuña). The Committee reiterates its request to the Government to send the text of the relevant rulings. The Committee greatly regrets that, despite the fact that the allegations date from 2001, it still does not know whether or not rulings on those dismissals have been handed down, and once again draws the Government's attention to the fact that justice delayed is justice denied.*

Case No. 2579 (Bolivarian Republic of Venezuela)

294. In its previous examination of the case in June 2008, the Committee made the following recommendations on the question still pending, which concerned the refusal by the authorities of the Ministry of Education and Sport to negotiate the draft Fifth Collective Labour Agreement with the eight national federations [see 350th Report, para. 1701]:

> Reminding the Government of the obligation to promote collective bargaining under the terms of Article 4 of Convention No. 98, the Committee requests it to take initiatives without delay to facilitate negotiation of the Fifth Collective Labour Agreement with the eight federations in the sector (education and sport).

295. In its communication of 7 October 2008, the Government states that it reiterates its previous statements (made in the previous examination of the case) in which it provided broad and detailed information on the procedure that must be followed for the presentation and subsequent negotiation of draft collective agreements. The Government emphasizes that the reply in question was based on labour laws in force, which guarantee the exercise of the right to legal defence and due process of law, these being the foundations of the democratic State, based on the rule of law and social rights in which workers can effectively carry on trade union activity in the private and collective spheres.

296. *The Committee wishes to recall that in its previous examination of the case, it pointed out to the Government that the requirement of excessive legal formalities in the context of broad bargaining processes (which in the present case involves eight federations) may be contrary to the principle of the promotion of collective bargaining set out in Article 4 of Convention No. 98. The Committee had regretted that the Ministry of Education and Sport did not extend the statutory time limit for the rectification of errors and omissions to which it refers [see 350th Report, para. 1699].*

297. *Likewise, in its previous examination of the case, the Committee requested the Government to take initiatives without delay to facilitate negotiation of the Fifth Collective Labour Agreement with the eight federations in the sector. The Committee regrets that the Government confines itself to reiterating the statements it made in September 2007, and that it has disregarded the Committee's recommendation to facilitate negotiation of the Fifth Collective Labour Agreement. The Committee urges the Government once again to take measures in this regard.*

* * *

298. 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
2086 (Paraguay)	June 2002	June 2007
2252 (Philippines)	November 2003	June 2008
2257 (Canada)	November 2004	June 2006
2292 (United States)	November 2006	November 2008
2295 (Guatemala)	November 2008	–
2304 (Japan)	November 2004	November 2008
2330 (Honduras)	November 2004	June 2008
2435 (El Salvador)	June 2007	June 2008
2447 (Malta)	June 2006	November 2008
2448 (Colombia)	March 2007	March 2008
2460 (United States)	March 2007	November 2008
2477 (Argentina)	June 2007	June 2008
2489 (Colombia)	March 2008	November 2008
2490 (Costa Rica)	November 2008	–
2517 (Honduras)	November 2007	June 2008
2523 (Brazil)	June 2007	June 2008
2525 (Montenegro)	June 2007	November 2008
2532 (Peru)	March 2008	November 2008
2540 (Guatemala)	November 2008	–
2547 (United States)	June 2008	–
2556 (Colombia)	March 2008	November 2008
2558 (Honduras)	June 2008	–
2561 (Argentina)	March 2008	November 2008
2566 (Islamic Republic of Iran)	November 2008	–
2568 (Guatemala)	November 2008	–
2569 (Republic of Korea)	November 2008	–
2573 (Colombia)	November 2008	–
2575 (Mauritius)	March 2008	November 2008
2578 (Argentina)	June 2008	–
2582 (Bolivia)	November 2008	–
2584 (Burundi)	June 2008	–
2598 (Togo)	November 2008	–
2599 (Colombia)	November 2008	–
2603 (Argentina)	November 2008	–
2605 (Ukraine)	November 2008	–
2607 (Democratic Republic of the Congo)	November 2008	–
2611 (Romania)	November 2008	–
2616 (Mauritius)	November 2008	–
2618 (Rwanda)	November 2008	–
2622 (Cape Verde)	November 2008	–
2632 (Romania)	November 2008	–

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

300. In addition, the Committee has just received information concerning the follow-up of Cases Nos 2068 (Colombia), 2139 (Japan), 2173 (Canada), 2228 (India), 2229 (Pakistan), 2249 (Bolivarian Republic of Venezuela), 2268 (Myanmar), 2275 (Nicaragua), 2297 (Colombia), 2338 (Mexico), 2354 (Nicaragua), 2382 (Cameroon), 2383 (United Kingdom), 2384 (Colombia), 2390 (Guatemala), 2413 (Guatemala), 2423 (El Salvador), 2428 (Bolivarian Republic of Venezuela), 2433 (Bahrain), 2439 (Cameroon), 2455 (Morocco), 2480 (Colombia), 2483 (Dominican Republic), 2502 (Greece), 2512 (India), 2536 (Mexico), 2550 (Guatemala), 2583 (Colombia) and 2591 (Myanmar), which it will examine at its next meeting.

CASE NO. 2606

DEFINITIVE REPORT

Complaint against the Government of Argentina presented by the Association of State Workers (ATE)

Allegations: The complainant organization alleges that it has been excluded from the wage bargaining process and that agreements have been reached with only one public sector trade union, even though the ATE has official trade union status

301. The complaint is contained in a communication from the ATE dated October 2007. The ATE presented further allegations in a communication dated May 2008. The Government submitted its observations in a communication dated 17 October 2008.

302. Argentina 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

303. In its communication of October 2007, the Association of State Workers (ATE) presented a complaint against the Government of Argentina concerning the violation of ILO Conventions Nos 87, 98, 151 and 154 as a result of the violation of the right of collective bargaining for national civil servants. The ATE states that it is a first-level trade union with official trade union status (No. 2), operates throughout the territory of Argentina, and is affiliated to the Confederation of Argentine Workers (CTA), a third-level trade union organization registered under No. 2.027. The ATE sets out the constitutional and legal provisions that guarantee trade unions the right to collective bargaining and freedom of association as a fundamental right. The ATE alleges that, despite this formal protection of the right to collective bargaining, the Government, during collective wage talks with civil servants, practised discrimination, and obstructed and ultimately abandoned collective bargaining, in flagrant violation of ILO Conventions Nos 87, 98, 151 and 154.

304. Specifically, the ATE states that, in the context of open collective bargaining between the Government, as employer, and the National Civil Servants' Union (UPCN) and the ATE, representing employees, a collective labour agreement for the national civil service was signed on 29 December 2005 and later approved by Decree No. 214/06, which contains provisions relating to the negotiation of sectoral collective agreements within the overall framework of the general collective agreement.

305. With regard to collective wage bargaining, the collective labour agreement (Decree No. 214/06) provides that: *"The staff member's remuneration shall comprise a base amount, an amount reflecting his or her grade or equivalent, plus any additional payments, supplements, bonuses and incentive payments that correspond to his or her category, in accordance with the regulations laid down in the sectoral agreements …"* (section 148). In other words, pay is subject to sectoral bargaining on the basis of the wage standards and structure outlined in the general collective labour agreement. Furthermore, in order to ensure that pay levels can still be negotiated to reflect current inflation and the consequent decline in real wages, the agreement allows for a six-monthly review, so that amendments can be made to the text of the agreement without terminating it (section 80(e)).

306. Therefore, although the general collective agreement was signed in December 2005, the parties called for a pay review in May 2006 and May 2007. In this regard, the ATE has always argued that the starting point of any such review must be the minimum wage provided for in the Constitution and defined in section 116 of the Employment Contracts Act (Act No. 20744), that is, the amount needed to ensure that all workers and their families have access to adequate food, decent housing, education, clothing, health care, recreation, transportation, holidays and social security. In other words, the starting point for any wage negotiations must be the minimum amount provided for by law and by the Constitution, which was estimated in December 2006 at 2,513 pesos, as had been stated by the CTA in the National Wage Council.

307. According to the ATE, the first stage in a wage negotiation process should be joint meetings aimed at reaching a negotiated agreement on the wage review. However, on 19 April 2006, the Government, represented by the President of Argentina, and the UPCN, as a representative union, held an official press conference at Government House announcing a 19 per cent wage increase for civil servants, to be implemented in the form of a 10 per cent increase with effect from June 2006 and a 9 per cent increase with effect from August the same year. In other words, without engaging in a bargaining process and without consulting the ATE, which is a signatory to the general collective agreement and a member of the general negotiating committee, the Government, having consulted only one of the parties (the UPCN), announced a wage increase.

308. According to the ATE, it is clear that this wage increase was imposed because on 21 April 2006, two days after the 19 per cent increase was announced in the press, it was invited to attend a meeting at the Ministry of Labour, Employment and Social Security, where it was expected to sign a document outlining the wage increase and thereby endorse the wage deal that had been imposed. At the meeting, after the ATE stated its objections to and rejection of the Government's position, the Ministry of Labour refused to allow the ATE's position to be reflected in the record of the meeting, which had to be set out in a separate document. It is clear that there was no collective wage bargaining for 2006 in the national public sector, and that this 19 per cent wage increase for civil servants was quite simply imposed by the Government.

309. The ATE, reiterating that collective bargaining must be free and that the starting point for negotiations should be the minimum wage established by law and by the Constitution, adds that with the onset of 2007 and the need to carry out a wage review for that year, the ATE

and the civil servants were once again denied their right to negotiate freely. Adopting the same approach as in 2006, the President of Argentina and the Secretary-General of the UPCN, among other unions, on 20 April 2007 announced a 16.5 per cent wage increase for civil servants, to be implemented in the form of a 10 per cent increase effective as from June 2007 and a further 6.5 per cent increase effective as from August. Once again, without any form of bargaining and without the signatories to the general collective agreement being invited to negotiate a fair wage increase for civil servants, the 16.5 per cent increase was imposed following its announcement in the media on 20 April 2007, as the attached documentation makes clear.

310. In this regard, a week after that announcement was made, on 3 May 2007, the parties were called to the Ministry of Labour, Employment and Social Security to sign a document accepting the increase which had been announced a few days earlier. The ATE reiterated its rejection of the procedure adopted by the Government but, as at the 2006 meeting, was denied the opportunity to place its views on record and had to set out its position in a separate document.

311. According to the ATE, the position adopted by the Government constitutes a systematic violation of freedom of association and collective bargaining. First, there has been a denial of the right to free collective bargaining. Second, there has been an absence of formal collective bargaining, an agreement being reached informally with only one of the unions concerned, which violates the principle of bargaining in good faith and discriminates against one of the representative unions. Third, there has been no sectoral collective bargaining, which means that sectors have been unable to discuss and negotiate the most favourable wage conditions.

312. As has been noted, the practice systematically adopted by the Government of Argentina in these two sets of pay negotiations for civil servants has been as follows: (a) to announce the wage increase for civil servants in the media; (b) to call a meeting of the general negotiating committee to "rubber stamp" the announced increase; and (c) to call on meetings of the sectoral negotiating committees to implement the increase. No in-depth analysis is required to conclude that there is de facto an absence of collective wage bargaining in the public sector.

313. There is indeed a de facto denial of the right to collective wage bargaining, and hence there is no suitable negotiation forum in which the parties could express their views on the wage increase for the year in question. Instead, wage increases previously announced in the media have been imposed arbitrarily and without justification, in violation of the employees' right to negotiate. This is how the Government has fixed the wage ceilings for 2006 and 2007, without giving civil servants the opportunity to discuss collectively the wage policies that affect them.

314. The ATE considers this to be quite simply a refusal to allow collective wage bargaining for civil servants, as well as being a violation of the duty to negotiate in good faith. The ATE believes that, as the ILO has stated, the principle of bargaining in good faith involves recognizing representative organizations, making every effort to reach an agreement, engaging in genuine and constructive negotiations, avoiding unjustified delays in the negotiations, and respecting commitments undertaken, taking into account the results of negotiations made in good faith. The Government, as the employer, decided to exclude the ATE from the agreements, which constitutes discriminatory treatment. Indeed, the employer, rather than holding negotiations in accordance with the principle of representation that it itself acknowledged in the general negotiating committee for the general collective agreement No. 214/06, bypassed the ATE and chose instead to deal with another union. Although the collective agreement provides that both the ATE and UPCN should be involved in the negotiation of any wage agreements for the national civil service,

the wage increases were announced with the consent of only one of the parties. In this regard, the Government, as the employer, circumvented the general negotiating committee by agreeing on an inadequate wage increase with another trade union without consulting the ATE or the workers, which constitutes discrimination.

315. The ATE indicates that, following the media announcements and a meeting of the general negotiating committee at which the announced increase was imposed without the ATE having any opportunity to negotiate or even to place its views on record, the Government convened sectoral negotiating committees with a view to concluding similar agreements and pursuing its economic policy. The meetings of the sectoral negotiating committees were all held at the same time, on 10 May 2006 and 22 May 2007, and at no time was the ATE given the opportunity to express its views. Collective bargaining in the civil service sectors has been blocked as a result of the imposition of a wage by the general negotiating committee which held no discussion or debate, something which constitutes a violation of the internationally recognized right to collective bargaining.

316. The ATE adds that attention should also be given to the action of the Ministry of Labour, Employment and Social Security, which, far from acting as an impartial body, endorsed the irregular actions of the employer (the Government). According to the ATE, the implementing authority complied with the Government's instructions, in other words, it did not convene joint wage negotiations until after the increase had been announced in the media and did not allow the ATE to put on record its views and its rejection of the agreement, thereby preventing free collective bargaining. The ATE considers that this situation is a result of the approach taken by the employer in making its offers, setting dates, issuing threats and carrying out specific functions that belong to the capacity of the "impartial body" responsible for facilitating talks. The Minister of Labour is, administratively speaking, an employee of the central Government and as such is bound to respect the hierarchical principle that prevails in administrative law. This in itself shows that it is inadequate to negotiate with the Ministry of Labour, Employment and Social Security, which in such matters is both judge and jury.

317. The Ministry of Labour is not an independent body, as its actions have shown. There is clearly no spirit of negotiation and the Ministry has failed to provide an opportunity to negotiate freely. The ATE considers the complicity of the Ministry of Labour in that it had a role to play in the Government's bad faith, by forcing a workers' organization to accept imposed conditions without any further opportunity for discussion.

318. In its communication of May 2008, the ATE alleges that on 29 April 2008, the Government, represented by the President of Argentina, and the UPCN, as a representative union, held an official press conference at Government House announcing a 19.5 per cent pay increase for civil servants, to be implemented in the form of a 10 per cent increase with effect from June 2008, and a 9.5 per cent increase with effect from August. On that occasion, the increase was not only announced but approved in the record of a meeting to which the ATE was not even invited. In other words, once again, without engaging in a bargaining process and without consulting the ATE, which is a signatory to the general collective agreement and a member of the general negotiating committee, the Government, in consultation with only one of the parties (the UPCN), announced a wage increase for the national civil service.

319. According to the ATE, this compounds the discriminatory attitude demonstrated by the implementation of wage increases for national civil servants in 2006 and 2007, and reflects a deteriorating situation in terms of violation of collective bargaining, discrimination and the imposition of a wage increase, in so far as an official document was signed at Government House without consulting the ATE and without any negotiation.

320. The ATE emphasizes that the Ministry of Labour, Employment and Social Security, far from acting as an impartial body, endorsed the irregular actions of the Government employer in the approach it has taken in recent years. Lastly, the complainant organization points out that, on 5 May 2008, the ATE was called upon to endorse the increase which had already been agreed with another trade union one week earlier, and was again denied the opportunity to place on record its rejection of the increase and had to do so in a separate document.

B. The Government's reply

321. In its communication of 17 October 2008, the Government indicated that workers in the public administration had opted for trade union pluralism, which means the coexistence of different representative bodies with official trade union status. The ATE, established in 1925, with official trade union status (No. 2), and the UPCN, established in 1948 with official trade union status (No. 95), are first-level trade union organizations to which all public sector workers at national, provincial, municipal and territorial levels, and throughout the whole of Argentina, are affiliated.

322. Trade union pluralism in the public sector was formalized in resolution No. 255 of 22 October 2003 adopted by the Ministry of Labour, Employment and Social Security, which adopted the principle of trade union pluralism regarding representativeness on the basis of the provisions contained in sections 4 and 6 of Act No. 24185 relating to collective bargaining and in the light of the historical context of worker representation, thus allowing a trade union to be granted official trade union status even if an existing union with official trade union status already operates in the same area, activity or category. Both organizations have exercised their rights to collective bargaining which are derived from their status as official trade unions.

323. The Government notes that the level of representativeness was determined using the criteria laid down in Convention No. 151, a fact never disputed by the complainant organization. It should therefore be understood that both entities had established their representative status in an objective manner, as required by the ILO, and had at all times respected the principle of freedom of association. Moreover, in certain sectors or national bodies, as well as provincial or municipal public sector bodies, different trade unions can perform similar functions, so that there are sometimes more than two unions with official trade union status. In view of this fact, the collective bargaining system in the national public sector envisages a general or framework agreement incorporating sectoral agreements, the negotiating committees including representatives of sectoral unions as well as national trade unions with official trade union status.

324. This means that the general collective agreement is signed by the ATE and UPCN on the trade union side, but collective bargaining for each sectoral collective agreement (under the terms of the general agreement) involves the organizations with official trade union status that are active in that field. The signatories of the Collective Bargaining Convention No. 214/06 are the State, the UPCN and the ATE. The collective agreement in question was concluded following difficult talks between the workers and the employer which were then reflected in the various documents contained in files 1090812/04 and 1169018/06. Discussions between the parties were free and open. In addition, collective bargaining in the national public administration is guided above all by the provisions of Convention No. 154.

325. The Government denies that it is the task of the negotiating committee merely to approve official announcements. In fact, Argentine legislation envisages, as the first step to initiating sectoral collective bargaining, the establishment of the bargaining committee by which authorized representatives are appointed to participate in collective talks. It should

be noted that legislation does not stipulate the number of representatives, which means that the number of members is determined by the parties involved (section 4 of Act 23546). The Government points out that the ILO has not objected to bodies of this kind provided that, whatever the system adopted, its main objective is to foster, by all possible means, free and voluntary collective bargaining involving all parties. The negotiating committee was set up precisely with the aim of facilitating collective bargaining between the social partners in a free and voluntary manner.

326. The Government states that, as further proof of total collective independence and trade union pluralism in the public sector, section 4 of Act No. 24185 stipulates that "… the representation of public employees will be undertaken by trade union associations, unions or federations with official trade union status and a national mandate, in accordance with section 6 …". However, in relation to the most representative trade union bodies, it stipulates that if "... there is a lack of consensus between the trade unions with collective bargaining rights in relation to the collective bargaining committee, the Ministry of Labour and Social Security shall determine, in accordance with the relevant regulations, the percentage of votes that corresponds to each party. To this end, it shall take into account the number of paid-up members belonging to each association in the corresponding sector …". For their part, the legislative regulations clearly state that "if more than one trade union association with official trade union status and national remit is represented on the collective bargaining committee for the general collective agreement, the number of votes corresponding to each of these associations shall be proportional to the number of paid-up union members in the public sector".

327. The Government adds that in this case, the representativeness of the two organizations was compared on the basis of the lists of paid-up members provided by the organizations themselves. The UPCN was shown to be the more representative union. The data were obtained in an objective manner, as required by the ILO, and the matter of representativeness has not been contested.

328. The Government states that, in the light of the above and after the formal opening of negotiations, numerous meetings were held and all were chaired by the appointed official. The Government categorically denies that the ATE did not participate in subsequent meetings. The trade union organization in question had the right to be heard and to state its position under article 18 of the national Constitution, as the records of subsequent meetings show. The truth is that the ATE is less representative than the UPCN and has filed this complaint under false pretences. The collective agreement for public sector employees was concluded within the framework of, with respect for and in compliance with, the relevant legislation. The process complied with both national labour law and the ILO's recommendations.

329. The Government also states that it is aware of and abides by its obligation to comply with Conventions Nos 87, 98, 151 and 154, and that the legislation in force supports and defends the collective independence of the social partners participating in collective bargaining. Furthermore, Act No. 25164, which governs the system of employment in the public sector, provides that, through an agreement between the parties, the legislative provisions may be adapted to the sectors of the public administration which present specific characteristics in terms of collective bargaining, as laid down in Act No. 24185. That is to say, the complainant organization is signatory to sectoral agreements in the negotiation and approval of which it was fully involved. According to the Government, the complainant's allegations are unfounded, as it participated at all stages of the collective bargaining process and was able to express its own position. This procedure has never been challenged, either in relation to the issue of representativeness or the building of consensus. At any event, the complainant failed to win support for its own position during

negotiations under the normal conditions of freedom and independence enjoyed by the various representative unions in the sectors.

330. The ATE always declared its position at the start of collective negotiations. The Government denies that there was any de facto denial of collective bargaining, or that there was any attempt to circumvent discussions. It therefore considers that the allegation of a de facto denial of collective bargaining must be rejected.

331. The Government adds that the complainant organization filed its complaint following the announcement of a 19 per cent wage increase for civil servants, to be implemented in the form of a 10 per cent increase effective as of June 2006 and a 9 per cent increase effective as of August the same year. The announcement was made on 19 April 2006 by the highest official authorities and members of the trade union organization which had signed the agreement. The Government states that the ATE was invited to all the meetings of the bargaining committee, as the record of the meeting of 21 April 2006 shows. The Government, as the employer, and the UPCN and ATE, all signatories to collective agreement No. 214/06, were present at the Labour Ministry. The Government, as the employer, made an offer to these two official trade union organizations. The UPCN accepted the offer, while the ATE of its own free will rejected it.

332. However, internal matters concerning trade union representation and the reasons given by one or other organization for differences between their negotiating strategies are not the Government's concern. What has been acknowledged by the Government is the fact that an organization representing a majority accepted the offer. According to the Government, the complainant organization is trying to involve the Government in an internal union matter by filing an international complaint. The Government informed the complainant organization that an agreement had been approved by the majority, which meant that it complied with the law, as section 4 of Act No. 24185 states that: "Representation of public sector employees shall be carried out by trade union associations, unions or federations with official trade union status and national remit, under the terms of section 6. If there is no consensus between trade unions with collective bargaining rights regarding the membership of the negotiating committee, the Ministry of Labour and Social Security shall define, in accordance with the regulations, the percentage of votes appropriate to each party. To this end, it shall take into account the number of paid-up members belonging to each association in the relevant sector."

333. The Government states that it was necessary, from a legal point of view, to finalize the records of meetings and have them approved by the majority in order to avoid confusing the employers when it came to applying them. This was the reason for requesting that the minority organization (the complainant) place its opinions on record in a separate document. As a result, section 4 of Act No. 24185 was invoked in response to the complainant's challenge but there was never any final closure and no discriminatory attitude.

334. The Government states that the ATE participated in every joint meeting called by the Ministry of Labour. As the records state, Mr Eduardo De Gennaro, Mr Leopoldo González, Dr Matías Cremonte and other representatives of the ATE took part in the joint meetings. The trade union representatives were not coerced into signing the agreement, and the result was wholly the product of direct negotiations between the parties. The right to collective bargaining and freedom of expression was thus respected, as the complainant organization always expressed its opinion, and the allegation concerning a lack of freedom of association is unfounded, as the Ministry of Labour never interfered in the activities and internal affairs of the ATE. The ATE was never excluded from meetings falling under the remit of the respective negotiating committee, and the minutes of those meetings, which mention the trade union organization in question, are evidence of this.

335. According to the Government, the statements concerning the wage increases in 2007 are not true. With regard to the complainant's statement that "the starting point for any wage negotiations must be the minimum amount provided for by law and by the Constitution, which was estimated in December 2006 at 2,513 pesos", the Government states that, under section 135 of Act No. 24013, the National Council for Employment, Productivity and the Minimum Adjustable Wage is a tripartite body presided over by the Ministry of Labour, Employment and Social Security. The Council's rules of procedure are laid down in Decree No. 2725/91 and section 5 of Decree No. 1095/04. Section 15 stipulates that, once the debate has ended, the president must propose a vote or votes on the matter at hand. Voting cannot be repeated on the same issue during the same session, except when it is authorized by more than 50 per cent of the council members present. All council resolutions must be approved by two-thirds of the 32 council members.

336. The Government states that on 13 July 2007 the Council was convened and, following tripartite negotiations, the minimum salary was then set, with effect from 1 August 2007, at 900 pesos for workers on monthly contracts who work with the statutory working hours stipulated in section 116 of Act No. 20744, except under the specific circumstances stipulated in section 92 of that law, which established an appropriate proportion of salary payable, and 4.50 pesos per hour for workers on daily contracts. From 1 October 2007, the respective amounts increased to 960 pesos for workers on monthly contracts and 4.80 pesos per hour for workers on daily contracts. From 1 December 2007, the rates were 960 pesos for monthly workers and 4.90 pesos per hour for daily workers. In line with resolution 1 of 28 July 2008, the minimum wage was fixed from 1 August 2008 at 1,200 pesos for monthly workers and 6.00 pesos per hour for workers on daily contracts, and from 1 December 2008 the monthly and daily rates were at 1,240 pesos and 6.2 pesos per hour respectively.

337. The Government points out that the primary criterion used to establish the minimum wage is that of "reasonableness". That is what is laid down in section 116, according to which pay is established by the Council "taking into account the data regarding the socio-economic situation, the objectives of the institution, and extent to which the two can be reasonably matched". Section 116 has to be interpreted in the light of section 139 of Act No. 24013, which stipulates that workers are guaranteed a minimum wage which will allow them to address their basic needs in terms of food, accommodation and leisure. The Government believes that the ATE's statement that the starting point for wage negotiations must be 2,513 pesos from December 2006, does not comply with the legislation. The pay increase must also meet the criterion of reasonableness. By contrast, the ATE's statement is a dogmatic assertion and is not accompanied by any documentary evidence to support its claims or the amount stated as a minimum. According to the Government, when the complainant organization states, regarding the sectoral wage negotiations, that the Government "convened sectoral negotiating committees with a view to concluding similar agreements", this constitutes bad faith, as it abandons the principle of reasonableness which is the product of tripartite dialogue.

338. The Government rejects the claim that an agreement was imposed during sectoral collective bargaining in the public administration. In May 2008, the complainant organization itself requested that the collective bargaining process continue, and the Government consented in accordance with the principles of freedom of association. The ATE requested that sectoral negotiations begin in order to guarantee the right to collective bargaining for all the workers involved, and negotiations are now under way with the Ministry. Although this process was not immediately implemented in all sectors, given the scope of the negotiations, it does address operational issues. As a result, the ATE actively participated in concluding a number of specific sectoral agreements, including the following: National Atomic Energy Commission (CNEA), Decree No. 968/08 of June 2008; Seafarers Decree No. 974/08 of 25 June 2008; National Parks Administration

(Guarda parques) Decree No. 967/08 of June 2008, Receiver General of Argentina (SIGEN) Decree No. 961/08 of 18 June 2008, National Institute of Industrial Technology (INTI) Decree 970/08 of 18 June 2008, National Commission for Space Activities Decree No. 964/08 of 18 June 2008, National Administrative Profession System (SINAPA) Decree No. 883/08 of 29 May 2008; Orchestras, Choirs and Ballet of the National Ministry of Culture, Decree No. 986/08 of June 2008, National Service for Agrifood Sanitary Inspection and Quality (SENASA), Decree No. 966/08 of June 2008; Professionals in Hospitals and Nursing Centres and Research and Production Institutes of the Ministry of Health, Decree No. 963/08 of 18 June 2008; National Institute of Agricultural and Livestock Technology (INTA) Decree 962 of 18 June 2008; Civilian Staff and Management in the Armed Security Forces (UPECIFA) Decree No. 1055/08 of 14 July 2008; the 18 APEN grades, Decree No. 985/08 of 25 June 2008. It should be made clear that the Labour Ministry resolution 757/2007, which approved the abovementioned agreements in section 5, reads as follows: "inform the Permanent Bicameral Commission of the Honourable National Congress", and also enables the legislature to take action in the event of any irregularities.

339. According to the Government, it is difficult to understand the attitude of the complainant organization and its reasons for filing a complaint, and the Government categorically denies the ATE's allegations regarding the violation of freedom of association, as it used its right to vote and expressed its opinion in all joint meetings that took place. In addition to making its position clear on the matter of wage increases raised during the debate, its rejection of the proposal was recorded in the minutes drafted at the Ministry of Labour, Employment and Social Security.

340. Finally, the Government states that: (1) collective bargaining is promoted in the public sector by the Ministry of Labour, Employment and Social Security, which convenes the signatory organizations, in this case the UPCN and the ATE, with a view to establishing a negotiating committee for the purpose of initiating sectoral collective bargaining; (2) the Government recognizes the ATE as a party authorized to sign collective agreements, with the right to be heard, the right to a reasoned decision and the right to put forward proposals, which, in the case of the wage increases, did not meet the criterion of "reasonableness"; (3) trade union representation is allowed in the public sector in accordance with the principles of freedom of association; (4) if, during the discussions, the complainant organization was unable to impose its view, then this is a matter to be resolved with the other trade union body and every effort should be made to find a common position; (5) the minimum wage is established by means of a tripartite system involving all sectors, whereby each party is able to exercise its rights and the majority view takes precedence; and (6) the criticism regarding the lack of an impartial body is not pertinent to the complaint, which concerns decisions made by bodies which have led to a bipartite or tripartite agreement which fails to satisfy a minority; nothing has occurred here that would justify the intervention of an impartial body.

C. The Committee's conclusions

341. *The Committee notes that in this case the complainant organization alleges that despite being a signatory, together with the UPCN, to the collective labour agreement for the national civil service, which provides that collective wage bargaining is subject to sectoral bargaining, no such negotiations have taken place. In addition, the ATE alleges that representatives of the Government and the UPCN held meetings and jointly announced wage increases (apparently for all public service employees) for the years 2006, 2007 and 2008, without the participation of the ATE.*

342. *In this regard, the Committee notes the Government's statements to the effect that: (1) in the public administration, workers opted for trade union pluralism, that is, the coexistence*

of different trade union bodies with official trade union status (the ATE and UPCN); (2) regarding the issue of wage increases, the ATE was invited to attend all the meetings of the joint negotiating committee, as is clear from the record of the meeting held on 21 April 2006; (3) the meeting in question was attended by representatives of the Ministry of Labour, UPCN and ATE, and the representatives of the Government made an offer which was accepted by the UPCN – the most representative organization – but rejected by the ATE; (4) during the meetings the trade union representatives were not coerced into signing the agreement and the outcome was entirely the product of direct negotiations between the parties; (5) the ATE was never excluded from the meetings, and the claim that any agreement was imposed during the negotiations is not true; and (6) in May 2008, the ATE requested that collective negotiations begin and the Ministry of Labour has consented. Although the process may not have been immediately implemented in all sectors, given the scope of the negotiations, it does address operational issues (the Government mentions more than ten collective agreements that were concluded in 2008 with the participation of the ATE).

343. *Under the circumstances, given the clarifications provided by the Government, and having observed that, in any event, sectoral collective bargaining is indeed taking place in the public administration with the participation of the ATE, the Committee considers that this case does not call for further examination.*

The Committee's recommendation

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

CASE NO. 2614

INTERIM REPORT

Complaint against the Government of Argentina presented by
— the Trade Union of Judicial Workers of Corrientes (SITRAJ) and
— the Argentine Judicial Federation (FJA)

Allegations: The complainant organizations object to a decision rendered by the Higher Court of Justice of the province of Corrientes in regard to the regulations governing the right to strike within the judiciary; they also object to the decision to dock the salaries corresponding to days spent on strike by judicial employees

345. The complaint is contained in communications from the Trade Union of Judicial Workers of Corrientes (SITRAJ) and the Argentine Judicial Federation (FJA) dated 6 and 19 November 2007. By communications dated 3 January and 3 July 2008, SITRAJ sent additional information in connection with its complaint.

346. The Government sent its observations in a communication dated 25 June 2008.

347. 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

348. In their communications dated 6 and 19 November 2007, SITRAJ and the FJA state that in October 2006, the Higher Court of Justice of Corrientes submitted to the executive its draft multi-year budget for 2007 together with its projections for 2008 and 2009. The amount in question was considered by the executive's Ministry of Finance, which asked that it be reduced. By Decision No. 36 of 23 November 2006, the Higher Court of Justice resolved "not to entertain a reformulation of the budget and to confirm its presentation thereof for the periods in question and in the amounts requested in accordance with the Act on Financial Independence of the Judiciary" (Act No. 4420, section 5). Despite that confirmation, the legislature, in approving the overall budget for the province, did so without respecting the independence of the judiciary. In November 2006, the provincial executive approved a 19 per cent salary increase for the civil service, effective as from the first of that month, with a subsequent 20 per cent increase as from 1 May 2007 by Decree No. 716/07. Following repeated complaints, partial success was achieved in securing the same salary policy as had been implemented by the provincial executive for the civil service and by the legislature for its employees, with an increase of 8 per cent being secured on 1 February of this year, and 16 per cent on 1 August, by extraordinary Decision No. 3, leaving 15 per cent still outstanding for the judiciary. It was this that sparked the current crisis.

349. The complainants state that on 16 June 2007, it was agreed in an extraordinary general assembly to take direct action in the form of work stoppages on 22 and 29 June and 6 July, in view of the lack of any response to the calls for a salary increase. In an unexpected move, and in the absence of any conciliation or of the direct action being declared illegal, the court ordered the deduction of two days of salary from those having participated in the two days of direct action in June. In the face of this response it was resolved, by decisions taken during recesses of the extraordinary assembly (on 6 and 27 July, 4 and 24 August, 7 and 27 September, and 13 and 26 October), to continue with direct action in the form of work stoppages on two days in July (26 and 27), four days in August (10, 17, 24 and 31), ten days in September (7, 11, 12, 13, 18, 19, 20, 25, 26 and 27) and 12 days in October (3, 4, 5, 10, 11, 12, 17, 18, 19, 24, 25 and 26).

350. The complainants add that an appeal for the protection of constitutional rights *(amparo)* was also submitted, on 25 July, under the terms of articles 43 and 75(22) of the National Constitution and article 67 of the Provincial Constitution against the state of the province of Corrientes (Judiciary) on account of the certain and imminent threat of measures to dock the salaries of judiciary employees having participated in the direct action – work stoppages – called by SITRAJ, through an infringement of constitutional rights on the part of the Higher Court of Justice. The supreme organ of the province's judiciary is currently on the point of restricting, distorting and threatening, in a manner that is clearly arbitrary and illegal, constitutional rights and guarantees such as the right to strike, which is recognized under article 14bis of the National Constitution and under numerous international treaties. Similarly, a precautionary measure was requested in order to have the supreme organ refrain from engaging in measures to dock the salaries of employees participating in direct action, and to have it ordered that any amounts thus docked or due to be docked be repaid, and that the matter be brought before Civil and Commercial Court No. 12 of the first district (file No. 9305/07). This judicial authority handed down decision No. 94 of 14 September 2007, in which it decided: "(1) to rule in favour of the present appeal for *amparo* and consequently to order the state of the province of Corrientes (judiciary) to refrain from docking the salaries of judicial employees on the grounds of

presenteeism or any other grounds having to do with the direct action involving work stoppages called by SITRAJ, as from the start of that action and until actual notification hereof, and to repay all amounts thus docked".

351. The complainants further state that by Resolution No. 546 of 1 August 2007, it was decided "to accept the precautionary measure and, by virtue thereof, to order the state of the province of Corrientes (judiciary) to refrain from docking, as from the month of July and thereafter, the salaries of judiciary employees having participated, or who may participate, in the direct action called for by SITRAJ, whether on the grounds of presenteeism or on any other salary-related grounds, while the case is being examined and until the final judgment is rendered in regard to the substance of the matter in dispute". The precautionary measure was appealed against by the provincial state, in response to which the trade union entered a challenge for cause in regard to the judges and President of the Higher Court of Justice for having expressed an opinion in advance of the trial (by pronouncing the decisions and ordering the docking of salaries and, ultimately, by having been the one who signed, as President of the Higher Court of Justice and on behalf of the judicial authority, the response to the *amparo*, thereby becoming both judge and party). Likewise, under the Act on Administrative Procedures, No. 3460, it is stipulated in section X, under the heading "Self-disqualification and challenge", section 65(b) in fine, that: "… However, no one having previously exercised an administrative, legislative or judicial function in a given case may intervene in that same case in the exercise of one of the other functions …". When the matter came before it, the Higher Court of Justice rejected the challenge for cause and decided to appeal against the precautionary measure, which it revoked, at the same time rejecting the extraordinary federal appeal. This prompted the complainant organization to lodge a remedy of complaint with the Supreme Court of Justice of the nation, calling for the decisions of the challenged judges to be declared null and void and/or for the revocation of the precautionary measure to be declared null and void. It has thus far received no response.

352. On 10 August, a submission was made to the Higher Court of Justice, reiterating the urgent need for a response in the matter of the 15 per cent shortfall in the salary increase requested (file No. S-50/07) for all employees of the province's Judiciary, since the issue was one of subsistence, the main supporting argument being that the same salary policy should be implemented for the judiciary as for the executive, through decrees and by decision of the Legislature.

353. The complainants state that, on 3 August 2007, following the communication in the normal manner of a note announcing the outcome of the extraordinary assembly, the Higher Court of Justice announced that it required "an authentic copy of the minutes of the assembly, together with records in the form of the books and tables drawn up for the purpose of registering the attendance of members at the assembly (article 32 of the SITRAJ statute), on pain of sanction in the event of non-compliance". This was met with petitions requesting clarification, there being no indication as to why something never previously requested was now being called for, or on what legal basis details were being requested whose inspection fell solely within the competence of the body responsible for supervising trade unions, namely the Ministry of Labour, Employment and Social Security of the nation. On 5 October, against a backdrop of persistent reports of amounts having been docked from salaries corresponding to the months of July and August, a note was sent to the Director of Administration informing her of the status of the *amparo* request, in response to which the Higher Court of Justice ordered that the docking of salaries should now cover the months of July, August and September (a total of 17 days), with the month of October not being included since it was not yet over.

354. The complainants state that on 11 October 2007, the Higher Court of Justice rendered Decision No. 30, which, in point 23, regulates the right to strike and constitutes a clear

subjugation of the practice of freedom of association. An appeal for reconsideration was entered against that decision (file No. S-126-07), calling for its annulment on the grounds that it sought to regulate, unreasonably and with a clear overuse of authority, a right that was enshrined in article 14bis of the National Constitution and requesting that its effects be suspended pending settlement of the matter. Such suspension was rejected by Resolution No. 225/07, against which an appeal for reconsideration was entered, together with reservations as to the making of all necessary administrative and judicial representations at the national and international levels.

355. A corresponding complaint was also made to the Ministry of Labour, Employment and Social Security by the Argentine Judicial Federation, the same complaint being made to the Ministry's Corrientes office by SITRAJ, the said office having replied (on 25 October) that "subjugation of the practice of freedom of association" lay beyond the competence of the Ministry. Nevertheless, and "should the parties so decide", they would act as "intermediaries". On 26 October, the recess of the extraordinary assembly was continued, during the course of which it was decided: "to repudiate Decision No. 30, point 23, which limits freedom of association and prohibits the right to strike, to accept the offer by the Corrientes office of the Ministry of Labour, Employment and Social Security to act as an "intermediary", and to suspend the pursuit of direct action – work stoppages – owing to the possible threat of loss of the source of labour.

356. The complainants consider that the conduct on the part of the Higher Court of Justice and the text of Decision No. 30, point 30, highlight the grievances behind their complaint. First, in the preambular part of the decision in question, the following interpretation is made of the content of the Trade Union Act: point IV of the reasons disregards the obligatory conciliation procedure provided for by Decree No. 272/2006 within the provincial territory. The complainants wonder whether each ministry or each authority has powers to regulate the right to strike. As they see it, it would appear to be so at the provincial level, since as judicial employees they are governed by Decision No. 30, point 23, which in turn leaves aside Act No. 23551, which is the act that governs the trade union status accorded to SITRAJ under Ministry of Labour, Employment and Social Security Resolution No. 362/75.

357. The complainants add that point 5 of the decision regulates "the manner in which control is exercised over the minimum requirements of accreditation and negotiation of conflicts within the Higher Court of Justice …", now exercising the powers of supervision and control that correspond to the Ministry of Labour, Employment and Social Security and requiring the presentation of documents on pain of "… taking judicial steps to have the action taken declared illegal". In the view of the complainants, the arguments put forward by the province's Higher Court of Justice undermine its institutional standing inasmuch as they seek, in an unlawful and dogmatic manner, to regulate the right of associations to take direct action. They consider it unworkable for the Higher Court of Justice of Corrientes to attempt to regulate matters pertaining to trade union rights.

358. The complainants further state that Decision No. 30/07 also wrongs them inasmuch as its point 1 provides "… that prior to resorting to direct action, the Higher Court of Justice shall be informed of the reasons for the conflict, which must be of a labour-related nature, together with any suggestions deemed relevant, to which end the corresponding record shall be drawn up in the presence of the administrative secretary". In point 2 of its operative part, the decision goes on to provide as follows: "In like manner, it shall – in the event that it is decided to undertake direct action liable to result in the suspension, interruption or shutdown of the services provided by judicial employees, by means of their withdrawal from the workplace or by other means – give advance notice to the Higher Court of Justice in due form and no later than five days before the date on which the action is due to begin, providing it with the outcome of the extraordinary assembly which, having

been convened solely for that purpose, decided in favour of such action by at least a two-thirds majority of those in attendance and entitled to vote (sections 21(j) and 27 of the Statute of the Trade Union of Judicial Workers) ...".

359. The complainants affirm that, as if the Higher Court of Justice's arrogation of legislative powers were not enough, point 2 of the operative part of Decision No. 30/07 provides that in the event of it being decided to resort to direct action, copies shall be submitted of the executive committee's call to assembly, of the agreement and resolution and of the ad hoc book or list recording the attendance of members at the assembly. The complainants wonder which provision of the National Constitution or Provincial Constitution, or of an international treaty, has been taken as a basis for establishing that the employer is to supervise and inspect the calling of its employees to an extraordinary assembly.

360. In point 4 of Decision No. 30/07 it is established that "in the event that the obligation to inform the Higher Court of Justice of the reasons for the conflict is not complied with; that those reasons are not labour-related; that the decision to resort to direct action is not taken in conformity with sections 21(j) and 27 of the Statute of the Trade Union of Judicial Workers; or that the obligation to provide a copy of the executive committee's call to assembly, of the agreement and resolution and of the ad hoc book or list recording the attendance of members at the assembly is not complied with, the Higher Court of Justice may take legal steps to have the direct action declared unlawful". The complainants hold that, under this provision, the Higher Court of Justice is acting as both judge and party, it being for this reason that they have lodged a complaint with the Supreme Court of Justice of the nation.

361. The complainants likewise object to point 3 of Decision No. 30/7, which states that: "on the day immediately following the day on which advance notice is given, the minimum services to be maintained during the conflict, the arrangements for their provision and the staff to be assigned to provide them shall be established in accordance with the past practice of the Higher Court of Justice referred to in the preambular part hereof". The complainants state that resolutions by which extraordinary assemblies resolve to engage in direct action – work stoppages – provide for one working day to enable magistrates and officials to call for, or establish shifts, in case the direct action attracts a very large following, with courts of first instance and public prosecution teams being exempted.

362. The complainants consider that under this decision, in the event of a labour-related conflict, it is required that the members of the SITRAJ executive shall first appear before the administrative secretary, inform him of the reasons and provide him with suggestions to be included in the record. No mention is made of dialogue with the Higher Court of Justice, of reconciliation between the two parties (employer and union), or of seeking solutions or agreements. Then, although the response is not known, it is necessary to give advance notice, five days ahead of the action, of the outcome of the extraordinary assembly, which, under the terms of the Statute it is not possible to do since the calling of a stoppage or strike is a defensive measure that can be taken only in extremis. In the event that such a call is issued on any grounds other than those specified in section 21(j), "or that those reasons are not labour-related", for example, modification of the union's statute (subparagraph (a)); under this decision, "the Higher Court of Justice may take legal steps to have the direct action declared unlawful". In the complainants' view, this is another clear example of the restrictions being imposed on freedom of association by the Higher Court of Justice.

363. The complainants maintain that the decision about which they are complaining is unlawful inasmuch as it regulates, in a unilateral and arbitrary manner, the exercise of trade union rights – something which no legislator has done. The deviations that are occurring are causing harm to judicial employees in particular, but also have negative repercussions for

the entire spectrum of workers and their unions, for whom there is henceforth a precedent that can be drawn upon when it comes to limiting the union activities in their respective companies or state entities. However, the interference by the Higher Court of Justice of Corrientes does not end here, since not only does it regulate the law but also sets itself up as the implementing authority for verification and examination of trade union activities. According to the complainants, the justice service has not been affected in its work, bearing in mind that only a part of the judicial community is represented by SITRAJ, it being the responsibility of the magistrates and officials, within whose power it lies, to provide the information that the court requires.

364. The complainants state that, as a consequence of the above situation, they have requested the intervention of the Ministry of Labour, Employment and Social Security of the nation, through a complaint lodged with the Corrientes office and another with the central office, in the interests of putting an end to the arbitrariness and serious violation of freedom of association on the part of the Higher Court of Justice. This resulted in the opening of file No. 1-208-81743-2007, in which the conflict is described in detail and in which the aforementioned Ministry states that the matter "falls outside the scope of its competence inasmuch as it has to do with a case of unfair practice under the terms of section 54 of Act No. 23551, calling for recourse to judicial channels, in which matter it would be prepared to act as a mediator". In this regard, the Higher Court of Justice of the province of Corrientes refuses to recognize the mandatory conciliation procedure provided for in section 2 of Act No. 14786, maintaining that those regulations do not apply to conflicts arising within the provincial territory, or to accept the mediation offer by the Corrientes office of the Ministry of Labour, Employment and Social Security, which is not mandatory. It is for this reason, with all internal procedures at the national, administrative and judicial levels having been exhausted, that the complainants have seen fit to lodge the present complaint, having regard to the legal considerations that are set forth below.

365. According to the complainants, various situations have arisen that amount to a serious violation of internationally-recognized principles – incorporated into Argentina's domestic legislation – designed to guarantee freedom of association.

366. The complainant organizations allege that the Higher Court of Justice, in issuing Decision No. 30(23), is seeking to regulate aspects of trade union rights (timing and arrangements for the holding of extraordinary assemblies and the corresponding quorum) that lie wholly outside its sphere of competence as a public authority. The complainants assert that there can be absolutely no disputing the fact that the strike, as a form of direct action aimed at bringing about certain changes in the employer's behaviour – changes that can involve either adopting new behaviour or dropping an existing one – is protected under the Constitution and constitutes a legitimate right in the sphere of labour relations. This constitutional right is exercised as a means of demanding the right to a decent wage, based on the family expenditure level, while at the same time the exercise of that right places a burden, to a greater or lesser extent, on the party against whom it is directed.

367. At the national level, the right to strike is enshrined in Act No. 25877, known as the Labour Organization Act, which regulates the right to strike in such a way as to lend greater effectiveness to the constitutional guarantee in keeping with the interests of the State, ensuring the essential values of social coexistence, while setting limits on that regulation, which is confined to essential services and is subject to the principles and criteria established by the ILO in that regard and incorporated into Argentine law. The Ministry of Labour, Employment and Social Security is the authority with the competence to exercise such regulation at its discretion and the only entity capable of determining the legitimacy or otherwise of the strike, not having declared it to be unlawful in the present case, while the Higher Court of Justice has no authority to determine the legitimacy of the strike or, even more to the point, to regulate it.

368. In its communication dated 3 January 2008, SITRAJ raises objections to new decisions relating to sick leave arrangements, and to the administrative rule of procedure for the judgment of breaches of discipline on the part of magistrates, officials and employees of the judiciary. The complainant organization adds that, on 28 November, criminal charges relating to fraud were unexpectedly brought against the general secretary of SITRAJ, Mr Juan Carlos González, for a matter going back to 2001. The complaint was lodged by an employee not associated with the entity, and the proceedings were anything but usual, it having been stated that the intention was to intimidate the union's leadership. The complaint was dismissed owing to the absence of any crime.

369. The complainant organization insists that the behaviour on the part of the Higher Court of Justice and the text of Decision No. 30(23), which amounts quite simply to a negation of the right to strike, concealing the wrongful persecution being carried out through the obvious abuse, overuse or misuse of power, since authority is being exercised for a stated purpose (ensuring an adequate justice service), while the true purpose lies elsewhere, namely in the restriction of freedom of association involving interference in the union's activities and the imposition of different regulations and a supervisory body other than the one provided for in Act No. 23551.

370. In its communication dated 3 July 2008, SITRAJ adds that the Higher Court of Justice of the province of Corrientes, not content merely to have adopted Decision No. 30 of 11 October 2007, which rules out the right to strike, has gone still further in its efforts to cut back on freedom of association by interfering in the activities of the union of judicial workers, imposing different regulations and a supervisory body other than the one provided for in Act No. 23551.

371. SITRAJ adds that on 14 February 2008, by judicial Decision No. 01, the Higher Court of Justice of the province of Corrientes rejected the appeal for reconsideration submitted by SITRAJ in regard to Decision No. 30(23) and confirmed "each and every one of the factual and legal grounds for the existence of Decision No. 30(23)". This judicial decision amounts to a restatement of the reasonings already expressed, using different nuances and words, in Decision No. 30, seeking to justify the unjustifiable, namely curtailment of the right to strike and interference in the internal affairs of a trade union, in other words causing injury by its efforts to confer legitimacy on a curtailment of the rights that are recognized and protected under section 14bis of the National Constitution. This lengthy decision fails to take account of the fundamental fact that the "right to strike" is the very last tool to which a union has recourse when all other avenues have been exhausted, and that SITRAJ has only ever made use of it in this way. Nor does it say anything about SITRAJ various requests received by the Higher Court of Justice, which was not even prepared to receive the new members of the executive committee, despite the requests made to that end, which have remained unanswered. SITRAJ wonders how the Court can expect to comply with its duty to engage in "prior dialogue" if it never grants an audience.

372. SITRAJ states that on 6 March 2008, the Higher Court of Justice rendered Decision No. 5, item 13, which withdrew the trade union privileges enjoyed by three members of the executive committee (general secretary, deputy secretary and treasurer), spuriously basing its action on section 48 of the Act on Trade Union Associations (No. 23551). Furthermore, in the operative part of item 13, the Court resolved to lift the suspension provided for under Decision No. 31/02(4), solely with respect to section 62, first part (hitherto suspended), which modified the current section 56, and granted entitlement to leave without pay while maliciously not implementing the second part by which trade union leave is granted. SITRAJ sees this as evidence of patent animosity towards the members of its executive committee and as an attempt to weaken SITRAJ as a part of its ongoing curtailment of the rights of workers who are constantly being subjugated by the Higher Court of Justice. This then completes the curtailment of freedom of association, since the SITRAJ representatives

are able to perform their representative duties only during the three hours of leave that are granted to them as employees of the judiciary.

B. The Government's reply

373. In its communication dated 25 June 2008, the Government emphasizes that the acts to which the complaint refers are those of an independent authority (the judiciary) of a provincial government (that of the province of Corrientes), and that by virtue of the federal form of government and principle of independence of authorities, the national Government must proceed with the greatest caution and the utmost respect for these constitutional principles. It is for this reason that the complaint was transferred to the Higher Court of Justice of the province of Corrientes, which presented its observations in regard to the case in question. The Government adds that, over and above those observations by the Higher Court of Justice, whose report is attached, in the present case it is necessary to abide by the relevant decisions of the Committee on Freedom of Association, namely that "officials working in the administration of justice and the judiciary are officials who exercise authority in the name of the State and whose right to strike could thus be subject to restrictions, such as its suspension or even prohibition", and that "staff in the judiciary should be considered as public servants exercising authority in the name of the State and, as a result, the authorities may suspend the exercise of the right to strike of this staff". The Government points out that at no time in the case in question was the right to strike prohibited or suspended, but that the minimum measures were adopted to ensure that the judiciary would be able to maintain an emergency service during the period of the strike.

374. In his report, the President of the Higher Court of Justice of the province of Corrientes states that the decisive circumstances resulting in the decision to establish a framework for the right to strike of judicial employees and harmonize the exercise of that right such as to ensure that the essential rights of individuals are not undermined, by maintaining non-postponable services pertaining to their liberty and to public safety, stem from considerations both legislative, i.e. the absence of any procedure at the provincial level for handling strikes by judicial employees, and factual, including: (a) the exercise of that right in 2007 by judicial employees; who on several occasions and with varying scope took the concerted decision to pursue direct action and then to maintain it, abandoning their duties after having signed the daily timesheets. In its report of 11 February 2008, the staffing and leave division of the Corrientes judicial authority stated that employee participation had been recorded in the stoppages arranged by SITRAJ on 22 and 29 June; 6, 26 and 27 July; 10, 17, 24 and 31 August; 7, 11, 12, 13, 18, 19, 20, 25, 26 and 27 September; 3, 4, 5, 10, 11, 12, 17, 18, 19, 24, 25 and 26 October 2007, making a total of 31 days; and (b) the difficulties reported by the Supreme Council comprising the law societies of Corrientes, Goya, Santo Tomé, Curuzú Cuatía and Paso de los Libres on account of the negative effects produced by the repeated action taken by the union, in the absence of conciliation.

375. The report states that such events gave rise to serious discussion, given the importance in such circumstances, and perhaps all the more so because of them, to find a way through that accommodated the various interests while ensuring that one sector's pursuit of its specific aims does not undermine the rights of any other sector. For these reasons, and given the existence of regulations at the national level (Decree No. 272/2006) in regard to the provisions of section 24 of Act No. 25877 (relating to the adoption of direct action in the context of activities that may be considered essential services) – which was deemed to be inapplicable to labour conflicts arising on provincial territory through the express application of the provisions of articles 121, 122 and 123 of the National Constitution, in the same way as it was deemed impossible for the Ministry of Labour, Employment and Social Security to interfere in conflicts involving employees of the judicial authority of the province of Corrientes (a lack of jurisdiction not discussed by that Ministry when it learned

of the situation from SITRAJ) – it was decided to adopt measures aimed at establishing a framework for the exercise of the right to strike.

376. The report goes on to state that, as was the case when the decision was rendered in regard to the appeal for revocation lodged by SITRAJ against the provisions of Decision No. 30/07(23), the competence of the Supreme Court of Justice to act in the way that it did has constitutional and legal backing since, under the framework established by articles 187(9) and 188 of the Provincial Constitution, the duties of this body include issuing decisions and regulations for the purpose of giving effect to the Constitution and organizational act on the courts, and exercising oversight in regard to the administration of justice. The word "oversight" signifies "ultimate oversight of a branch", this constituting an intrinsic duty of the Higher Courts or Courts of Justice in order to "govern" the judiciary. This implies decentralized legislation, distribution and implementation as institutional guarantees or safeguards for adequate fulfilment of the role that the Constitution assigns to this authority and clearly refers to the entity's decentralized competence, separate from the central administration, whereby the judiciary is responsible for determining its own decision-making powers and administering its own activities.

377. Within this framework, the province's Supreme Court is responsible for administering its own organization, bearing in mind that the administrative judicial machinery of the judiciary raises very delicate issues in regard to the management and use of the human, technological and financial resources assigned to enable it to perform its basic and essential functions, and in the exercise of those rights and in the aspect pertaining to the effective provision of the justice service, for which the Higher Court of Justice is the main custodian and responsible entity (being empowered to issue decisions for the purpose of improving its services and to exercise oversight in regard to all employees of the province's justice administration, in application of the duties and authority accorded to it by the Provincial Constitution for the effective consolidation of its work), it is logical and reasonable, when faced with the situation referred to in point 23 of the contested decision, as in the case of the concerted adoption by judicial employees in 2007, on various occasions and with varying scope, of ongoing direct action whereby they abandoned their duties after signing the daily timesheets, that the Court should have taken appropriate measures to balance the interests at stake; on the one hand, the need to ensure the uninterrupted provision of the justice service, seen as an essential service for the community and, on the other hand, the need to ensure respect for the fundamental right to strike. The balance to be achieved, then, is between the aforementioned interest of the community at large and the right of workers to take direct action.

378. Let it be recalled that the justice service entrusted to this provincial state authority constitutes a function in its own right that is essential and cannot be delegated and whose implementation and efficient provision fall chiefly to the Higher Court of Justice, which is the reason why these internal measures were adopted in order to adapt the constitutional exercise of the right to strike in such a way as to avoid situations that could result in the possible disruption or degradation of the service. The principles of efficiency, effectiveness and uninterrupted service provision are of particular significance when it comes to organization of the justice service, on account of the exclusivity of the public functions concerned; hence the emphasis on the absolute need to ensure their provision. In short, the competence in question stems from the implicit authority conferred by the preambular parts of both constitutions, national and provincial, to "strengthen the justice system" or safeguard its administration, as well as from the aforementioned legal and constitutional authority which confers its management on the Higher Court of Justice. The judiciary has a non-repealable mission to guarantee the essential rights of individuals, sanctioning behaviours which harm those rights and ordering that any such unjust harm be redressed, it being essential to ensure the adequate and uninterrupted operation of its various organs in

order to guarantee peaceful and healthy coexistence and the maintenance of citizens' rights.

379. It is precisely because the right to strike is not an absolute right but a relative one, subject to the reasonable limits laid down in the corresponding regulations, as prescribed in articles 12 and 14 of the National Constitution, that it is open to regulation. Such regulation must flow not only from an act but also from the entity whose responsibility it is to provide the justice service. It was within this context that it was decided to establish a framework for (rather than prohibit) the exercise of direct action, while focusing less on the internal organization of the union or decisions taken by it. In short, whether we are looking at autonomous or delegated regulations, the province's Higher Court of Justice, as head of the judicial authority, acted within the bounds of its competence when issuing the decision in question.

380. The President of the Higher Court of Justice notes in this connection that under point 1 of the operative part of the decision in question, recourse to direct action must be preceded by an explanation from the union of the labour-related reasons for the conflict, together with any suggestions it may have in that regard, the aim of this being to find a rapid and effective means of resolving the complaints. The need for rapidity is obvious, in order not to hinder the normal functioning of the justice service and to foster the search for consensus solutions in the specific matter of conflicts.

381. Where the decision by SITRAJ to take direct action liable to result in suspension, interruption or paralysis of any part of the service is concerned, point 2 of the operative part requires the establishment of rules regarding the means by and form in which this is to be communicated to the court, whereby the period of notice must be reasonable, namely five days before the stoppage or strike is due to begin. The reason for this is common knowledge; as the chief authority, the Higher Court of Justice must notify each of its offices in the capital and elsewhere in the province of the union's decision so that they can take the measures necessary to ensure an uninterrupted service. This period of notice is absolutely essential in order to avoid situations such as the calling of a stoppage just one day after the Higher Court of Justice is informed of that action. By way of illustration, it can be seen from file No. S-79-07 that SITRAJ, on 21 June 2007, informed the President of the Court that action would be taken as from 7 a.m. on 22 June 2007, with the signing of timesheets and withdrawal from the workplace without allowing for continuity of the service to be duly safeguarded or for news of the action to be communicated to other courts and to members of the Public Prosecutor's office.

382. The union is also required to provide, together with its communication regarding the planned stoppage, a copy of the executive committee's call to assembly, of the agreement and resolution and of the ad hoc book or list recording the attendance of members at the assembly in question, in addition to which point 3 stipulates that the minimum services to be maintained during the period of the conflict shall be established. In regard to such services, there are already decisions of the Court, formulated differently to the current one, which specified the manner in which these were to be organized. With respect to the requirement as to the submission of a copy of the executive committee's call to assembly, of the agreement and resolution and of the ad hoc book or list recording the attendance of members at the extraordinary assembly convened solely for the purpose of discussing the taking of direct action, in no way does this imply interference in the union or its internal affairs.

383. If the union's own statute, in sections 21(j), 27 and others, regulates the arrangements for giving notice of such a meeting, then requesting the union to provide a copy to the Court when it announces its decision and to specify the days on which the strike is to be held, responds, as the Higher Court of Justice states, to the basic principle of law whereby

anyone calling for the adoption of a given situation must provide due grounds therefore. This requirement has everything to do with transparency and with the execution of the strike in due form and good faith, and can in no way be interpreted as undermining the rights of the appellant union or restricting the right to freedom of association. It is, moreover, a minimum requirement in the face of a decision to take strike action, which, as everyone knows, can be taken only as a final, extreme measure, whence the requirements laid down in the union's own statute for taking such a decision.

384. In conclusion, none of the measures that have been ordered undermine, infringe or impair the right to strike or the right to freedom of association of the union's members, nor do they constitute an unfair practice or restrict the union's right to agree on direct action, which it can do subject to respect for the aforementioned conditions. Finally, the foreseen consequences also become irreproachable since the possibility of pursuing a declaration of lawfulness or unlawfulness is clearly unquestionable in regard to the exercise of the right to strike. Then, the whole question of remuneration for duties not performed, in addition to the reasons already set forth in the contested decision, is a principle that has repeatedly been supported by the Higher Court of Justice of the nation.

385. The reasons which led the union to decide in favour of direct action are specified in the notifications received by the Higher Court of Justice. These refer specifically to: (1) salary adjustment: 31 per cent as at June 2007; and (2) disagreement: (a) with the sums being disbursed by the judiciary for the division of IT and buildings infrastructure; (b) regarding the advancement of lower-ranking employees; (c) regarding the Act on Independence; and (d) with the docking of salaries for days of work stoppage, among other things.

386. The question of the budget/wage review and financial independence formed the main grounds for the demands made by the judicial employees, triggering the various strikes held in 2007. It is essential that attention be drawn to the following in the interests of clarifying the matter, which is inextricably linked with the budget. The budget for the expenditure and resources of the judiciary for 2007 was drawn up in accordance with strict prudential standards laid down by the General Budget Directorate of the province of Corrientes (files Nos 100-01899-2006, 100-00087-2007 and 100-00135-2007), having regard to the financial cap imposed by the nation vis-à-vis the province, pursuant to the Act on Fiscal Responsibility, No. 25917, and with due consideration at all times being shown for upcoming projects and tasks, such as the implementation of 13 new legal offices, staff strengthening in those offices experiencing a serious human resources deficit, continuation of the computerization plan and of the buildings and equipment infrastructure policy, all of these goals being closely and indissociably linked in the interests of achieving the Court's prime objective of ensuring the effective administration of justice, with priority being given to the improvement of working conditions for judicial employees.

387. An initial presentation to the Provincial Executive of the budget for 2007, in the amount of 160,963,608 Argentina pesos (ARS), provided for a salary increase of 15 per cent for judiciary employees. However, following application of the financial cap imposed by the nation on provincial budgets, the credits allocated for salary increases were reduced by 8 per cent. The budget ultimately approved, by Act No. 5778, was in the amount of ARS138,463,608, the reductions made having been ARS17,000,000 under item 100 (staff costs), ARS2,500,000 under item 200 (consumer goods), and ARS3,000,000 under item 400 (fixed assets). It is to be noted that the body in charge of the financial administration system has the constitutional authority to modify the amounts proposed by the Judiciary. Despite the decision by the Higher Court of Justice to ratify the initial amount of ARS160,963,608, the provincial legislative power, pursuant to the Act on Fiscal Responsibility, No. 25917, which requires that the national and provincial governments maintain a balanced budget, was obliged to reduce the amounts proposed.

388. Also affected by the imposed reduction – although to a lesser extent – were capital investments. It was stated at the time that the decision signalled the intention to respect the state policy in regard to the judiciary and the provisions of the Act on Fiscal Responsibility. Within the described framework, the Higher Court of Justice granted a salary increase of 8 per cent by Decision No. 5/07, with retroactive effect to 1 February 2007, prior to the approval of and in response to the 2007 budget, as authorized by the body in charge of the State's financial administration system. Subsequently, Extraordinary Agreement No. 3/07 provided for a nominal increase of 16 per cent as from 1 August 2007, representing an effective improvement of 25.28 per cent accumulated over the period in question, following approval of the Budget Act (2007), No. 5778, and reorganization of the budgetary resources.

389. It is to be noted that the judiciary shares in the province's budget within the so-called central administration. SITRAJ demanded 31 per cent in order to be on a nominal footing with the increases granted by the executive to its employees, that is: 19 per cent under Decree No. 1547/06 plus 20 per cent under Decree No. 716/07, less the 8 per cent granted under Decision No. 5/07. By way of illustration, it is to be recalled that from September 1993 to the present, justice administration employees saw an increase in the actual purchasing power of their salaries in the order of 85 per cent, while over the same period the provincial executive merely confined itself to reviewing the slender basic incomes of the other employees of the central administration.

390. The President of the Higher Court of Justice considers it necessary to point out that, under the constitution of the province of Corrientes, the budget for expenditure and resources of the judiciary is calculated by the executive on the basis of the preliminary draft drawn up by it and is approved by the legislature. Therefore, although the judiciary has full financial independence it does not have the constitutional powers to establish its budget. Thereafter, the economic and financial opportunities to grant salary increases depend solely on the financial resources legally available. Along the same lines, the fulfilment or otherwise of the rules established under Provincial Act No. 4420, which sets a minimum of 6.27 per cent of the province's general budget, is not the concern of the judicial authority but of the other authorities, and since the province's general budget constitutes an act, it must be understood as modifying the former.

391. As regards the use that is made of the budget, although the salary question is an essential one, it is at the same time but one aspect of the many requirements to be met. The administration of justice could not be effective without an adequate infrastructure, computer facilities or logistical organization to support the work of the courts. In this regard, the Judiciary currently (in 2007) allocates 84.36 per cent of its budget to staff costs, leaving only 15.64 per cent for goods and services and fixed assets.

392. Where staff numbers are concerned, these have also increased. In 2003, there were 1,275 employees, including judges and judicial officials, that figure having risen to 1,928 posts by 2007. On the question of infrastructure, the judiciary's architecture unit set itself the objective to implement during 2007 a number of premises projects necessitated by the creation and/or expansion of a number of judicial offices and their functions. Priority was given to the implementation of works designed to provide accommodation for the new functions, as well as to repair and maintenance work on the various premises in the capital and provinces, with objectives being proposed in line with available budgetary resources and the plan of works established at the beginning of the year. As regards the computerization programme, the IT Division, through its various units, has been a constant tool for implementation of the Higher Court of Justice's decisions and institutional policies, as reflected in a series of measures: purchasing of the latest technology; updating of the corresponding regulations; ongoing user training; and strengthening of technical specialists.

393. In the area of human resources, it is worth pointing out that work has been stepped up, through the judicial school, on the ongoing training, retraining and upgrading of judges, officials and employees. Work has been done on the functional structure of the courts, providing them with more staff and, above all, creating a balance between those having the same level of competence but different staffing levels. Access to all levels of the administration of justice was provided through open public competitions, with the application, perhaps for the first time in this province, of the constitutional provisions (article 24 of the Provincial Constitution) whereby employment in the public service shall be granted through the system of "merit". The report also refers to investment in a vehicle fleet and to the creation of the Institute of Forensic Medicine (judicial morgue, criminal investigation laboratories, refrigeration equipment, etc.).

394. Finally, the President of the Higher Court of Justice states that every effort has been made and continues to be made to ensure full protection of staff salaries in the various structures and at all the hierarchical levels, in the context of budgetary restrictions and of the economic situation currently being faced by the whole of Argentine society, with the relevant demands being addressed to other authorities within the framework of institutional dialogue, without this in any way implying the calling into question of this authority's independence. Had the claim by SITRAJ been allowed and had this led to the award of a salary increase over and above the authorized budgetary items, that independence would have been placed in serious jeopardy, since it would then be a matter for the executive to decide whether or not to release the budgetary credits necessary to cover the resulting additional expenditure.

C. The Committee's conclusions

395. *The Committee notes that in the present case the complainants object to the decision by the Higher Court of Justice of the province of Corrientes to dock pay corresponding to two days of the work stoppage called by SITRAJ in June 2007, and at least a further 17 days for stoppages in July, August and September 2007, the stoppages having been called in protest against the absence of any response to the calls for salary increases and against the subsequent decision to render Decision No. 30 of 11 October 2007, which regulates – in a unilateral and arbitrary manner according to the complainants – the right to strike within the sector (according to the complainants, the decision in question takes no account of the mandatory conciliation procedure, makes it obligatory to inform the judicial authority of the reasons for the conflict, which must be of a labour-related nature, imposes a five-day notice period ahead of the direct action, etc.). The complainants further allege that, with the aim of intimidating the SITRAJ leadership, criminal charges for the alleged crime of fraud were brought against its general secretary and subsequently dismissed, and that by Decision No. 5 of 6 March 2008, the trade union privileges enjoyed by three SITRAJ leaders were withdrawn for the purpose of weakening the complainant organization.*

396. *In this respect, the Committee notes that, in general terms, the Government states that officials working in the administration of justice are officials who exercise authority in the name of the State and whose right to strike could thus be subject to restrictions or even prohibition, but observes that in the present case the right to strike has at no time been prohibited or suspended but that minimum measures were taken to ensure that the judiciary could operate on an emergency basis under strike conditions. The Committee further notes the report of the Higher Court of Justice of the province of Corrientes, in which it is stated that: (1) the decisive circumstances resulting in the decision to establish a framework for the right to strike of judicial employees and harmonize the exercise of that*

right such as to ensure that the essential rights of individuals are not undermined stem from: (a) the exercise of that right during 31 days in 2007, when employees of the judiciary joined stoppages – abandoning their duties after signing the daily timesheets – arranged by SITRAJ; and (b) the concern and call for conciliation on the part of the Supreme Council, comprising various law societies, in regard to the negative effects produced by the direct action taken by SITRAJ; (2) given the existence of regulations at the national level relating to cases of direct action in the context of activities that may be considered essential services (which was deemed to be inapplicable to labour conflicts arising on provincial territory), it was decided to adopt measures aimed at establishing a framework for the exercise of the right to strike; (3) the competence of the Supreme Court of Justice to act by adopting the disputed measure has constitutional and legal backing; (4) the justice service constitutes a function in its own right that is essential and cannot be delegated and whose implementation and efficient provision fall chiefly to the Higher Court of Justice, which is the reason why internal measures were adopted in order to adapt the constitutional exercise of the right to strike; (5) the judiciary has a non-repealable mission to guarantee the essential rights of individuals, sanctioning behaviours which harm those rights and ordering that any such unjust harm be redressed, it being essential to ensure the adequate and uninterrupted operation of its various organs in order to guarantee peaceful and healthy coexistence and the maintenance of citizens' rights; (6) in this context it was decided to establish a framework for, and not to prohibit, the exercise of direct action; and (7) the reasons which led SITRAJ to decide in favour of direct action had to do with the salary adjustment and with disagreement as to the allocation of funds for the division of IT and buildings infrastructure, the advancement of lower-ranking employees, the Act on Independence and the docking of salaries for days of work stoppage. According to the report by the President of the Higher Court of Justice, every effort has been made and continues to be made to ensure full protection of staff salaries in the various structures and at all the hierarchical levels, in the context of budgetary restrictions and of the economic situation currently being faced by Argentine society.

397. *Regarding the disputed decision by the Higher Court of Justice of the province of Corrientes to dock pay corresponding to two days of the work stoppage called by SITRAJ in June 2007, and at least a further 17 days for stoppages in July, August and September 2007, the stoppages having been called in protest against the absence of any response to the calls for salary increases, the Committee recalls that is has pointed out on various occasions that "salary deductions for days of strike give rise to no objection from the point of view of freedom of association principles" [see* ***Digest of decisions and principles of the Committee on Freedom of Association,*** *fifth edition, 2006, para. 654]. This being the case, the Committee will not pursue its examination of this allegation.*

398. *Regarding the disputed Decision No. 30 of 11 October 2007 – adopted, according to the complainants, in a unilateral and arbitrary manner – which regulates the right to strike in the judicial sector in the province of Corrientes, the Committee, while recalling, as it has done on previous occasions in respect of other cases relating to Argentina, that officials working in the administration of justice and the judiciary are officials who exercise authority in the name of the State and whose right to strike could thus be subject to restrictions, such as its suspension or even prohibition [see 344th Report, Case No. 2461 (Argentina), para. 313; and 291st Report, Case No. 1660 (Argentina), para. 106] observes that judicial workers enjoy the right to strike.*

399. *Regarding the allegation as to the unilateral nature of Decision No. 30 issued by the Higher Court of Justice of the province of Corrientes, which regulates the right to strike within the sector, the Committee observes that neither the Government nor the province's supreme judicial authority have denied this allegation. In this respect, the Committee recalls the importance it attaches to the promotion of dialogue and consultations on matters of mutual interest between the public authorities and the most representative occupational organizations of the sector involved [see* ***Digest****, op. cit., para. 1067]. In these circumstances, the Committee expects that in future the authorities will endeavour to ensure compliance with this principle and to promote collective bargaining, including on wages.*

400. *The Committee requests the Government to send its observations concerning the allegations, presented in 2008, that: (1) with the aim of intimidating the SITRAJ leadership, criminal charges for the alleged crime of fraud were brought against its general secretary and subsequently dismissed and requests it to institute an investigation to determine whether these charges had an anti-union intimidation or discrimination motive; and (2) by Decision No. 5 of 6 March 2008 the trade union privileges enjoyed by three SITRAJ leaders were withdrawn for the purpose of weakening the complainant organization.*

401. *Finally, in respect of the declaration of illegality in relation to the strike, that according to the complainant organization lies within the power of the Minister of Labour, Employment and Social Security, the Committee recalls that responsibility for declaring a strike illegal should not lie with the Government but with an independent body which has the confidence of the parties involved [see* ***Digest****, op. cit., para. 628].*

The Committee's recommendations

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

(a) The Committee expects that in future the authorities will endeavour to ensure compliance with the principle of the importance of dialogue and consultations on matters of mutual interest between the public authorities and the most representative occupational organizations of the sector involved and to promote collective bargaining, including on wages.

(b) The Committee requests the Government to send its observations concerning the allegations, presented in 2008, that with the aim of intimidating the SITRAJ leadership, criminal charges for the alleged crime of fraud were brought against its general secretary and subsequently dismissed and requests it to establish an investigation to determine whether these charges had an anti-union intimidation or discrimination motive. The Committee also requests the Government to send its observations relating to the allegations that by Decision No. 5 of 6 March 2008, the trade union privileges enjoyed by three SITRAJ leaders were withdrawn for the purpose of weakening the complainant organization.

CASE NO. 2650

DEFINITIVE REPORT

Complaint against the Government of Bolivia presented by the Trade Union Confederation of Health Workers of Bolivia (CSTSB)

Allegations: The complainant organization alleges obstruction of collective bargaining in the public service, as well as the imposition of a wage increase without negotiation and the declaration that a strike carried out by the administrative authority was illegal

403. The Trade Union Confederation of Health Workers of Bolivia presented its complaint in a communication dated 7 May 2008.

404. The Government sent its observations in a communication dated 27 August 2008.

405. 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

406. In its communication dated 7 May 2008, the Trade Union Confederation of Health Workers of Bolivia (CSTSB) alleges violation of Convention No. 87 by the Government. It states in particular that, on 8 December 2007, it presented a list of claims for 2008 to the Ministry of Health and Sports which, together with the Ministry of Labour, instead of promoting solutions by means of appropriate negotiation, merely declared that a strike that was carried out was illegal. The complainant organization adds that, although the legal procedures for the exercise of the right to strike were respected, the administrative authority ordered the submission of the names of the workers who had participated in the strike for the purpose of making the respective salary deductions in order to frighten the workers.

407. The complainant organization also alleges that certain clauses of the collective agreement concluded in 2007 with the Ministry of Health, the Ministry of Labour and the Ministry of Finance were not complied with and that, as a result, the content of those clauses was included in the claims for 2008. According to the complainant organization, the Ministry of Health and Sports, far from encouraging and promoting machinery for negotiation, unilaterally imposed the payment of a wage increase, without debate or discussion (the complainant organization cites as examples Ministerial Circular MS-and-D/DESP/608/08 and the merit increment).

B. The Government's reply

408. In its communication dated 27 August 2008, the Government states that the CSTSB represents officials of health federations and unions of the nine departments of the Republic of Bolivia. With regard to the allegations concerning Convention No. 87, the

Government states that the Bolivian State, through the national Government, promotes full rights for the functioning of trade unions in Bolivia, under the following legal provisions:

– Article 159 of the Political Constitution of the Bolivian State provides that: "Freedom of employers to form associations is guaranteed. Unionization is recognized and guaranteed as a means of defence, representation, welfare, education and culture of workers, as is trade union immunity as a guarantee for union officials while carrying out activities in the specific performance of their duties, for which they may not be prosecuted or arrested. Moreover, the right to strike is established as the exercise of the legal entitlement of workers to withhold their labour to defend their rights, after complying with the legal formalities."

– Section 99 of the General Labour Act provides that: "The right to form unions, which may be employers' organizations, trade unions or professional associations, whether mixed, industrial or at enterprise level, is recognized."

– Section 100 of the General Labour Act provides that: "The essential purpose of the union is to defend the collective interests it represents. Workers' unions in particular shall have the authority to conclude collective agreements with employers and assert the rights arising under such agreements; represent their members in the exercise of rights derived from individual agreements, where expressly required by the parties concerned; represent their members in collective disputes and on conciliation and arbitration boards; create vocational and industrial schools, public libraries etc; and organize cooperatives for production and consumption, except for the production of goods which are similar to those manufactured by the enterprise or industry in which the union is active."

– Section 102 of the General Labour Act provides that: "The relations between the public authorities and workers shall be conducted through departmental (regional) union federations or national confederations."

– Section 134 of the Regulations of the General Labour Act provides that: "Federations or confederations shall obtain legal personality under the same conditions as those laid down for unions and shall therefore enjoy the same rights as unions, as well as the right to represent their member unions."

– Section 159 of the Regulations of the General Labour Act provides that: "Freedom of employers to form associations is guaranteed. Unionization is recognized and guaranteed as a means of defence, representation, welfare, education and culture of workers, as is trade union immunity as a guarantee for union officials while carrying out activities in the specific performance of their duties, for which they may not be prosecuted or arrested. II. Moreover, the right to strike is established as the exercise of the legal entitlement of workers to withhold their labour to defend their rights, after complying with the legal formalities."

409. The Government adds that the President of the Republic of Bolivia has promulgated Supreme Decree No. 29539, a legal instrument through which the State guarantees the freedom of workers to unionize, from the date of election of their leaders. Furthermore, the Ministry of Labour, in accordance with its legally conferred powers, by means of Ministerial Decision No. 114/08 of 28 February 2008, has recognized the executive board of the CSTSB, elected for the period from 19 October 2007 to 18 October 2009, made up of 32 trade union leaders. The leaders of the Confederation concerned were officially declared as being on secondment with entitlement to 100 per cent of their salary and other labour rights, in accordance with the provisions of section 97 of Supreme Decree No. 22407 of 11 January 1990. Furthermore, the Government states that section 104 of the

General Labour Act provides that "Public servants may not unionize regardless of their category and status".

410. The Government considers that, for the reasons stated and in view of the legal provisions in force and national government policies, the complaint presented by the CSTSB alleging failure to comply with Convention No. 87 by Bolivia's Executive is shown to have no basis whatsoever. In the specific case of the organization concerned, the fact that it assumed the role of intermediary between the Government and the worker members of the federations united by it shows that the Ministry of Labour of Bolivia did not at any level deny the exercise of the right to unionize. The activities of the complainant organization were declared legal, it was recognized as a legally established organization and its leaders were officially declared as being on secondment so as to guarantee full and absolute freedom of association.

411. With regard to the allegations relating to compliance with Convention No. 98 and specifically to the request made by the CSTSB in the list of claims for a wage increase, the Government points out that on 28 March 2008, by means of Note No. 00547/08, the Minister of Health and Sports informed the executive secretary of the complainant organization that the national Government had provided a detailed reply to all the points raised in the list of claims. The trade union organization agreed to several points, which indicates the progress made in dealing with the sectoral claims. With regard to the central points of the list of claims, the Government indicates that the reply sent indicated the Government's decision, by means of Supreme Decree No. 29473, to approve a wage increase for all public and private sector workers in Bolivia.

412. Furthermore, the Government indicates that, on 18 June 2008, by means of Note No. 12224/08, the Minister of Health and Sports informed the President of the Republic of the following: "We have been informed of the request made by the leaders of the CSTSB for consideration to be given to its demands set out in its list of claims for 2008. As soon as it became aware of these claims, my Authority convened the leaders of this Confederation for dialogue, as proven by the fact that the first and only meeting was held on 27 February 2008, which they abandoned based on their refusal to discuss the list of claims with the Committee appointed by my office. Following this failure of dialogue caused by the leaders of the CSTSB, the leaders requested a written reply to all the points in their claims, which was met with a reply to the 25 points in the list of claims, dated 20 March 2008. The leaders subsequently submitted a counterproposal to us, in which they accepted more than 50 per cent of our reply, which we took into account in continuing to negotiate the handling of the points not agreed upon. Regrettably, without offering any explanation, the Confederation declared a national 24-hour strike, which was declared illegal by the Ministry of Labour. Despite this attitude, we subsequently convened further negotiations on 11 April 2008, which were not attended by the Confederation, which discredited and refused to recognize the authority of the Deputy Health Minister and the General Adviser from my office, whom I had appointed to continue the dialogue."

413. The Government adds that in this context it has promulgated Supreme Decree No. 29473 establishing a wage increase of 10 per cent (minimum increase for the private sector). Furthermore, Supreme Decree No. 29501 provides for an additional increase of 10 per cent for the health sector, approving an annual vaccination bonus for this sector. The Ministry of Labour decided to send a final note to the complainant organization dated 16 April 2008, informing it of the national Government's intention to promulgate the legal provisions mentioned and advising it that in view of its constant avoidance of the dialogue which had been convened, it would consider the matter of the list of claims concluded with the replies sent previously.

414. The Government indicates that the only matter which remained pending with regard to the sector in question was the payment of the merit increment approved by the Government under Bi-ministerial Decision No. 004/2008. This benefit was to be paid from May 2008, but regrettably, this was once again obstructed by the leaders of the complainant organization, who questioned and challenged the instructions for the evaluation procedure issued by the Ministry of Labour in a circular dated 2 May addressed to the departmental (regional) health services (SEDES) to initiate the payment of this benefit. The directors of the departmental (regional) health services are currently being asked once again to send the list of persons eligible for a merit increment so that the payment can be initiated as soon as possible. With regard to the vaccination bonus, the Government points out that the payrolls are being prepared to meet this commitment on 6 July, as laid down in the Supreme Decree. The Government emphasizes that it has fulfilled its undertaking in respect of the sector presenting the complaint and that the workers of this sector have been awarded the 10 per cent increases established for their seniority bonus, infant nursing benefit and border-worker subsidy, all paid retroactively from January of the current financial year. Furthermore, they are to receive the same percentage increase in the service increment, which was paid together with the vaccination bonus on 6 July 2008.

415. The Government emphasizes that, in these circumstances, efforts are clearly being made to agree upon criteria with all social sectors, both public and private, so that wages increase annually in line with the rising cost of living.

C. The Committee's conclusions

416. *The Committee observes that in the present case the Trade Union Confederation of Health Workers of Bolivia (CSTSB) alleges that, in December 2007, it presented a list of claims for 2008, that the authorities of the Ministry of Health and Sports and the Ministry of Labour failed to promote collective bargaining and merely declared that a strike carried out in the sector was illegal (according to the complainant organization, in order to frighten workers, the names of the strikers were demanded so as to make the relevant salary deductions) and, finally, that the administrative authority imposed the payment of a wage increase without holding a debate.*

417. *The Committee notes that the Government mentions the legal provisions which, in its view, guarantee trade union rights and compliance with Convention No. 87 in Bolivia and with regard to the complaint it states that: (1) the CSTSB is recognized as a legally established organization and by means of Ministerial Decision No. 114/08 of 28 February 2008 its executive board was recognized and its leaders were placed on official secondment with full salary entitlement; (2) the General Labour Act provides that public servants may not unionize regardless of their category and status; (3) in reply to the CSTSB's list of claims, the Minister of Health and Sports provided a detailed reply to all the points raised, the complainant organization agreed to several points and it was notified of the Government's decision to approve by supreme decree a wage increase for all public and private workers; (4) following a meeting with the complainant organization held on 27 February 2008 and the reply of the Minister of Health and Sports to the list of claims, dated 20 March 2008, the CSTSB sent a counterproposal and then, without any explanation, declared a national 24-hour strike which was declared illegal by the Ministry of Labour; (5) the Ministry of Health and Sports convened the CSTSB to further negotiations to be held on 11 April 2008, but the organization did not attend and, on 16 April 2008, it was informed of the Government's decisions, including its decision to consider the matter of the list of claims concluded given that the CSTSB had rejected dialogue; (6) in this context Decree No. 29473 establishing a wage increase of 10 per cent and Decree No. 29501 providing for an additional increase of 10 per cent for the health sector were promulgated; and (7) the only matter remaining pending with the sector is the payment of a merit increment,*

which has not been made since the executive board of the CSTSB has obstructed the respective procedure.

418. *Firstly, the Committee notes the Government's statement that section 104 of the General Labour Act provides that public servants may not unionize, regardless of their category and status. The Committee observes, however, that the Government has recognized the complainant organization and its leaders. The Committee recalls that "public servants, like all other workers, without distinction whatsoever, have the right to establish and join organizations of their own choosing, without previous authorization, for the promotion and defence of their occupational interests" [see* ***Digest of decisions and principles of the Freedom of Association Committee****, sixth edition, 2006, para. 219]. In these circumstances, the Committee requests the Government to take the necessary steps to amend the General Labour Act so as to ensure that public servants enjoy the right to establish and join organizations of their own choosing.*

419. *With regard to the negotiation of the list of claims for 2008 presented by the CSTSB and the alleged unilateral imposition of a wage increase, the Committee notes the contradictory information provided by the Government and the complainant organization. The CSTSB alleges that the authorities of the Ministry of Health and Sports failed to promote collective bargaining, while the Government states that it convened the parties on at least two occasions and that, even though the CSTSB did not participate in the second meeting, it declared a national strike. In this regard, observing that the collective bargaining process was not carried out in a structured manner and with every effort being made, the Committee emphasizes that "genuine and constructive negotiations are a necessary component to establish and maintain a relationship of confidence between the parties" [see* ***Digest****, op. cit., para. 935]. The Committee hopes that in future the authorities and the trade union organizations concerned in the health and sports sector will endeavour to enforce this principle. In this regard, the Committee considers that the collective bargaining problems mentioned in this case seem to be linked to public servants not having the right to organize (including those in the health sector) and, therefore, to the lack of legal framework regulating the exercise of the right to collective bargaining by public servants who are not engaged in the administration of the State, a right recognized in Convention No. 98. The Committee requests the Government to establish a legal framework in this area, even though it observes that in practice trade union organizations exist and collective bargaining takes place.*

420. *With regard to the declaration by the administrative authority that the strike held was illegal, the Committee notes that the Government states that, in the context of the negotiation of the list of claims and following the submission of a counterproposal, the CSTSB, without any explanation, declared a national 24-hour strike, which was declared illegal by the Ministry of Labour. In this regard, the Committee recalls that "Responsibility for declaring a strike illegal should not lie with the government, but with an independent body which has the confidence of the parties involved" [see* ***Digest****, op. cit., para. 628]. In these circumstances, the Committee requests the Government to take steps to ensure that responsibility for declaring a strike illegal, where this is necessary, lies with an independent body which has the confidence of the parties involved.*

421. *With regard to the allegation that, in order to frighten workers, the administrative authority ordered the submission of the names of the strikers for the purpose of making the respective salary deductions, the Committee recalls that "salary deductions for days of strike give rise to no objection from the point of view of freedom of association principles" [see* ***Digest****, op. cit., para. 654].*

The Committee's recommendations

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

(a) The Committee requests the Government to take the necessary steps to amend the General Labour Act so as to guarantee that public servants enjoy the right to form and join organizations of their own choosing and to establish the legal framework regulating the right to collective bargaining of public servants not engaged in the administration of the State.

(b) The Committee hopes that in the future, the authorities and the trade union organizations concerned in the health and sports sector will endeavour to hold constructive negotiations and that they will do everything within their power to maintain a relationship of confidence.

(c) The Committee requests the Government to take steps to ensure that responsibility for declaring a strike illegal, where this is necessary, lies with an independent body which has the confidence of the parties.

CASE NO. 2470

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

Complaint against the Government of Brazil presented by — the Single Central Organization of Workers of Brazil (CUT) and — the Unified Trade Union of Chemical Industry Workers (Vinhedo Region)

Allegations: Anti-union practices; establishment of a parallel workers' representative body at the instigation of the company; non-recognition of the National Trade Union Committee; pressure on workers to resign from the Union

423. The Committee last examined this case at its March 2007 meeting [see 344th Report, paras 353 to 386, approved by the Governing Body at its 298th Session].

424. The Government sent its observations in communications dated 23 May and 24 August 2007, 12 March and 1 July 2008, and 9 February 2009.

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

A. Previous examination of the case

426. At its March 2007 meeting, the Committee made the following recommendations [see 344th Report, para. 386]:

(a) The Committee notes with concern that, by and large, the Government confined itself to transmitting the information obtained from both partners without expressing any judgement.

(b) The Committee requests the Government to carry out an investigation into the allegations of various anti-union practices carried out by the company (telephone threats to workers, filming of demonstrations in order to put pressure on the employees, infiltration of workers' meetings by managers, cutting of barbed-wire fences to avoid the picket line and intimidation of workers to return to work during a work stoppage) and to send it detailed information in that regard.

(c) Observing that accompaniment by security guards could be considered in certain circumstances as a necessary measure, but that such a procedure should not result in any interference in internal trade union affairs or in the capacity of trade union representatives to communicate freely with workers in order to apprise them of the potential advantages of unionization, the Committee requests the Government to take steps to ensure that union officials have the necessary space to communicate freely with workers without interference from the employer and without the presence of the employer or the security guards. It requests the Government to kept in informed in this regard.

(d) With regard to the establishment of a workers' representation body parallel to the Union, and considering that the discussion forums or communication programmes promoted by the company do not in themselves constitute a violation of freedom of association, the Committee requests the Government to adopt measures to ensure, in light of the findings of the investigation into the alleged anti-union practices, that these are not used to the detriment of the Union, which is the only body that can guarantee independence both in its establishment and its operation.

(e) Observing with regret that the Government has not sent its observations on Unilever's non-recognition of the National Trade Union Committee, the Committee requests the Government to carry out an investigation promptly into this allegation and to inform it accordingly.

(f) With regard to the distribution of resignation forms and the setting up of a toll-free telephone line providing information on how to resign from the Union, the Committee requests the Government to put into place a mechanism that would enable it to rapidly redress any effects of this type of interference, including through the imposition of sufficiently dissuasive sanctions on the employer where appropriate, and to avoid such incidents in the future.

B. The Government's replies

427. In its communications of 23 May and 24 August 2007, the Government stated that the Ministry of Labour was carrying out investigations into the allegations made in the present case. In its communication of 12 March 2008, the Government stated that it was awaiting the conclusion of the investigations and the report on the measures adopted by the Ministry in connection with its investigation at the Unilever company into allegedly anti-union practices.

428. In its communication of 1 July 2008, the Government states that Unilever was ordered to respect the rights of the union movement. The Government states that the Labour Judge of the Third Labour Court of Jundiaí approved in its entirety the public civil judgement which had been examined by the Ministry of Labour, and ordered that Unilever immediately desist from practices aimed at influencing workers in their decisions to join or leave a union, or to persuade them not to carry out union activities. The complaint was lodged by

the Unified Trade Union of Chemical Industry Workers (Vinhedo Region), and during the ensuing hearings, the Regional Public Prosecutor for Labour, having heard the statements of company and union representatives, confirmed that there had been irregularities. Failure to comply with the decision will result in the imposition by the court of a 100,000 real fine for any instance of non-compliance with any of the specific obligations to refrain from anti-union action. Specifically, this means desisting immediately from any of the following acts: (1) putting pressure on workers to join or leave a union, or to cease union activities; (2) requiring employees to use any telephone service, particularly if it involves the company, to register union membership, or requiring employees to seek company authorization to join the union or have union membership dues deducted at source from wages; (3) dismissals without prior judicial inquiry, or applying any other sanction such as discounting days on which union officials had not worked in order to attend to union business, up to the limit provided for in the collective agreement, or any transfer of a union official to another establishment without his or her agreement, within the statutory period; it will also not be permitted to treat union officials in a discriminatory manner for the mere reason of holding union office, or to initiate any proceedings against workers who associate with union officials or show sympathy for union activities; (4) carrying out any form of reprisal or discriminatory act against employees or against unions on grounds of union membership or activity; (5) refusing to employ a worker because of his or her union membership or intention to join a union; (6) preventing or obstructing union officials from entering company premises in order to disseminate information on matters of interest to the workers, or preventing the use of notices, meetings, or other means of informing workers on union issues of interest to them, the aim being to ensure the freedom to organize union events within and outside company premises; (7) obstructing the freedom to conduct peaceful picketing without interference by the company, the aim being to ensure that workers enjoy the rights provided for in the law on strikes and in the national Constitution; (8) recording on video or any other photographic recording medium workers' demonstrations or meetings without the prior consent of the workers concerned or of their union; (9) obstructing the participation by the authorized union representative in the work of the commission that may be set up to discuss profit sharing under the terms of section 2 of Act No. 10.101/2000; and (10) failing to invite workers in writing in due time, in accordance with the deadlines and terms set out in the collective agreement, where one exists, for the purpose of elections to the internal accident prevention committee.

429. In its communication of 9 February 2009, the Government indicates that the Ministry of Labour and the Unilever group had reached an agreement, approved by the courts, whose terms reaffirmed the principles set out in the ILO Declaration on Fundamental Principles and Rights at Work, particularly those concerning respect for freedom of association and the right to collective bargaining. The agreement provides for a fine, to be determined by the court, in case of anti-union acts committed by the Unilever group.

C. The Committee's conclusions

430. *The Committee recalls that the allegations that had remained pending in this case referred mainly to acts of anti-union discrimination which, according to the complainant organizations, had been committed by the Unilever company (telephone threats against workers, filming of demonstrations in order to put pressure on workers, infiltration of workers' meetings by managers, cutting wire fences to avoid picket lines and intimidation of workers to make them return to work during a work stoppage, having union officials accompanied by security guards, distribution of forms for leaving the union, and setting up a toll-free telephone line allowing workers to resign from the union; and its refusal to recognize the National Trade Union Committee) [see 344th Report, paras 353–386].*

431. *The Committee notes the Government's statements to the effect that: (1) investigations were carried out by the Ministry of Labour into the allegations, and the labour judge of the Third Labour Court of Jundiaí ordered the company to desist immediately from practices aimed at influencing workers in their decision to join or resign from a union or persuading them to cease their union activities; (2) the complaint was lodged by the Unified Trade Union of Chemical Industry Workers (Vinhedo Region) and, during the ensuing hearings, the Regional Public Prosecutor for Labour, having heard statements by company and union representatives, confirmed that there had been irregularities; and (3) failure to abide by the court ruling will result in a 100,000 real fine for every instance of non-compliance with the obligations to desist from the anti-union acts specified in the ruling; and (4) the Ministry of Labour and the Unilever group had reached an agreement, approved by the courts, whose terms reaffirmed the principles concerning freedom of association and the right to bargain collectively and which provides for a fine to be determined by the court in case of anti-union acts.*

432. *The Committee, while regretting the anti-union actions which were found by the court to have taken place, notes with interest the remedial measures ordered by the court, in particular the injunction issued by the court to prevent any recurrence or the carrying out of similar actions and the agreement reached in this regard. Under these circumstances, the Committee requests the Government to ensure that the principles of freedom of association are respected within the Unilever company.*

433. *The Committee notes with interest the agreement concluded between the Ministry of Labour and the Unilever group. The Committee requests the Government to provide relevant information on the consideration given to the refusal to recognize the National Trade Union Committee and the alleged establishment of a parallel workers' representative body within the framework of the investigations, the judicial ruling and the agreement concluded.*

The Committee's recommendations

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

(a) The Committee notes with interest the remedial measures ordered by the court against acts of anti-union discrimination and requests the Government to ensure that the principles of freedom of association are respected within the Unilever company.

(b) The Committee notes with interest the agreement concluded between the Ministry of Labour and the Unilever group. It requests the Government to provide relevant information on the consideration given to the refusal to recognize the National Trade Union Committee and the alleged establishment of a parallel workers' representative body within the framework of the investigations, the judicial ruling and the agreement concluded.

CASE NO. 2635

DEFINITIVE REPORT

Complaint against the Government of Brazil presented by the Union of Workers in the Urban Industries of the State of Pará (STIUPA)

Allegations: The complainant organizations allege acts of anti-union discrimination in particular, arbitrary dismissals and discrimination against trade union leaders and a large number of workers

435. The complaint is contained in a communication from the Union of Workers in the Urban Industries of the State of Pará (STIUPA) dated 10 March 2008.

436. The Government sent its observations in a communication dated 5 September 2008.

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

A. The complainant's allegations

438. In its communication dated 10 March 2008, the Union of Workers in the Urban Industries of the State of Pará (STIUPA) alleges that, between January and April 2005, the company Centrales Eléctricas de Pará SA dismissed 257 workers in an arbitrary and discriminatory manner (117 were subsequently reinstated following a public civil action with an application for a provisional protection order). The complainant organization adds that, in addition to the 257 workers dismissed, four trade union leaders were dismissed and it alleges that they were not covered by the security provided for under section 522 of the consolidated labour laws. The dismissals of the trade union leaders were reported to the Labour and Employment Prosecution Service and their reinstatement was achieved following a public civil action.

439. From August 2007, the trade union and the company initiated negotiations through which an agreement was reached which put an end to a dispute which had been developing over more than two years. It was agreed that the dismissed workers who were not reinstated would be paid 12 months' basic wages and those who were reinstated would be paid four months' wages. The agreement was concluded and officially approved on 15 October 2007.

440. The STIUPA alleges that on 7 December 2007, the company dismissed 50 of the 117 workers who had been reinstated, without complying with the above agreement and falsely stating that the trade union organization had agreed to the dismissals. Of the 50 dismissed workers, only four were not unionized. The complainant organization reports that in the face of the company's anti-union attitude a public civil action was lodged and the reinstatement of the dismissed workers was achieved on 17 December 2007. The STIUPA reports that the judicial authority recognized the discriminatory and abusive nature of the dismissals and ordered the company to refrain from such practices under

penalty of a fine. According to the STIUPA, the company's anti-union attitude is not new, given that, in 2002, a group of managers formed a movement to weaken the trade union. It also reports that, through the Ministry of Labour, three agreements were concluded to modify the company's conduct with a view to improving the industrial relations between the company and the trade union. Under the first agreement the company was obliged to refrain from adopting any kind of negative attitude towards the unionization of workers and the free movement of trade union leaders on the company's premises and to maintain harmonious relations with the trade union.

B. The Government's reply

441. In its communication dated 5 September 2008, the Government states that the Ministry of Labour and Employment is determined to find a legal solution to the wrongful dismissals which occur in the labour market and which are reflected in the alleged events in this case. An example of this determination is the submission to the National Congress of a proposal for the ratification of Convention No. 158. This Convention was already previously approved by the Congress of Brazil in September 1992, but it was subsequently denounced and has not been in force as of December 1996. As a result of Constitutional Amendment No. 45, the trade union organizations requested that the ratification of the Convention concerned be examined. This request was met by the Government in 2007 and the matter was submitted for discussion by the Tripartite Committee on International Relations (CTRI), a tripartite advisory body of the Ministry of Labour and Employment.

442. In a meeting held on 24 October 2007, the CTRI issued an opinion on the matter and, with the opposition of the employer's sector, it decided to recommend to the Minister of State for Labour and Employment, in accordance with the provisions of its internal regulations that Convention No. 158 should be sent to the National Congress for consideration. The Government points out that the decision to send the Convention to the National Congress for consideration is supported by the most representative trade union confederations and by the National Association of Labour Magistrates, a body which gathers together labour judges from across the country.

443. The Government considers that ratification of Convention No. 158 will allow one of the most significant problems in Brazil's labour market today to be tackled: the high turnover of employees, which is a tool used to reduce wages costs. This Convention is currently being examined by the Foreign Relations Committee of the Chamber of Deputies and the Government is taking all possible steps to ensure that the Congress approves it and is able to ratify this major instrument designed to combat wrongful dismissals, as occurred in the case presented to the Committee.

444. The Government points out that the initiative relating to the ratification of Convention No. 158 is part of a set of Government actions designed to make its labour relations more democratic and ensure that the legislation provides for more comprehensive regulation of anti-union practices, which is currently lacking. The Government emphasizes that although freedom of association is protected under the Constitution and the legislation offers protection of constitutional rights in the case of certain abuses (for example under the Strike Act), the national legislation does not provide a precise definition of anti-union acts. This prevents the social partners and the Ministry of Labour and Employment from applying effective preventive and repressive measures to control practices such as those reported in this case.

445. The Government points out that, in an attempt to resolve this issue, it has prepared, in collaboration with workers and employers within the National Labour Forum, a proposal for trade union reform which includes a more precise definition of anti-union acts and provides for sanctions which may be imposed on offenders by the Ministry of Labour and

Employment. The draft Bill on trade union relations (No. 369/05), which is currently in the final stages before the National Congress, provides for a number of situations which constitute anti-union conduct. Any act which is intended to prevent or obstruct trade union activity by employers or workers shall be regarded as an anti-union act and the offender may be liable to sanctions.

446. Under this proposal, the following shall constitute anti-union conduct: making recruitment or continued employment subject to membership, non-membership or termination of membership of a trade union organization; dismissing or discriminating against a worker on the grounds of his or her membership or activities in a trade union organization, participation in a strike or representation of workers in the workplace; granting more favourable financial treatment in a discriminatory manner on the grounds of trade union membership or activity; inciting workers to request their exclusion from proceedings initiated by a trade union organization in defence of their individual rights; forcing a worker to return to work to obstruct or hinder the exercise of the right to strike; hiring workers outside the purview of the law with the aim of replacing workers on strike; and violating the duty of good faith in collective bargaining. Under the provisions of the draft Bill, workers may also commit anti-union acts. The Government emphasizes that a good proposal to resolve this issue inevitably has to reflect the provisions of Convention Nos 98 and 135, which have been ratified by Brazil. The proposal must also establish effective mechanisms for the imposition of sanctions on offenders, which is being met with considerable resistance from Brazil's employer's sector. The Government indicates that the proposal originating from the National Labour Forum fills the legislative void by providing a more precise definition of anti-union acts which may be committed by workers and employers and at the same time imposing sanctions and penalties which ensure the effectiveness of the legislation. The Government explains that it was not possible to reach a consensus in the National Labour Forum on the issue of sanctions and penalties, in particular with regard to the amount of the fine to be imposed in the case of anti-union conduct. The employers' opposition with regard to the stipulated amount of the fines has had an effect on the length of time taken to pass the draft through the National Congress, but has in no way diminished the Government's expectation that the draft will be approved as soon as possible. It is a trial of strength, which is typical in a democratic society, in which the different interests of society have to be taken into account.

C. The Committee's conclusions

447. *The Committee observes that in the present case the complainant organization alleges that on several occasions, between 2005 and 2007, the company Centrales Eléctricas de Pará SA dismissed a number of trade union leaders and 257 workers in an arbitrary and discriminatory manner (the trade union leaders and a large number of workers were subsequently reinstated following legal action; the judicial authority recognized the discriminatory and abusive nature of the dismissals and ordered the company to refrain from such practices under penalty of a fine) and that the company has been adopting an anti-union attitude since 2002.*

448. *The Committee notes that the Government reports that: (1) it is determined to find a legal solution to the wrongful dismissals which occur in the labour market and which are reflected in the alleged events in this case, and that, as an example of its determination, it has submitted to the National Congress a proposal for the ratification of Convention No. 158; (2) the initiative concerning the ratification of that Convention forms part of a set of actions aimed at making labour relations more democratic and ensuring that the laws of Brazil provide for more comprehensive regulation of anti-union practices, currently lacking in the legislation; (3) although freedom of association is protected under the Constitution, the national legislation does not define anti-union acts and this prevents the Ministry of Labour and Employment from applying effective preventive and repressive*

measures to control acts such as those reported in this case; (4) in an attempt to resolve this issue, the Government, together with workers and employers within the National Labour Forum, has prepared a proposal for trade union reform (No. 369/05, which is currently in the final stages before the National Congress) which gives a more complete definition of anti-union acts and provides for sanctions which may be imposed on offenders by the Ministry of Labour and Employment; (5) the draft Bill on trade union relations, currently before the National Congress, provides for a number of situations which constitute anti-union practice (making recruitment or continued employment subject to membership or non-membership of a trade union organization, dismissing or discriminating against a worker on the grounds of his or her membership or activities in a trade union organization, participation in a strike or representation in the workplace, etc.); (6) a good proposal to resolve this issue inevitably has to reflect the provisions of Conventions Nos 98 and 135 and must establish effective mechanisms for the imposition of sanctions on offenders, which has been met with a difference of opinion as to the level of sanctions to be imposed in the case of anti-union behaviour between employers and workers; (7) the National Labour Forum's proposal fills the legislative gap by providing a more complete definition of anti-union acts which may be committed by employers and workers and at the same time imposing sanctions and penalties which ensure the effectiveness of the legislation; and (8) it was not possible to achieve a consensus in the National Labour Forum on the issue of sanctions and penalties, in particular with regard to the amount of the fine to be imposed in the case of anti-union conduct, but while this has had an effect on the length of time taken to pass the draft through the National Congress, it has in no way diminished the Government's expectation that the draft will be approved as soon as possible.

449. *The Committee observes that the Government acknowledges the anti-union dismissals alleged and that these dismissals were resolved through an agreement between the parties or by a court ruling. In these circumstances, the Committee requests the Government to continue to ensure respect for trade union rights in the company in question.*

450. *In general, the Committee notes that the Government points out that the lack of definition of anti-union acts in the legislation prevents the Ministry of Labour and Employment from applying effective preventive and repressive measures to control acts such as those reported in this case. In this respect, the Committee notes with interest that initiatives have been taken relating to the adoption of legislation (a proposal for trade union reform) which includes a more precise definition of anti-union acts and provides for sanctions which may be imposed on offenders by the Ministry of Labour and Employment. In this regard, the Committee draws the legislative aspects of this case to the attention of the Committee of Experts on the Application of Conventions and Recommendations for it to examine with regard to the application of Convention No. 98.*

The Committee's recommendations

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

(a) The Committee requests the Government to continue to ensure respect for trade union rights in the company Centrales Eléctricas de Pará SA.

(b) The Committee notes with interest the initiatives relating to the adoption of legislation (proposal for trade union reform) which includes a more complete definition of anti-union acts and provides for penalties which may be imposed on offenders by the Ministry of Labour and Employment, the Committee draws the legislative aspects of this case to the attention of the

Committee of Experts on the Application of Conventions and Recommendations, with regard to the application of Convention No. 98.

CASE NO. 2636

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

Complaint against the Government of Brazil presented by — the Union of Workers in Metal, Engineering and Electrical Equipment Industries of Caxias do Sul and — the Central Organization of Workers of Brazil (CTB)

Allegations: the complainant organizations allege that a long-serving official was dismissed on anti-union grounds

452. The complaint is contained in a communication of the Union of Workers in Metal, Engineering and Electrical Equipment Industries of Caxias do Sul and the Central Organization of Workers of Brazil (CTB) dated 14 March 2008.

453. The Government sent its observations in a communication dated 5 September 2008.

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

A. The complainants' allegations

455. In their communication of 14 March 2008, the Union of Workers in Metal, Engineering and Electrical Equipment Industries of Caxias do Sul and the CTB allege that, in violation of the principles of freedom of association, the management of the enterprise FRASLE SA dismissed trade union official Jorge Antonio Rodríguez on 27 January 2008. The complainant organizations provide the following details about the career of Mr Rodríguez as a trade union official: in 1990, he was elected as vice-chairperson; in 1993, he was elected as chairperson; in 1996 and 1999, he was re-elected as chairperson; in 2002, he was elected as director of legal and labour relations matters and in 2005, he was elected as chairperson of the union's financial board.

456. According to the complainant organizations, during the whole time that Mr Rodríguez worked at the enterprise, he never committed an illegal act or breached a legal or contractual obligation that would justify the unilateral decision to terminate his contract. Even if he had committed serious misconduct, the enterprise should have suspended the worker and called on the judicial authority to conduct an investigation to prove that an illegal act had been committed. No such investigation took place, because the trade union official did not commit any serious misconduct and the enterprise simply dismissed him without just cause.

457. According to the complainant organizations, the dismissal was a penalty for the official's trade union activity and for his firm stand in defence of workers' rights (during his last

term of office, he had been called upon to intervene on several occasions to defend the rights of the entire occupational category that he represented).

458. The complainant organizations report that, in a show of solidarity and gratitude for Jorge Antonio Rodríguez, the workers of the enterprise staged a work stoppage on 28 January 2008. The complainant organizations consider that the dismissal without just cause of the official in question is an act of discrimination that violates freedom of association and undermines the right of workers to trade union representation in the workplace.

B. The Government's reply

459. In its communication of 5 September 2008, the Government states that it is unbelievable and unacceptable that a trade union official in the exercise of the office entrusted to him by his fellow workers – which expired on 5 December 2008 – should have been the victim of a gross violation of the rights guaranteed by the Constitution of Brazil. In fact, in accordance with the provisions of Convention No. 98, the Constitution guarantees job security for all trade union officials and their substitutes who are elected by workers (section 8, paragraph VIII). The trade union official in question was elected to serve as the chairperson of the supervisory board of the union, and as such he enjoyed the guarantee of job security provided under section 8 of the Constitution.

460. In terms of taking a decisive measure, such as reinstating the worker in the enterprise, the greatest difficulty that the Government faces lies in the fact that, although freedom of association is guaranteed under the Constitution and although the law provides protection from certain violations (as is the case with the Strike Act), anti-union behaviour is not fully recognized as an offence by the national legal system. This prevents the social partners and even the Ministry of Labour and Employment from taking effective preventive and repressive measures to regulate the type of conduct mentioned in the complaint.

461. According to the Government, in an attempt to resolve this issue, it prepared, in the context of the National Labour Forum and together with workers and employers, a proposal for trade union reform which includes a more complete definition of anti-union acts and provides for penalties for offenders, which may be imposed by the Ministry of Labour and Employment. The preliminary draft act on trade union relations (No. 369/05), which is pending the final stages of approval by the National Congress, provides for a number of situations that constitute anti-union behaviour. Any act by employers or workers that is intended to impede or obstruct trade union activities shall be considered as anti-union behaviour and penalties may be imposed on the offender. The Government also sent to the National Congress a proposal on the ratification of Convention No. 158.

462. In any case, in view of the Government's limited capacity to act in response to situations that clearly flout legislation, as is demonstrated in the present case, the priority of the Government is precisely to formulate legislative proposals which not only extend the rights of workers, but which can also guarantee the effective implementation of those rights. Lastly, the Government indicates that, in the current situation, as described, the worker should seek legal redress so that a decision may be taken by the labour courts to ensure respect for all his rights, which would lead to the reinstatement of the worker in his post. The labour courts of Brazil are playing an increasingly active role in combating this type of behaviour and accordingly the majority of their decisions are consistent with the best interests of workers.

C. The Committee's conclusions

463. *For the purposes of these conclusions and recommendations, a reference to "the company" is a reference to the enterprise FRASLE SA.*

464. *The Committee observes that, in the present case, the complainant organizations allege that Jorge Antonio Rodríguez, a long-serving official, was dismissed from the company on 27 January 2008 on anti-union grounds. According to the complainant organizations, the dismissal was a penalty for the official's trade union activity and for his firm stand in defence of workers' rights.*

465. *The Committee notes that, according to the Government: (1) it is unbelievable and unacceptable that a trade union official in the exercise of the office entrusted to him by workers – which expired on 5 December 2008 – should have been the victim of a gross violation of the rights guaranteed by the Constitution of Brazil; (2) in accordance with the provisions of Convention No. 98, the Constitution guarantees job security for all trade union officials and their substitutes elected by workers (section 8, paragraph VIII); as the trade union official in question was elected to serve as the chairperson of the union's financial board, he accordingly enjoyed the guarantee of job security provided under the Constitution; (3) in terms of taking a decisive measure, such as reinstating the worker in the enterprise, the greatest difficulty that the Government faces lies in the fact that, although freedom of association is guaranteed under the Constitution, anti-union behaviour is not fully recognized as an offence by the national legal system and this prevents the Ministry of Labour and Employment from taking effective preventive and repressive measures to regulate the type of conduct mentioned in the complaint; (4) in an attempt to resolve this issue, the Government, together with workers and employers, prepared in the context of the National Labour Forum a proposal for trade union reform (No. 369/05, which is pending the final stages of approval by the National Congress) which includes a more complete definition of anti-union acts and provides for penalties for offenders, which may be imposed by the Ministry of Labour and Employment; (5) in view of the Government's limited capacity to act in response to situations that clearly flout legislation, as is demonstrated in the present case, the priority of the Government is precisely to formulate legislative proposals which not only extend the rights of workers but also guarantee the effective implementation of these rights; and (6) in the current situation, as described, the worker should seek legal redress so that a decision may be taken by the labour courts to ensure respect for all his rights, which would lead to the reinstatement of the worker in his post.*

466. *In these circumstances, noting that the Government acknowledges the allegations, and considers them to be a gross violation of the trade union rights guaranteed by the Constitution and a flouting of the legislation, and further noting the Government's indication that anti-union behaviour is not fully recognized in the national legal system and prevents the social partners and the Ministry of Labour and Employment from taking effective preventive and repressive measures, the Committee requests the Government to take without delay all measures within its power to ensure the reinstatement of Jorge Antonio Rodríguez in the company. The Committee requests the Government to keep it informed in this regard and to indicate whether Jorge Antonio Rodríguez has initiated legal proceedings in connection with his dismissal.*

467. *Lastly, welcoming the steps taken to adopt a law (proposal for trade union reform) that includes a more complete definition of anti-union acts and provides for penalties for offenders, which may be imposed by the Ministry of Labour and Employment, the Committee draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to the legislative aspects of this case relating to the application of Convention No. 98.*

The Committee's recommendations

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

(a) The Committee requests the Government to take without delay all measures within its power to ensure the reinstatement of trade union official Jorge Antonio Rodríguez in the company. The Committee requests the Government to keep it informed in this regard and to indicate whether Jorge Antonio Rodríguez has initiated legal proceedings in connection with his dismissal.

(b) Welcoming the steps taken to adopt a law (proposal for trade union reform) that includes a more complete definition of anti-union acts and provides for penalties for offenders, which may be imposed by the Ministry of Labour and Employment, the Committee draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to the legislative aspects of this case relating to the application of Convention No. 98.

CASE NO. 1787

INTERIM REPORT

Complaint against the Government of Colombia presented by
— the International Trade Union Confederation (ITUC)
— the Latin American Central of Workers (CLAT)
— the World Federation of Trade Unions (WFTU)
— the Single Confederation of Workers of Colombia (CUT)
— the General Confederation of Workers (CGT)
— the Confederation of Workers of Colombia (CTC)
— the Trade Union Association of Civil Servants of the Ministry of Defence, Armed Forces, National Police and Related Bodies (ASODEFENSA) and
— the Petroleum Industry Workers' Trade Union (USO) and others

Allegations: Murders and other acts of violence against trade union leaders and trade unionists

469. The Committee last examined this case at its November 2007 meeting [see 348th Report, paras 231–287, approved by the Governing Body at its 300th Session, November 2007]. The International Trade Union Confederation (ITUC) sent new allegations in communications dated 15 November 2007 and 19 March 2008. The World Federation of Trade Unions (WFTU) sent new allegations in communications dated 27 November 2007, 25 April and 25 June 2008. The Single Confederation of Workers of Colombia (CUT), the General Confederation of Workers (CGT) and the Confederation of Workers of Colombia (CTC) sent new allegations in a communication dated 12 June 2008. The Union of Public Employees of Sena (SINDESENA) sent new allegations in communications dated 23 January and 21 May 2008. The Telecommunications Company Workers' Union

(SINTRATELEFONOS) sent new allegations in a communication dated 2 June 2008. The ITUC sent new allegations in a communication dated 4 March 2009.

470. The Government sent its observations in communications dated January, 7 and 21 May, July and 22 August 2008, and 13 February 2009.

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

A. Previous examination of the case

472. At its session of November 2007, the Committee considered it necessary to draw the special attention of the Governing Body to this case because of the extreme seriousness and urgency of the matters dealt with therein and made the following recommendations concerning the outstanding allegations, which related chiefly to acts of violence against trade unionists [see 348th Report, paras 4 and 287]:

(a) In general, the Committee considers that in view of the persistence of acts of violence of which trade union leaders and members are the victims in the exercise of their functions, the situation is extremely grave;

(b) With regard to the progress of the investigations and the information provided by the Office of the Public Prosecutor and the Government, the Committee takes note of certain encouraging steps taken such as the creation of a sub-unit for trade union matters and expects that the measures adopted will lead to positive outcomes in a greater number of investigations, which should cover both the 128 pre-selected cases, as well as the other existing cases, and it urges the Government to provide it with detailed information on the progress made in each of the investigations under way, where they relate to trade union victims, on those responsible for such acts, particularly in the case that they are specific armed groups, and on their motives, and that it will continue to take all the necessary measures to bring an end to the intolerable situation of impunity;

(c) In relation to the alleged links between the DAS and paramilitary groups, the Committee asks the complainant organizations to send information concerning the link between these allegations and the questions dealt with in this case and requests the Government to take all the necessary measures to ensure that, in the context of the investigations that are being undertaken by the Public Prosecutor and the Procurator-General, the necessary steps are taken to determine conclusively: (1) whether there has been a violation of the legislation and of the provisions governing the DAS with regard to the confidentiality of the information relating to the trade union leaders, particularly through the divulgence of such information to paramilitary groups; (2) whether the divulgence of this information corresponded to a plan for the elimination of the trade union movement, with the victims including the persons murdered who are included on the list provided by the ITUC; (3) those who were responsible for such violations; and (4) the extent of the involvement of the DAS in such acts. The Committee urges the Government to ensure that such investigations are carried out on an urgent basis and expresses the firm hope that they will achieve tangible results and, if the allegations are proven to be true, will identify those responsible and prosecute and punish those who are guilty. The Committee requests the Government to provide full information on the investigations that are under way and their outcome;

(d) In view of the planned notification of the protection programme for trade union leaders to the national police, the Committee requests the Government to take measures without delay to provide adequate protection to all those trade unionists who so request and to ensure that such protection has the full confidence of the trade unionists concerned;

(e) The Committee further requests the Government to provide information on the measures adopted in relation to the acts of violence denounced most recently, which are contained

in the section on new allegations in the present case, and on the measures intended to prevent future acts of violence against trade unionists and their families;

(f) With regard to the mass detentions of trade union members of FENSUAGRO, the Committee requests the Government to indicate whether they have their origin in orders issued by the judicial authorities and on the reasons for such orders and the progress made in the judicial processes related to these detentions;

(g) With reference to Justice and Peace Act No. 975, intended to achieve the collective and individual reincorporation into civilian life of the members of clandestine armed groups, its impact on the rights of the victims to truth, as well as the pending cases of murders and violence against trade unionists, the Committee requests the Government to indicate the impact in practice of the Justice and Peace Act on the pending cases of murders and violence against trade unionists which occurred both prior to the entry into force of the Act and since its entry into force, as well as the influence of the Act on the general climate of violence against trade union leaders and members;

(h) The Committee urges the Government to provide without delay its observations on the allegations relating to the existence of the so-called "Operation Dragon" plan to eliminate several trade union leaders, in relation to which the Government indicated previously that both the Office of the Public Prosecutor and that of the Procurator-General have launched investigations; and

(i) Finally, the Committee requests the Government to provide its observations on the communications dated 16 August and 13 September 2007 from the CUT and the ITUC without delay, respectively, which have been added to the section on new allegations in the corresponding part of the report, as well on the communication from the WFTU dated 13 August 2007.

B. New allegations

473. In their communications dated 15 and 27 November 2007, 19 March, 25 April, 21 May, 2, 12 and 25 June 2008, the ITUC, WFTU, CUT, CGT, CTC, SINDESENA and SINTRATELEFONOS refer to the following acts of violence.

Murders

1. Julio César Gómez Cano, official of the Antioquia Teachers' Association (ADIDA), in June 2007.

2. Leónidas Silva Castro, official of the North Santander Teachers' Union (ASINORT), in the Prados del Norte District, on 2 November 2007.

3. Giraldo Rey, president of the branch committee of the National Union of Fruit, Agro-industrial, Fisheries, Hotels and Tourism Workers of the Grajales Industrial Group.

4. Mercedes Consuelo Restrepo Campos, official of the Valle Single Union of Teachers (SUTEC), in Cartago, on 7 November 2007.

5. José de Jesús Marín Vargas, member of the National Union of Food Workers (SINALTRAINAL), in the town of Dos Quebradas, on 22 November 2007.

6. Mario Zuluaga Correa, member of the Medical Union (ASMEDAS), in Medellín, on 2 January 2008.

7. Ramiro de Jesús Pérez Zapata, member of the executive committee of ADIDA on 12 January 2008.

8. Israel González, General Secretary of the Tolima Farmworkers' Association (ASTRACATOL).

9. Yebraín Suárez, official of the Union of Guards of the National Prison Service (SIGGINPEC), in Itagüi, on 28 January 2008.

10. José Martín Duarte Acero, member of SINTRAMBIENTE, in the La Macarena national park, on 2 February 2008.

11. María del Carmen Mesa Pasachoa, member of the Arauca Teachers' Association (ASEDAR), on 8 February 2008.

12. Arley Benavídez Samboni, CUT activist, on 9 February 2008.

13. José Giraldo Mamian, member of ASOINCA-FECODE, in the town of La Vega, on 9 February 2008.

14. Carmen Cecilia Carvajal Ramírez, member of ASINORT, on 4 March 2008.

15. Leónidas Gómez Rozo, of the National Union of Bank Employees (UNEB), disappeared on 5 March and was found murdered on 7 March 2008.

16. Gildardo Antonio Gómez Alzate, delegate of ADIDA, on 7 March 2008.

17. Carlos Burbano, member of the National Association of Hospital Workers of Colombia (ANTHOC), on 12 March 2008.

18. Víctor Manuel Muñoz of ADUCESAR-FECODE in the town of Codazzi, on 12 March 2008.

19. Manuel Antonio Jiménez, member of FENSUAGRO, in Puerto Asís, on 16 March 2008.

20. José Fernando Quiroz, member of CICACFROMAYO-FENSUAGRO, in Puerto Asís, on 16 March 2008.

21. José Gregorio Astros Amaya, member of ASEINPEC, in the Department of Valle, on 18 March 2008.

22. Adolfo González Montes, member of SINTRACARBON, on 25 March 2008.

23. Luz Mariela Díaz López, member of ASEP, FECODE, in the town of La Hormiga, on 1 April 2008.

24. Emerson Iván Herrera Ruales, member of ASEP, FECODE, in the town of La Hormiga, on 1 April 2008.

25. Jesús Heberto Caballero Ariza, official of SINDESENA, in the town of Sabanalarga, on 21 April 2008.

Death threats

1. Against Mr Carlos Julio Peñaloza García, teacher president of ASINORT, in the context of a complaint he had made concerning notifications and improvement of conditions of work of teachers in the town of Pamplonita (allegation filed under No. 2554).

2. Rodolfo Bello Merchán, member of ASINORT relating to the process of notifications of teachers in the town of Pamplonita (allegation filed under No. 2554).

3. Against SINDESENA Medellín, by the paramilitary group "Aguilas Negras", on 21 January 2008.

4. Héctor Vásquez Fernández and José Joaquín Vásquez Ríos, members of the Escuela Sindical Nacional, on 25 February 2008.

5. Over Dorado, president of ADIDA, received a death threat on 1 April 2008.

6. David Flórez (president of CUT Santander), Javier Correa (president of SINALTRAINAL), César Plazas (treasurer of CUT Santander), Martha C. Díaz (president of ASTDEMP), Fernando Porras (official of CUT Santander), César Tamayo (official of FENSUAGRO), William Rivera (official of SUDEVI), Nohora Villamizar, member of CUT Santander, threatened on 11 June 2008 by paramilitaries.

7. Belcy Rincón, threatened by the paramilitary group "Aguilas Negras", on 19 June 2008.

8. Lina Paola Malagón, lawyer of The Colombian Commission of Lawyers which represents CUT, threatened by the paramilitary group "Aguilas Negras" on 2 March 2009.

Assaults

1. Rafael Boada, president of the National Union of Bank Employees (UNEB), received two gunshot wounds in his car on 7 March 2008.

2. Eduardo Arévalo, member of SUTIMAC, gunshot wound on 26 March 2008.

3. Jorge Gamboa Caballero, president of the Petroleum Industry Workers' Trade Union, in the town of San Vicente de Chucurí, on 23 April 2008.

4. Against the national headquarters of SINDESENA, on 18 May 2008, violent entry, violence against the building manager and theft of property.

Detentions

1. Manuel de Jesús Reyes, legal representative of the Sucre Department Agricultural Workers Union, SINDAGRICULTORES, on 27 March 2008.

474. The ITUC emphasizes that the teaching profession in Colombia is one of the most affected by anti-union violence and stresses the need for a special unit in the Office of the Public Prosecutor to achieve concrete and credible results in the investigations into the murders which have occurred.

475. In its communication of 2 June 2008, the Bogotá Telecommunications Company Workers' Union refers to the allegations previously submitted by the WFTU that the President and Vice-President of the nation had launched a campaign of slander and threats against the trade union movement, accusing them of having links to the guerrillas. SINTRATELEFONOS reports that it has initiated criminal proceedings against the Vice-President and the Adviser to the President for the offence of slander.

476. In their communication of 12 June 2008, the CUT, CGT and CTC sent a communication in which they presented an updated list of the 2,669 trade union members murdered and 193 abducted and disappeared in the period between 1 January 1986 and 1 June 2008. This list was sent to the Government. The complainant organizations indicated that, bearing in mind that in the present case the proceedings before the Committee on Freedom of Association is a fundamental source of work of the Sub-unit of the Office of the Public Prosecutor and the Colombian judges designated under the tripartite agreement, this list needs to be investigated and subsequent reports should refer to them. They add that the list is not exhaustive.

C. The Government's reply

477. In its communications of January, 7 and 21 May, July and 22 August 2008, and 13 February 2009, the Government indicates that all the institutions of the Colombian State were committed to the process of demobilizing the over 30,000 members of the AUC in the framework of the peace process led by the current Government. The demobilization and disarming of these groups was duly supported by international organizations, monitored by NGOs and had the active involvement of 125,000 victims who came forward to file their claims.

478. In the Office of the Public Prosecutor, in 2007 alone, prosecutors and assistants reviewed 240,000 cases which now provide sufficient information to uncover the concealment of the truth by the former paramilitaries on pain of losing all benefits and possible imposition of sentences which could be up to 60 years in prison.

479. The Government again refers to the Justice and Peace Act and its special provisions. It points out that 21 offices of the National Justice and Peace Unit were created by Decree No. 122 of 18 January 2008, and the staffing establishment of the Office of the Public Prosecutor was modified, assigning to that Unit 93 prosecutors attached to the circuit courts, 32 prosecutors attached to special circuit criminal courts, 39 prosecutors attached to the district court, among other things. 217,498 cases related to incidents which occurred in areas of influence of the demobilized AUC groups were reviewed.

480. According to the Office of the Public Prosecutor, the results of the Justice and Peace Act relating to cases of trade unionists in May 2008 were: number of proceedings opened: 11; arrest warrants: 5; persons arrested: 10; and convictions: 1.

481. The Government refers to the emergence of new criminal gangs, among them the "Aguilas Negras". These criminal gangs are organizations which are taking over armed control of strategic drug-trafficking zones. They represent the creation of organizations to dominate drug-trafficking and hire ex-paramilitaries. The criminal gangs project themselves as a new generation of cartels, strengthened by an extremely wealthy military apparatus with transnational reach, based on its location in frontier areas and seaports. It seeks to create a new model of criminal activity by strengthening organizations in areas where ex-AUC paramilitaries have strategic influence. Currently, 18 criminal gangs have been identified, with 2,196 men in 16 departments and 101 towns. Following Government instructions, the law enforcement agencies have put in place a powerful mechanism, the "Integrated Centre for Intelligence against Criminal Gangs – C12 BACRIM", responsible for coordinating, checking and acting on results against criminal gangs, in order to ensure the process of demobilization, disarming and reintegration.

482. In general, with regard to the murders of trade union officials and members, the Government reiterates that Colombia is a country where levels of violence, in part derived from the activities of illegal groups financed by drug-trafficking, extortion and kidnapping, had peaked in 2002. The violence affects the whole population without discrimination,

including members of the trade union movement. Thanks to the democratic security policy, in 2003, the general upward spiral of violence began to reverse.

483. This improvement was also seen with respect to members of trade unions thanks to the special measures taken by the national Government and the judiciary, such as strengthening the budgets and organization of the national Government's protection programmes and strengthening the judiciary by creating the Special Unit in the Office of the Public Prosecutor and the special courts to clear the bottleneck and combat the impunity of crimes against members of the trade union movement. As a result, the aggregate rate of murders for the Colombian population fell by 40 per cent between 2002 and 2007, and the rate of murders of trade union members fell by 82 per cent according to statistics of the Escuela Sindical Nacional and by 87 per cent according to national government figures.

484. Despite all these efforts, regrettably in the current year new incidents have occurred affecting the lives of trade unionists, in the face of which the Government has adopted new measures to combat impunity and violence, such as, the system of rewards offered to anyone who provides information leading to the arrest of those who commit acts of violence. Thanks to this system and the work of the criminal police and the Office of the Public Prosecutor, five people have been arrested for murders in 2008, as shown below:

Investigations initiated

Cases in which an arrest has been made

1. File No. 4441.

   Victim: Mario Zuluaga Correa.

   Occupation or profession: Doctor.

   Trade union: ASMEDIAS (Medical Trade Union).

   Status in the trade union: Member.

   Offence: Aggravated homicide with qualified and aggravated robbery.

   Stage: Submission of preliminary indictment.

   Name of accused: Yenson Alexander González.

   Date of the incident: 20 January 2008.

   Place of the incident: Medellín Antioquia.

   Summary: The incident occurred at apartment 401, No. 42-19, 51st Street, the home of the victim. Dr Mario Zuluaga was found at his home. He had been manually strangled.

   Action in the proceedings: Preliminary hearing in which an arrest warrant was requested on 4 April 2008; formulation of charge of the offence of aggravated homicide with qualified and aggravated robbery, with application for remand in custody on 8 April 2008. The application was approved by District Criminal Court No. 1, Enforcement of Guarantees, Medellín. Investigations into a second person who was apparently involved in the offence are ongoing.

2. File No. 4445.

   Victim: María Teresa Trujillo Orozco.

   Occupation and trade union: Teacher. ASOINCA.

   Offence: Homicide.

   Stage: Submission of indictment.

   Accused: Wilson Cristo Herrera Pineda.

   Date and place of the incident: 7 March 2008; Santander de Quilichao Cauca.

   Summary: Occurred in the outskirts of the municipality of Santander de Quilichao Cauca. The victim was on the public highway when she was attacked by two persons, when, during a struggle with her to steal her belongings, one of them caused fatal injuries with a sharp instrument and then fled immediately.

   Action in the proceedings: Application for arrest warrant, 6 March 2008. Hearing to confirm the arrest, formulation of the charge and preventive detention order on 7 March 2008. The indictment was submitted on 4 April 2008. A preliminary hearing was requested in the ILO decongestant court. Date yet to be fixed.

3. File No. 4456.

   Victims: Luz Mariela Díaz López, Emerson Iván Herrera Ruales.

   Occupation and trade union: Teachers; SEP.

   Stage: Submission of indictment.

   Accused: Edgardo Alexander Díaz.

   Date and place of the incident: 1 April 2008; Valle del Guamuez (Putumayo).

   Summary: The victims were travelling by motorcycle through the Los Pomos district of the municipality of Valle de Guamuez when they were intercepted by two persons who threatened them with a firearm and fired repeated shots causing their death.

   Action in the proceedings: Initially prosecuted by the Hormiga Putumayo Prosecutor's Office, Section No. 50. On 8 April, the arrest of Edgardo Alexander Díaz, was approved, the indictment was formulated and an application was made for remand in custody, which was approved by the guarantee control judge. The matter was requested in letter No. 05 of 15 April 2008 of the Hormiga Putumayo Prosecutor's Office, Section No. 50. in the remand process. On 2 May 2008, the indictment was submitted in Bogotá. The hearing was set for 16 May 2008.

4. Criminal summons No. 767366000186200800154.

   Prosecutor: Section No. 47, Sevilla, Valle.

   Victim: Omar Ariza.

   Profession trade union: Teacher; SUTEV.

Date and place of the incident: 7 April 2008; Farm in Sevilla Valle.

Stage of proceedings: Awaiting the report of the youth unit – Tulúa Prosecutor's Office, Section 51, Valle. In this case, the trial of Andrés David Alegría and Jhon Luis Restrepo was held before the Sevilla district judge. Sentencing was deferred until 2 July 2008.

Other investigations

1. File No. 440.

   Victim: Ramiro Jesús Zapata.

   Occupation or profession: Secondary teacher Genoveva Díaz of San Jerónimo Antioquia, member of ADIDA.

   Date and place of the incident: 12 January 2008; San Jerónimo district, Antioquia.

   Stage: Investigation.

   Action in the proceedings: Prosecuted by Prosecutor's Office, section 6, of Santa Fe de Antioquia.

2. Victim: Israel González.

   Occupation or profession: Farmer.

   Organization: ASTRACATOL.

   Stage: Investigation.

   Date of the incident: 24 January 2008.

   Place of the incident: Tolima.

   Summary: Mr Israel Gonzáles, president of the Mesetas de San Antonio district action committee, Tolima, was killed in a fight.

   It seems that the deceased was carrying a 38 calibre revolver, a grenade and a book of keys, and was presented as a subversive killed in combat.

   It should be noted that ASTRACATOL, according to the annexed certification, is not a trade union but a farmers' organization, for which reason it is requested that the case should be excluded.

3. File No. 4443.

   Victim: José Yebrail Suárez Leal.

   Occupation or profession: Inpec officer, maximum security prison, Itagüi (Antioquia), SIGGINPEC.

   Stage: Investigation.

   Date of the incident: 28 January 2008.

Place of the incident: Intersection of 56th with 50th street in the municipality of Bello Antioquia.

4. File No. 4453.

Victim: Víctor Manuel Muñoz Benavides.

Occupation and Trade Union: Teacher; ADUCESAR.

5. File No. 4454.

Victim: José Gregorio Astros Amaya.

Profession and Trade Union: Inpec Inspection Commander; ASEINPEC.

Stage: Investigation.

Date and Place of the incident: 18 March 2007; Cartago, Valle.

6. File No. 4455.

Victim: Adolfo Gonzáles Montes.

Occupation and Trade Union: Operator 15 – Cerrejón mine; SINTRACARBON.

Stage: Investigation.

Date and place of the incident: 22 March 2008; Riohacha Guajira.

Action in the proceedings: Investigation conducted by Prosecutor's Office, section 3, Riohacha Guajira. A methodological programme was prepared. On 13 May 2008, legal instructions were issued to the police.

7. Criminal summons No. 08636001108200880036.

Prosecutor's office: Section 1, Barranquilla.

Victim: Jesús Herberto Caballero Ariza, official of SINDISENA, Atlántico branch committee.

Stage of proceedings: Investigation, active stage.

Date and place of the incident: 17 April 2008; Barranquilla.

8. File No. 4444.

Criminal indictment No. 5068361056192008800012.

Victim: José Martín Duarte Acero.

Occupation and Trade Union: Forestry engineer, SINTRAMBIENTE.

Stage: Investigation.

Date and place of the incident: 2 February 2008; San Juan de Arama (Meta).

Action in the proceedings: Prosecutor's office, section 14 of the municipality of Granada carried out the methodological programme with the police intelligence unit (SIJIN) of San Juan de Arama.

9. File No. 4446.

Victim: Arley Benavidez Samboni.

Occupation and Trade Union: Moto taxi driver; ANTHOC (had been made redundant due to reorganization but was a member of the trade union).

Offence: Homicide.

Stage: Investigation.

Date and place of the incident: 9 February 2008; La Sierra-Cauca.

Action in the proceedings: Prosecuted by Prosecutor's Office section 2, Balboa Cauca.

10. File No. 4447.

Victim: José Giraldo Mamian.

Occupation and Trade Union: Teacher; ASOINCA.

Stage: Investigation.

Date of the incident: 9 February 2008.

Place of the incident: Paraíso district of the municipality of La Sierra-Cauca.

Action in the proceedings: Prosecuted by Prosecutor's Office section 1, Popayán.

11. File No. 4449.

Victim: Carmen Cecilia Carvajal Ramírez.

Occupation and trade union: Teacher; ASINORT.

Stage: Investigation.

Date of the incident: 4 March 2008.

Place of the incident: Ocaña Norte de Santander.

Action in the proceedings: Investigation conducted by Prosecutor's Office, section 1, Ocaña.

12. File No. 4450.

Victim: Segundo Leónidas Gómez Rozo.

Occupation and trade union: Bank employee; UNEB.

Stage: Investigation.

Date of the incident: 8 March 2008.

Place of the incident: Bogotá DC.

Action in the proceedings: Resolution of 18 March 2008, Prosecutor's Office, section 191, Homicide Unit.

13. File No. 4451.

Victim: Gildardo Antonio Gómez Alzate.

Occupation and trade union: Teacher; ADIDA.

Stage: Investigation.

Date and place of the incident: 9 March 2008; Medellín (Antioquia).

Action in the proceedings.

Prosecuted by Prosecutor's Office, section 98, Medellín.

14. File No. 4452.

Victim: Carlos Burbano.

Occupation and trade union: Nursing auxiliary; ANTHOC.

Stage: Investigation.

Date and place of the incident: 9 March 2008; San Vicente del Caguán.

Summary: Action in the proceedings.

Prosecuted by Special Prosecutor's Office, section 2, Florencia.

485. With regard to the allegations submitted by the WFTU relating to the murder of Mr Luis Miguel Gómez Porto of the union of small and medium-sized farmers of SINDEAGRICULTORES, the Government indicates that according to the information provided by the Marine Infantry, the incident arose as a consequence of military action by the Marine Infantry, who were initially attacked with firearms, apparently by the victim. The Government adds that Mr Gómez Porto was arrested on 12 April 2005, at the request of the Prosecutor's Office, section 16, Sincelejo, for the crime of rebellion. Subsequently, he was released by order of the Sincelejo First Criminal Circuit Court on 19 May 2006. The Office of the Public Prosecutor initiated an investigation into the death of Mr Gómez, Case No. 72578, Prosecutor's Office section 7, Sincelejo.

486. As regards the allegations relating to threats, the Government sends the following information:

1. Over Dorado Cardona: according to the results of the technical study, the level of risk and degree of threat proved normal, for which reason it is proposed to withdraw the hard security measures provided by the Ministry of the Interior and Justice, which are a vehicle with two escorts, but soft measures such as bullet-proof vest, means of communication and preventive security patrols by the national police will continue to be provided.

2. Jorge Enrique Gamboa Caballero: the report indicates that on 23 April at 4 p.m., there was an assault on the president of USO, in which respect it should be pointed out that according to the information received both from the DAS and the national police, an incident occurred which might have caused misunderstandings but at no time was it an assault, since:

   (a) by Order No. 065 of 22 April, patrolmen Héctor María Vargas Muñoz and Gabriel Hernando Jaimes Pardo were ordered to patrol;

   (b) the purpose of the patrol was to provide security for the movements of the Colonel and a protest that was taking place in the area; these situations justified the assessment of possible risks;

   (c) while the press conference was being held by the president of USO, the patrolmen were attacked by the crowd and dispossessed of their arms; and

   (d) the Colonel then personally warned Mr Gamboa and the crowd that those persons belonged to the national police.

   In the above circumstances, it must be reiterated that the State is firmly resolved to prevent and punish any violation of the rights of workers and all Colombians, and it should also be pointed out that Mr Jorge Gamboa is provided with hard security measures (car, escorts, communication devices) by the Ministry of the Interior.

3. Rafael Boada: the national Government, through the Ministry of Social Security, at the request of the trade union, provided protection measures through the Ministry of the Interior and with the grant by the Banco Popular which granted, in addition to trade union leave, a special leave for two months in order to provide Mr Boada with protection mechanisms.

4. Eduardo Arévalo: the only information is that communicated to the public, and the Prosecutor's Office does not have any information on the subject. According to the facts stated in the letter from the alleged assault victim, the Human Rights Directorate in the Ministry of the Interior was requested urgently to assess the level of risk and degree of threat, with a view to the adoption of protection measures. However, the gentleman has a cellphone with which he can communicate with the authorities in any risk situation, and preventive patrols are carried out by the Atlantico police.

5. Manuel de Jesús Reyes: the Secretariat of the Government of Sucre, in letter No. 038 of 1 April 2008, informed this programme that the Prosecutor's Office has issued an order for his arrest in relation to the investigation of Case No. 76995 of the Sincelejo Second Special Prosecutor's Office, for the offences of rebellion, extortion and terrorism. He was arrested on 26 March 2008, in an inter-agency operation carried out by personnel of the national police attached to the Sucre Police Department and personnel of the First Marine Infantry Brigade. The prosecution was conducted by the Sincelejo Second Special Prosecutor's Office, in which documentary and witness evidence was produced, and arrest warrant No. 36000033222 was issued. The arrest was normal, his rights were respected at all times, and he was handed over to the competent authority.

Protection measures for trade unions

487. The Government also refers to the following protection measures provided to trade unions:

1. SIGGINPEC:

   - *Means of communication:* Avantel phone for Juan de la Rosa Grimaldos, adviser to the union; Sandro Rivera Sogamoso, legal representative and Diego Alonso Arias (who is currently out of the country).

2. ASEINPEC:

   - *Individual protection:* for Freddy Antonio Mayorga Meléndez, national president (with normal vehicle), for six months while the risk and degree of threat is reassessed (under CRER 21-05-08).

   - *Land transport support:* for María Elsa Páez García, treasurer, national executive committee, for 150 hours per month, for three months, while the risk and degree of threat is reassessed (under CRER 21-05-08).

   - *Escorts:* two mixed units for Freddy Antonio Mayorga Meléndez, national president and one national police escort for María Elsa Páez.

   - *Means of communication:* two Avantel phones for Freddy Mayorga and his security system; two Avantel phones for María Elsa Páez and her escort; and five Avantel phones for the National Executive Committee.

   - *National airline tickets:* three national airline tickets per month for Mr Freddy Antonio Mayorga Meléndez, national president.

3. UNEB:

   - *Land transport support:* for Luis Fernando Jiménez Madiedo, Barranquilla branch, for 100 hours per month while the risk and degree of threat is reassessed (under CRER 21-05-08).

   - *Escorts:* for Luis Fernando Jiménez Madiedo, Barranquilla section.

   - *Means of communication:* Avantel phone for Luis Fernando Jiménez Madiedo, Barranquilla branch and Rafael Boada Cavanzo, branch president, Bucaramanga.

   - *Support for temporary relocation:* for Rafael Boada Cavanzo, branch president, Bucaramanga, in the sum of one million, three hundred and eighty-five thousand pesos – (1,385,000 pesos).

   - *Armoured protection:* for headquarters of the national executive committee and the Bogotá branch, both located in this city.

4. ASINORT:

   - a group scheme for Myriam Tamara, Crisanto Torres Albarracín and Félix María Gonzales whose entitlement stems from the president, Myriam Tamara Carrero;

   - a group scheme for Leonardo Sánchez and Alvaro Pineda Castro;

   - four Avantel communication devices; and

- transport support:
  - one approved for Myriam Tamara Carrero;
  - three for Alvaro Pineda Castro; and
  - one for Félix María Gonzales.

5. Cauca Teachers' Association (ASOINCA):
   - a group scheme for the Executive Committee of ASOINCA;
   - armoured protection for the trade union headquarters;
   - six group transport supports, worth 1,920,000 pesos c/u;
   - eight cellphones; and
   - three supports for temporary relocation, approved for Carlos Fernando Devia Villegas.
6. Nariño Teachers' Union (SIMANA):
   - a group scheme for the executive committee of the union;
   - three cellphones;
   - nine Avantel communication devices;
   - armoured protection of the union headquarters;
   - personal transport support, one for Lucía Patricia Hidalgo, four for Aracelly Ibarra, and nine for Javier Dorado Rosero;
   - two group transport supports; and
   - one escort unit for Javier Dorado Rosero.
7. Single Union of Education Workers of Valle (SUTEV):
   - a group scheme, assigned to the SUTEV executive committee, Cali;
   - a group scheme, assigned to the SUTEV executive committee, Buenaventura;
   - two Avantel communication devices for SUTEV, Cartago;
   - six group transport subsidies worth 1,920,000 pesos, for the SUTEV executive committee, Cali;
   - one escort unit for the SUTEV executive committee, Cali;
   - four Avantel communication devices; and
   - maintenance of the armoured protection of the headquarters of SUTEV Cali.

8. Arauca Teachers' Association (ASEDAR):

   - a group scheme, assigned to the executive committee of the organization;
   - nine group transport subsidies, worth 1,920,000 pesos;
   - a national ticket for Mr Hernando Sánchez Blanco;
   - two cellphones; and
   - armoured protection of the union headquarters.

9. ADIDA:

   - two Avantel communication devices.

10. César Teachers' Association (ADUCESAR):

    - six temporary relocation subsidies; three for Ms Elsa Rosado and three for Ms Yodima Castro.

11. Putumayo Teachers' Association (ASEP):

    - six temporary relocation subsidies, one cellphone and a relocation grant for Mr Paulo Emilio Anacona, as vice-president of ASEP.

12. ANTHOC:

    Individual schemes: three implemented:

    – Esperanza Cardona, Chinchiná branch committee, individual scheme consisting of two escorts, a vehicle and two pistols;

    – Yesid Camacho, two escorts, a normal vehicle, two pistols, two bullet-proof vests, a two-way radio, two side-arms and a machine gun; and

    – Gilberto Martínez, two escorts, a normal vehicle.

    Group schemes: ten implemented:

    – National Executive Committee, three escorts, a normal vehicle, four small arms, an Avantel phone and three bullet-proof vests;

    – Valle branch committee, provided with a normal vehicle, an escort, three small arms;

    – Barranquilla branch committee, two escorts, two small arms and a normal vehicle;

    – Atlántico branch committee, two escorts, two arms, a normal vehicle and a bullet-proof vest;

    – Cúcuta branch committee, three escorts, three pistols, a machine gun, an Avantel phone, three bullet-proof vests and a normal vehicle;

– Cauca Department branch committee, implemented for 11 members of the executive committee, three escorts, three pistols, a radio, three bullet-proof vests and a normal vehicle;

– Popayán branch committee, an escort and a land transport support;

– Florencia branch committee, two escorts, a normal vehicle;

– Ibagué branch committee, two group schemes; and

– Bolivar branch committee, three escorts and transport support.

Armoured protection of headquarters:

– The Barranquilla, Bogotá, Ibagué and Ocaña offices are armour protected.

Communication devices:

– 43 Avantel phones; and

– 62 cellphones.

Policies adopted to reduce violence against trade unionists

488. The Government emphasizes its commitment to reducing the number of murders and acts of violence against trade union leaders. To that end, additional measures have been taken to strengthen police protection measures, as follows:

– transitional directive No. 151 of 31 August 2007, of the Directorate General of the National Police, which contains orders and instructions to optimize conditions of security of trade unionists and the exercise of their activities in Colombia; and

– permanent directive No. 020 of 31 August 2007, which harmonizes the criteria for police organization through coordination based on prevention and guarantee of the fundamental human rights of persons at risk.

489. Recognizing the especially vulnerable situation of schoolteachers, the Government has taken the following measures:

– Decree No. 3222 of 10 November 2003, creating an inter-institutional group at national and sub-national level for the prevention of threats. This body is made up of representatives of the Ministry of Education, the Ministry of the Interior and Justice, the Ministry of Social Security, the Office of the Procurator General, the Vice-President of the Republic and FECODE. In addition, there are now in the 78 certified regional bodies [1] committees of threatened teachers, which are responsible for arranging the notification of teachers in state educational establishments as a protection measure.

– Ministerial directive No. 014 of 2002 on protection of threatened and relocated teachers was issued, and also directives Nos 020 of 2003 and 03 of 2004, on the incorporation of teachers and administrative staff in staff schemes financed from

[1] Under article 20 of Act No. 715 of 2001, departments, districts and municipalities with over 100 inhabitants are certified regional bodies with powers to manage educational resources.

resources of the general taxation system. These directives establish guidelines aimed at protecting the lives and physical integrity of teachers and the arrangements for their reinstatement to work in educational establishments.

490. Between 2002 and November 2007, 653 definitive relocations took place, 506 temporary relocations and 87 teachers are awaiting relocation.

Measures to advance investigations relating to acts of violence against trade unionists

491. In inter-administrative agreement No. 15406 of 2006, the Government is seeking to implement measures to give an impetus to and pursue ILO cases by: (i) optimizing the investigative process; (ii) clearing of cases and decongestion of documentation; and (iii) qualitative analysis of the information and characterization of the offences by strengthening the National Human Rights Unit, the anti-terrorism unit and the related regional sections.

492. The number of prosecutors in the National Human Rights Unit has been increased to strengthen the investigations into recruitment of children, homicides alleged to have been committed by agents of the State, sexual violence in armed conflict, cases of the patriotic union and trade unions, among others.

493. Currently, there are 19 prosecutors specially assigned to the investigation of cases of human rights violations against trade unionists.

Structure

Staffing	City	Number
Prosecutors specializing in cases of offences against trade unionists	Barranquilla, Villavicencio, Bucaramanga, Cartagena, Medellín, Neiva, Pasto, Cali	10
Prosecutors specializing in cases of human rights, IHL and offences against trade unionists	Bogotá	9
Investigation Branch (CTI) Investigators	Barranquilla, Villavicencio, Bucaramanga, Cartagena, Medellín, Neiva, Pasto, Cali, Bogotá	28
Police Intelligence Unit (DIJIN) Investigators	Barranquilla, Villavicencio, Bucaramanga, Cartagena, Medellín, Neiva, Pasto, Cali, Bogotá	50
Assistant prosecutors	Barranquilla, Villavicencio, Bucaramanga, Cartagena, Medellín, Neiva, Pasto, Cali, Bogotá	19
Lawyers contracted by the National University	Barranquilla, Villavicencio, Bucaramanga, Cartagena, Medellín, Neiva, Pasto, Cali, Bogotá	1
Total		117

494. In collaboration with the workers' confederations and under the auspices of the ILO, the Office of the Public Prosecutor undertook the investigation of 1,288 cases under its decongestion programme in the investigation of crimes against trade unionists.

Work of the sub-unit since its creation until 20 January 2009

Cases assigned	1 302
Cases under preliminary investigation – questioning of accused	654
Cases in progress – accused charged	208
Preventive detention measures	261
Indictments	91
Formulation of charges for plea bargain	103
Convictions	120
Persons convicted in relation to the 60 convictions	160
Total Victims	1 544

Note 1. The assigned cases included 610 investigated for homicide with 816 victims, on several occasions combined with other offences and 290 for the offence of threats, among others.

Note 2. Of the total cases assigned, 61 are being prosecuted under the adversarial system – Act No. 906 of 2004.

Note 3. Of the 120 convictions, five relate to cases heard under the adversarial system – Act No. 906 of 2004.

Note 4. The 120 convictions were handed down in 85 cases.

Comparative table of the activities of the UNDH and IHL sub-unit for offences against trade unionists
(20 January 2008–20 January 2009)

Description	**20 January 2008**	**20 January 2009**
	Total	**Total**
Cases assigned	1 253	1 302
Physical cases	1 027	1 104
Cases under preliminary investigation	711	654
Cases in progress	118	208
Opening of proceedings	106	262
Preventive detention measures	75	269
Abstention	8	40
Indictments	20	91
Formulation of charges for plea bargain	No records	103
Preclusions	5	26
Convictions	36	120
Convictions without leave to appeal	2	7
Persons arrested	35	93
Persons arrested and remanded in custody	29	75
Persons sentenced to a custodial sentence	42	114
Public or preliminary hearings attended by prosecutors from the sub-unit for offences against trade unionists	55	138

Prioritized cases in the UNDH and IHL sub-unit for offences against trade unionists
(Cases prioritized at 20 August 2008)

Current stage	20 August 2008
Inhibitory	4
Investigations	47
Trial	4
Judgement pending	1
To be located	1
Preclusion	2
Preliminary	109
Conviction – hearing for sentencing	1
Dismissed	2
Subtotal	**171**
Cases ending in a conviction	14
Cases incorporated with another because the facts were connected	1
Victim case – discuss with confederations	1
Total	**187***

* In fact, 185 priority cases were being processed. Two cases were withdrawn at the request of the unions as they did not concern anti-union violence.

Convictions in prioritized cases at 20 January 2009

Description	20 October 2007	20 January 2009
Cases with conviction	11	31
Convictions	11	39
Persons convicted	20	57

Prioritized cases
Act No. 600 of 2000/Act No. 906 of 2004

Act No. 906	29
Act No. 600	156
Total	**185**

Note 1. It should be highlighted that in 27 of the 27 cases involving a conviction, the decision was handed down since the creation of the Unit for offences against trade unionists, and 52 persons were convicted.

Note 2. The idea of prioritized cases originated in the tripartite agreement on freedom of association and democracy, signed on 1 June 2006, between the national Government, employers and trade unions. It should be noted that in recognizing the positions of the representatives of each of these sectors, their number was increased without limit, despite the fact that the original intention was to prioritize only 100 cases. For this reason, it was decided in a meeting held on 2 October 2007 with representatives of the Government, Prosecutor's Office and trade unions, to prioritize 187 of the 1,264 cases assigned to the Unit for offences against trade unionists, which basically comprise investigations relating to the three main trade union confederations: CUT, CGT and CTC, and those relating to murders of trade unionists in 2006 and 2007. Currently, eight prioritized cases are in progress under the supervision of the Office of the Public Prosecutor and the rest under the sub-unit of the prosecutor's office for offences against trade unionists.

Convictions in the 1,251 investigated by the UNDH and IHL sub-unit for offences against trade unionists
(at 20 January 2009) *

Convictions per year	Number
2001	1
2002	10
2003	7
2004	12
2005	8
2006	11
2007	44
2008	76 **
Total	171

* Convictions up to the present. This office is engaged in identifying more convictions handed down in cases of offences against trade unionists.

** The 76 convictions in 2008 is a prediction.

Cases in which the 171 convictions were handed down	131
Persons convicted in the 171 convictions	253
Sentenced to a custodial sentence	164

Note 1. Fifty-seven cases of convictions in 2008.

Note 2. It should be noted that due to the application of the figure of the interruption of the trial process, on various occasions, several sentences have been handed down in the same case. The number of cases with convictions (131) is less than the number of convictions handed down (171).

Convictions by year of incident

Year Incidents	Year of conviction								Total
	2001	2002	2003	2004	2005	2006	2007	2008	
1996								1	1
1998		3				1			4
1999				1					1
2000		1	1	1			3	11	17
2001	1	3	6	2	3	1	12	9	37
2002		3		6	4	4	10	14	41
2003				2	1	2	3	17	26
2004							4	14	18
2005						2	5	1	8
2006						1	6	4	11
2007							1		1
2008								5	5
Total general	1	10	7	12	8	11	44	30	123

Convictions for homicide	111
Convictions for other offences	12

Statistics on convictions by office

Unit	Convictions
UNDH	53
Unit for offences against trade unionists	84
Other	34
Total	**171**

Intention of the perpetrator according to the sentence (at 20 August 2008)

Intention of the perpetrator	Total
Accident	1
Political activity	1
Trade union activity	21
Terrorist attack	1
Collaboration with the authorities	4
Economic (kidnapping and extortion)	7
Robbery	14
The victims seemed to be stealing livestock	1
Social cleansing	1
The victim did not allow the convicted persons to enter a shop	1
Presumed collaboration with the self-defence groups	2
Presumed involvement in subversion	38
Personal problems	8
Professional role or activity	8
Not stated	14
Abduction by FARC	1
Total *	**123**

* The intention of the perpetrator shown in the table was extracted from a review of the 122 judgements which were physically located, while one remains to be located.

Convicted persons by group to which they belong (at 20 August 2008)

Law enforcement agencies	15
AUC	100
FARC	12
ELN	4
EPL	8
JEGA	1
Trade union	1
Common criminal	56
Aguilas Negras	2
Total	**199**

Murders 2006 *

Cases	**Victims**
59	61
Cases under Act No. 906	18
Cases under Act No. 600	41

Current stage	**Total**
Preliminary	37
Judicial investigation	8
Judicial investigation/trial	1
Trial	2
Conviction	10
Filed	1

* From August 2008, these will be taken over by the National Human Rights and International Humanitarian Law Unit.

Murders 2007 *

Cases	26
Victims	27
Cases under Act No. 906	20
Cases under Act No. 600	6

Current stage	**Total**
Preliminary	22
Judicial investigation	1
Trial	1
Conviction	2

* From August 2008, these will be taken over by the National Human Rights and International Humanitarian Law Unit.

Murders 2008

Cases	41
Victims	42
Cases under Act No. 906	41

Current stage	Number
Investigation	24
Conviction	1
Judgement in case pending	3
Number of UNDH and IHL cases	20
Number of DNF cases	8

Cases assigned to UNDH and IHL judges

	Indictments pending trial	Proposed indictments
Total	6	4

Results obtained in the UNDH and IHL sub-unit for offences against trade unionists according to information from the Justice and Peace Unit at 20 August 2008

Description	Number
Number of proceedings opened	16
Number of preventive measures	6
Number of persons charged	15
Number of convictions	3

Statistics on bills of indictment for advanced ruling relating to persons covered by the Justice and Peace Act

City	Number
Barranquilla	2
Bucaramanga	7
Cali	39
Cartagena	11
Medellín	2
Neiva	5
Villavicencio	7
Pasto	0
UNDH	2
Total	**75**

The protection programme

The following persons have benefited from the protection programme:

	Persons benefiting/per cent													
Target group	**2002**	**%**	**2003**	**%**	**2004**	**%**	**2005**	**%**	**2006**	**%**	**2007**	**%**	**2008**	**%**
Trade unionists	1 566	32	1 424	28	1 615	30	1 493	27	1 504	24	1 959	21	1 433	18
Others	3 291	68	3 797	72	3 831	70	4 014	72	4 593	75	7 485	79	6 895	82
Total	4 857	100	5 221	100	5 446	100	5 507	100	6 097	100	9 444	100	7 911	100

Budget 2007

Target group	**Total** (thousands of pesos)	**Budget** (per cent)	**Population** (per cent)
Trade unionists	22 577 531	30.00	20.74
UP–PCC	13 388 610	17.85	21.79
Councillors	7 833 673	10.44	22.77
NGO	7 647 826	10.23	6.49
Peace agreements	6 835 957	9.12	0.73
Leaders	6 137 869	8.18	10.07
Journalists	2 906 639	3.87	1.36
Institutional	2 225 842	2.96	3.39
Deputies	2 165 000	2.89	0.78
Relocated decision T-025	1 766 092	2.36	6.29
Mayors	1 055 586	1.42	4.13
Representatives	127 666	0.17	1.07
Ex-mayors	341 963	0.45	0.01
Witnesses	25 650	0.04	0.34
Medical mission	8 544	0.02	0.04
Total	75 044 448	100	100

Budget 2008

Target group	**Total** (thousands of pesos)	**Budget** (per cent)	**Population** (per cent)
Trade unionists	10 617 970	28.59	18.11
UP–PCC	6 170 388	16.62	15.89
Councillors	3 842 657	10.35	27.44
NGO	3 562 636	9.59	7.84
Peace agreements	3 302 930	8.89	0.85
Leaders	4 927 493	13.27	9.99
Journalists	1 326 046	3.57	1.74
Institutional	1 159 391	3.12	3.70
Deputies	507 925	1.37	1.28
Relocated decision T-025	1 061 950	2.86	8.19

Target group	Total (thousands of pesos)	Budget (per cent)	Population (per cent)
Mayors	394 544	1.06	3.25
Representatives	49 587	0.13	1.04
Ex-mayors	194 873	0.52	0.34
Witnesses	7 640	0.02	0.30
Medical mission	8 457	0.02	0.04
Total	37 134 487	100	100

495. Persons assigned for the protection of trade unionists:

– DAS: 19 official staff escorts.

– MIJ: 432 contract escorts charged to the Ministry of the Interior and Justice, for a total of 451 escorts, with 297 pistols, 164 revolvers and 76 machine guns.

– Police: 12 escort officers, each armed with a pistol.

In total, 463 persons are assigned for the protection of trade unionists.

496. The Human Rights Directorate, with the support of USAID/MSD Colombia, has been operating a "Preventive Security Project" since 2004, which is intended to complement the hard and soft measures granted under the Protection Programme, by implementing mechanisms which allow the target group, including trade union officials and activists, to adopt self-protection measures which reduce their vulnerability.

497. Since 2004, the Directorate has been undertaking training in preventive security in 11 departments of the country and has trained 428 trade union leaders.

Information on "Operation Dragon"

498. As previously reported to the Committee, the Office of the Procurator General, through the Office of the National Director of Special Investigations, is investigating the complaint by Dr Alexander López Maya, in Case No. 009-152804-06, and it is at the evaluation of the investigation stage.

499. Also according to information from the Prosecutor's Office (Prosecutor's Office 2 assigned to the National Human Rights and IHL Unit), the investigation is currently filed under File No. 2028 and is being evaluated to determine whether it should proceed to the judicial investigation stage.

500. Lastly, with regard to the allegations submitted by the World Federation of Trade Unions on behalf of SINTRATELEFONOS, SINTRAEMCALI and SINTRAUNICOL, the Government reports that the International Seminar held in Quito, Ecuador, from 9 to 13 July 2007, produced a final declaration in which it made grave pronouncements such as the following: "We support all forms of combat which allow the gathering of forces for the revolution, which strike the enemy and bring closer the triumph of our goals, believing that only the use of organized violence of the masses will be able to strike decisive blows to overcome the bourgeois-imperialist domination and seize power." … "From this international platform, we, the organizations participating in this seminar, express our solidarity with … the struggle of the insurgent movements in Colombia, the Philippines, Nepal ...".

501. In the light of such grave events and bearing in mind that not only did the trade unions SINTRATELEFONOS, SITRAEMCALI and SINTRAUNICOL appear in that declaration, but also the International Front National Liberation Army (ELN) (Colombia) and the Armed Revolutionary Forces of Colombia (FARC-EP), the Vice-President of the Republic, in a letter of 19 July 2007, invited the three trade unions to comment on this. In the light of the foregoing, the Government categorically rejects the allegations of the Federation suggesting that the Government is stigmatizing trade union officials by describing them as guerrillas, since that allegation does not reflect the facts and is totally without foundation, as can be seen from the letter sent to the three trade unions involved in the matter, and from whom the Government duly sought a clear explanation.

D. The Committee's conclusions

502. *The Committee notes the communications submitted by the ITUC, WFTU, CGT, SINDESENA and SINTRATELEFONOS. The Committee notes the detailed observations of the Government on the outstanding questions. The Committee notes that the information sent by the Government and the Office of the Public Prosecutor, which is contained both in the main part and the annex to this case refers to investigations which are in progress in relation to the murders and other acts of violence perpetrated against trade union officials and members and other criminal offences and complaints by trade unions and deputies; information relating to the sentences handed down in many of the judicial proceedings initiated; the protection measures adopted for trade union officials, members and headquarters; the special protection measures for members of the teaching profession.*

Acts of violence

503. *With regard to the acts of violence in particular, the Committee notes that since the last examination of the case in November 2007, the trade unions have reported the murder of 25 union officials and members, four assaults, seven cases of threats and persecution and one case of detention.*

504. *In this respect, the Committee notes that in its observations, the Government provides information on investigations initiated in relation to almost all the recent cases of violence reported which are contained in the "new allegations" section.*

505. *The Committee also notes the Government's information concerning the emergence of new violent groups or criminal gangs such as the "Aguilas Negras" responsible for some of the acts of violence described in this case. The Government indicates that 18 groups with these characteristics have been identified and adds that these gangs are tending to strengthen organizations in the former areas of influence of the United Self-defence Groups of Colombia which are being demobilized. The Committee notes that according to the Government, a system of rewards has been developed for people who provide information leading to the arrest of the perpetrators of acts of violence. This mechanism, together with the work of the police and the Prosecutor's Office, allowed the arrest of five persons presumed to be responsible for murders.*

506. *The Committee also notes that the Government further indicates that the violence resulting from the activities of the illegal groups, on the one hand affects the population as a whole and, on the other, that it has been considerably reduced since the programme of democratic security began to be implemented. In this respect, the Government states that between 2002 and 2007, the aggregate rate of murders fell by 40 per cent and the rate of murders of trade unionists fell by 82 per cent.*

507. *Taking all this information into account, together with the new allegations, the Committee observes that considerable progress has been made in combating violence. Nevertheless, the situation of officials, members and the trade union movement in general is still grave. The Committee has noted the complaint of the murder of 25 officials and members, four assaults, seven cases of threats and persecution and one case of detention. The Committee deplores this situation which it considers unacceptable, and totally incompatible with the requirements of Convention No. 87. The Committee observes that the trade union sector continues to be the target of acts of violence of certain radicalized groups and considers that this is a matter of extreme concern. Indeed, the Committee has reiterated on many occasions in the context of this case 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 edition, 2006, para. 44]. Under these circumstances, the Committee urges the Government to continue to take all the necessary measures to ensure that workers and trade unions can fully exercise their rights in freedom and security.*

508. *The Committee also notes the detailed information sent by the Government with respect to the protection measures adopted for trade union officials, which will be examined below.*

Investigations and situation of impunity

509. *With regard to the acts of violence reported and the investigations initiated in that respect, the Committee notes that the CUT, CGT and CTC submitted a list of 2,669 officials and members murdered and 197 disappeared, which incidents occurred between 1 January 1986 and 30 April 2008. This list was transmitted to the Government so that it would have the information to be taken into account in the investigations into the cases concerned. In this regard, bearing in mind that according to the Government's observations and the information provided by the Office of the Public Prosecutor, the latter undertook the investigation of 1,302 cases under its decongestion programme in the investigation of crimes against trade unionists, the Committee invites the trade unions to make available to the Government and the Office of the Public Prosecutor all the additional relevant information which it may have in order to enable the Office of the Public Prosecutor to update the number of cases that require investigation. The Committee requests the Government to keep it informed in that respect.*

510. *The Committee also notes the information sent by the Office of the Public Prosecutor which takes into account the work of four courts responsible for examining the cases of violence against trade unionists (see annex). The Committee notes with interest that the number of prosecutors specially assigned to the investigation of human rights violations against trade unionists has been increased from 13 to 19.*

511. *The Committee notes with interest that in the context of the investigations undertaken by the Office of the Public Prosecutor, chiefly by the Human Rights and International Humanitarian Law Sub-Unit for offences against trade unionists, up to 20 January 2009, 171 convictions involving 199 persons were handed down, of which 134 were sentenced to a custodial sentence. The Committee notes that of the convicted persons, 100 belonged to the United Self-defence Groups of Colombia, 22 to guerrilla groups (FARC, ELN, EPL), 56 were common criminals and two were members of "Aguilas Negras".*

512. *The Committee notes this progress and the wealth of information provided by the Government, in particular the Office of the Public Prosecutor, in relation to the victims, motives for their murder and groups or persons responsible. The Committee observes, however, that the majority of the cases listed, both those included in the general list of*

1,302 cases, and the 185 cases which by agreement between the Government, the trade union confederations and the employers were given priority, are at the preliminary stage. Indeed, 171 convictions, although they constitute progress, are still not many when set against the 1,302 cases outstanding. The Committee recalls the importance of the investigations yielding concrete results in order to determine reliably the facts, the motives and the persons responsible, in order to apply the appropriate punishments and to prevent such incidents recurring in the future. In these circumstances, the Committee requests the Government to continue to take all the necessary measures to achieve significant progress in the outstanding investigations and the new investigations begun on the basis of the complaints contained in the "new allegations" section and thereby to put an end to the intolerable situation of impunity, and to inform it in detail concerning progress in each of the investigations begun, who the guilty persons were, and, in particular, whether it was a case of specific armed groups and what their motives were.

513. *As regards the complaints of the ITUC concerning the existence of a close link between paramilitary groups and the DAS which is responsible for providing protection to trade union officials and members, the Committee recalls that according to those complaints, a plan had been drawn up to exterminate certain members of the trade union movement; that consequently, the Government requested the resignation of the Director of the DAS and dismissed its Deputy Director; it published the irregularities detected and the corresponding independent investigations, both disciplinary and criminal, were initiated by the Public Prosecutor and the Procurator General; an independent commission of six members was set up to establish the causes of the crisis and to make recommendations. The Committee recalls in this respect that it had requested the Government to ensure that, in the context of the investigations that were being undertaken by the Public Prosecutor and the Procurator General, the necessary steps had been taken to determine conclusively: (1) whether there had been a violation of the legislation and of the provisions governing the DAS with regard to the confidentiality of the information relating to trade union leaders, particularly through the divulgence of such information to paramilitary groups; (2) whether the divulgence of this information corresponded to a plan for the elimination of the trade union movement, including among the victims the persons on the list of those murdered provided by the ITUC; (3) those who were responsible for such violations; and (4) the extent of the involvement of the DAS in such acts. The Committee expresses its concern at the gravity of this situation and notes with deep regret that the Government has not sent its observations in this respect and strongly urges it to do so without delay.*

514. *With reference to the Justice and Peace Act No. 975, the Committee recalls that it had requested the Government to indicate the impact in practice of the Justice and Peace Act on the pending cases of murders and violence against trade unionists which occurred both prior to the entry into force of the Act and since its entry into force, as well as the influence of the Act on the general climate of violence against trade union leaders and members. In this respect, the Committee notes that the Government indicates that so far 217,498 cases have been reviewed related to the incidents which occurred in zones of influences of the AUC in the context of the Justice and Peace Act. The Government reports that according to the information provided by the Office of the Public Prosecutor, the results of the Justice and Peace Act relating to the cases of trade unionists up to May 2008 are: 11 proceedings opened, five arrest warrants, ten persons arrested and one conviction. While observing that the impact of this new law on investigations into acts of violence against the trade union movement is for the moment very limited, the Committee requests the Government to continue to keep it informed of progress in the application of this law and its relation to progress in the abovementioned investigations.*

515. *As regards the so-called "Operation Dragon", which according to the allegations was intended to eliminate several trade union officials, the Committee notes that the Government reports that the Office of the Procurator General, through the Director of*

Special Investigations, is conducting an investigation. The Prosecutor's Office reports that the investigation, under File No. 2028, is now being evaluated to see whether it should proceed to the institution of proceedings. The Committee regrets that despite the time elapsed, the Government has not been able to provide more information on allegations of such gravity. In these circumstances, the Committee urges the Government to take the necessary measures to ensure that this investigation yields concrete results as soon as possible, and to send its observations in this respect.

516. *As regards the mass detentions of trade unionists alleged by FENSUAGRO in its communication of June 2007, once again the Committee observes that the Government has not sent information in this respect. In these circumstances, bearing in mind the time that has elapsed, the Committee urges the Government to inform it without delay whether the trade unionists are still detained, whether the detentions are based on orders issued by the judicial authority and the grounds for those orders and the status of the related judicial proceedings.*

517. *With respect to the allegations submitted by the WFTU, according to which the President and the Vice-President of the country initiated a campaign of slander and threats against the trade union movement accusing it of having links with the guerrillas, the Committee notes that in its communication of 2 June 2008, the Bogotá SINTRATELEFONOS again refers to those allegations highlighting that, as a result of the declarations made during the seminar in Ecuador, the trade union officials were accused of being guerrillas. In this respect, the Committee notes that the Government states that in the international seminar held in Quito, Ecuador, from 9 to 13 July 2007, a final declaration was issued justifying the use of violence as a means for seizing power. The Government denies any stigmatization of the trade union movement and indicates that during the formulation of the declaration in question in Quito, the trade unions SINTRATELEFONOS, SINTRAEMCALI and SINTRAUNICOL, the ELN and FARC were present. For these reasons, the Vice-President of the Republic, in a letter of 19 July 2007, requested the trade unions to comment in this respect.*

Protection of trade unionists

518. *As regards protection measures for trade unionists, the Committee notes with interest the broad range of measures adopted by the Government which benefit many threatened trade unions and officials. Indeed, the Committee notes the information provided by the Government, according to which 7,911 security measures have been adopted, of which 1,433 are for the trade union movement, thus representing 18 per cent of the total protection measures for all vulnerable groups (members of the Patriotic Union, councillors, peace agreements, leaders, journalists, deputies, among others). The Committee also notes that the Directorate of Human Rights has been implementing the "Preventive Security Project" since 2004, which is intended to complement protection measures with mechanisms which allow the population to adopt self-protection measures which reduce their vulnerability, and 428 trade union leaders have been trained.*

519. *The Committee also notes the allegations of the ITUC concerning the particular situation of vulnerability in which teachers find themselves. In this respect, the Committee notes the Government's information according to which Decree No. 3222 of 10 November 2003 created an inter-institutional group for the prevention of threats, made up of. representatives of the Ministry of Education, the Ministry of the Interior and Justice, the Ministry of Social Security, the Office of the Procurator General, the Vice-President of the Republic and FECODE. In addition, there are now in the 78 regional bodies which are responsible for arranging the relocation of teachers in state educational establishments as a protection measure. In addition, ministerial directive No. 014 of 2002 on protection of threatened and relocated teachers and directives Nos 020 of 2003 and 03 of 2004 were*

issued, on the incorporation of teachers and administrative staff in staff schemes, establishing guidelines aimed at protecting the lives and physical integrity of teachers. The Committee notes that between 2002 and November 2007, 653 teachers had been definitively relocated, 506 provisionally relocated and 87 teachers were awaiting relocation.

520. *The Committee observes in relation to these protection measures that, on the one hand, they constitute a confirmation of the particular vulnerability of trade union members and officias, (including teachers) in the exercise of their trade union rights. However, on the other, they demonstrate the Government's determination to put an end to this situation to ensure that trade union officials and members can exercise their rights freely and in security. In these circumstances, the Committee requests the Government, while using every means in its power to eradicate violence against trade union officials and members, to take all necessary measures to ensure better and broader protection for threatened trade union officials and members who request it. The Committee requests the Government to continue to send information on any additional measures adopted in this respect and to keep it informed of developments.*

The Committee's recommendations

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

(a) With regard to acts of violence in particular, the Committee observes that considerable progress has been made in combating violence. Nevertheless, the situation of officials, members and the trade union movement in general continues to be grave; the Committee deplores this situation which it considers unacceptable and totally incompatible with the requirements of the Convention. Under these circumstances, the Committee urges the Government to continue to take all the necessary measures to ensure that workers and trade unions can exercise their rights in full in freedom and security.

(b) With regard to the list submitted by the trade union confederations which contains 2,669 officials and members murdered and 197 disappeared, in incidents which occurred between 1 January 1986 and 30 April 2008, the Committee invites the trade unions to make available to the Government and the Office of the Public Prosecutor all the additional relevant information which it may have in order to enable the Office of the Public Prosecutor to update the number of cases that require investigation. The Committee requests the Government to keep it informed in that respect.

(c) With respect to progress in the investigations and information provided by the Office of the Public Prosecutor and the Government, the Committee requests the Government to continue to take all the necessary measures to achieve significant progress in the outstanding investigations and the new investigations begun on the basis of the complaints contained in the "new allegations" section and thereby to put an end to the intolerable situation of impunity. The Committee requests the Government to inform it in detail concerning progress in each of the investigations begun, who the guilty persons were, and, in particular, whether it was a case of specific armed groups and what their motives were.

(d) As regards the complaints of the ITUC concerning the existence of a close link between paramilitary groups and the DAS which is responsible for providing protection to trade union officials and members, the Committee notes with deep regret that the Government has not sent its observations and strongly urges it to do so without delay.

(e) With reference to the Justice and Peace Act, No. 975, while observing that the impact of this new law on investigations into acts of violence against the trade union movement is now very limited, the Committee requests the Government to continue to keep it informed of progress in the application of this law and its relation to progress in the abovementioned investigations.

(f) As regards the so-called "Operation Dragon", which according to the allegations was intended to eliminate several trade union officials, the Committee urges the Government to take the necessary measures to ensure that this investigation yields concrete results as soon as possible and to send its observations in this respect.

(g) As regards the mass detentions of trade unionists alleged by FENSUAGRO in its communication of June 2007, once again the Committee observes that the Government has not sent information in this respect. In these circumstances, bearing in mind the time that has elapsed, the Committee urges the Government to inform it without delay whether the trade unionists are still detained, whether the detentions are based on orders issued by the judicial authority and the grounds for those orders and the status of the related judicial proceedings.

(h) As regards protection measures for trade unionists, the Committee requests the Government, while using every means in its power to eradicate violence against trade union officials and members, to take all necessary measures to ensure better and broader protection for threatened trade union officials and members who request it. The Committee requests the Government to continue to send information on any additional measures adopted in this respect and to keep it informed of developments.

(i) The Committee considers it necessary to draw the special attention of the Governing Body to this case because of the extreme seriousness and urgency of the matters dealt with therein.

Annex

Statistical information provided by the Government

Statistical table of all active cases convictions, referrals and proceedings, 2007 and 2008

Court ILO Agreement	Plea bargains	Convictions	Final convictions	Proceedings in progress	Control of legality	Referred back	Void	Total cases processed
Criminal Circuit Court 56	18	8	2	10	0	6	1	45
Special Criminal Circuit Court 10	10	6	1	7	2	7	0	33
Special Criminal Circuit Court 11	12	9	1	10	0	6	0	38

Total cases, ILO programme

Plea bargains	Convictions	Final convictions	Proceedings in progress	Control of legality	Referred back	Void	Total
40	23	4	27	2	19	1	116

Total cases received, ILO programme

2007	2008
41	75

Updated to 28 August 2008.

General management report

1. Victims – murdered: Jorge Eduardo Prieto Chamucero, Héctor Alirio Martínez, Leonel Goyeneche.

   Unique case code: 81001031007001-2005-00060-00, received 13 July 2007. For sentencing.

   Internal number of each court: 2007-001-2.

   Offence: Aggravated homicide.

   Accused: Jhon Jairo Hernández Suárez, Juan Pablo Ordoñez Cañón, Walter Loaiza Culma, Oscar Raúl Cuta, Daniel Caballero Rozo.

   Prison establishment (EPC): Tolemaida. In Combita, Daniel Caballero Rozo.

   Originating court, city: Single Criminal Court. Arauca Special Circuit Decongestion Court.

   Trial court: Second Special Criminal Circuit Decongestion Court (ILO).

   Stage in proceedings – Sent for trial: Guilty verdict and sentenced to 40 years prison and accessories 20 years. Returned to originating court on 28 August 2007.

2. Victims – murdered: Rafael Jaimes Torra (member of trade union of ECOPETROL), Germán Augusto Corzo García (member of trade union of ECOPETROL).

   Unique case code: 68001310700310-2006-0102-00, received 18 July 2007. For sentencing.

   Internal number of each court: 2007-001-1.

Offence: Homicide, aggravated, conspiracy to commit offences, illegal carriage of arms.

Accused: Ronaldo David Ruiz and Luis Alfonso Hitla Gómez.

EPC: Bucaramanga.

Originating court, city: Special Criminal Circuit Court 3 – Bucaramanga.

Trial court: Second Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: Convicted 3 August 2007 and sentenced to 450 months of prison and accessories 20 years. Returned to originating court on 9 August 2007.

3. Victim – murdered: Jorge Dario Hoys Franco (recognized trade union member of the Fusagasuga region).

   Unique case code: 250003207001-2006-00019-00, received 18 July 2007. For sentencing.

   Internal number of each court: 2007-002-2.

   Offence: Aggravated homicide and attempted homicide.

   Accused: Carlos Alberto Monroy Rodríguez.

   EPC: Arrest warrant in force.

   Originating court, city: First Special Criminal Circuit Court of Cundinamarca.

   Trial court: Second Special Criminal Circuit Decongestion Court (ILO).

   Stage in proceedings – Sent for trial: Convicted 14 August 2007 and sentenced to 40 years prison and accessories 20 years. Returned to originating court on 28 August 2007.

4. Victims – murdered: Joel Paolo Niño Alean (member of USO), Juvenal Esteban Otero Gamero (member of USO).

   Unique case code: 6800131070020-2005-00419-00, received 17 July 2007. For sentencing.

   Internal number of each court: 2007-002-1.

   Offence: Terrorism, conspiracy to commit offences, forced displacement.

   Accused: Jamer Suárez Sierra, Jhon Jairo Valle Montesino, Freddy Sepúlveda Ríos, Edwin Gerardo Méndez Sepúlveda.

   EPC: Barrancabermeja.

   Originating court, city: Second Special Criminal Circuit Court, Bucaramanga.

   Trial Court: First Special Criminal Circuit Decongestion Court (ILO).

   Stage in proceedings – Sent for trial: Final verdict 13 August 2007 Acquitted. Returned to originating court 15 September 2007.

5. Victims – murdered: Alejandra Camargo Cabrales (murdered – child, 2 years old), Alma Renata Cabrales and René Alfredo Cabrales.

   Unique case code: 230013107001-2006-00027-00, received 3 August 2007. Trial stage.

   Offence: Aggravated homicide and similar crimes.

   Accused: Salvatore Mancuso Gómez, Carlos Castaño Gil and Fidel Castaño Gil.

   EPC: Itagüí Maximum Security (Mancuso Salvatore).

   Originating court: Special Criminal Circuit Court, Montería – Córdoba.

   Trial Court: First Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: Prisoner (Salvatore Mancuso), Castaño Fidel (under valid arrest warrant). Preliminary hearing held on 28 August 2007. Sent to Bogotá High Court on appeal on 30 August 2007. On 4 December 2007, the original case which was appealed was remanded by the Bogotá High Court. A date was set for the preliminary hearing on 18 December and postponed to 10 January 2008. On 10 January 2008, the hearing was adjourned. On 31 January 2008, the preliminary hearing continued and a date was set for the public hearing in 27 and 28 February 2008. The public hearing took place, and judgement was reserved. The judgement was handed down on 26 March 2008, with Salvatore Mancuso Gómez and Fidel Castaño Gil sentenced on the main charge to 40 years prison and on the accessory charge to 20 years. Ordered to pay compensation of 500 times the legal minimum monthly wage. Suspended sentence or house detention not granted. Returned to the originating court on 31 March 2008.

6. Victim – murdered: Manuel Enrique Charris (employee of Drumond).

   Unique case code: 087583104001-2007-00163-00, received 6 August 2007. Preparation for public hearing.

   Offence: Aggravated homicide with qualified and aggravated robbery.

   Accused: Erwin Arturo Pérez Díaz.

   EPC: Current arrest warrant.

   Originating court, city: Single Criminal Circuit Court, Soledad (Atlántico).

   Trial court: Single Criminal Circuit Decongestion Court (ILO).

   Stage of proceedings – Sent for trial: The public hearing was held on 25 and 26 September 2007. On 28 September, the judgement was handed down, with a sentence of 312 months prison and accessory term of ten years. Returned to the originating court on 5 October 2007.

7. Victim – murdered: Juan de Jesús Orduz (leader of Commune 6, Cúcuta, Edil).

   Unique case code: 540013107002-2006-0108-00, received on 8 August 2007.

   Offence: Aggravated homicide and conspiracy to commit offences.

   Accused: Luis Evelio Sánchez López and Obrison Cartagena Correa.

   EPC: Bogotá Model Prison (Evelio Sánchez) and arrest warrant for Obrison Cartagena Correa.

   Originating court, city: Seconcd Special Criminal Circuit Court, Cúcuta.

   Trial court: Second Special Criminal Circuit Decongestion Court (ILO).

   Stage of proceedings – Sent for trial: On 13 August 2007, there was held to be a conflict of jurisdiction and the trial was returned to the originating court on 15 August 2007.

8. Victims – murdered: Enrique Gustavo Sánchez González, Albeiro de Jesús Ledesma, José Agustín Colmenares, Luis Enrique Guisao, José Viviano Hurtado Moreno, José Alberto Martínez Ballesta. All members of the CUT more specifically SINTRAINAGRO.

   Victims – injured: César Cuesta Castellanos, José Ancizar Restrepo Díaz.

   Unique case code: 1217 UNDH – 2006-0063, received on 13 August 2007. For sentencing.

   Offence: Homicide against a protected person, bodily harm of a protected person, aggravated rebellion and acts of terrorism.

   Accused: Jhoverman Sánchez Arroyave, alias “Manteco”.

   EPC: Not in custody, arrest warrant.

   Originating court, city: First Special Criminal Circuit Court, Antioquia.

   Trial court: First Special Criminal Circuit Decongestion Court (ILO).

   Stage of proceedings – Sent for trial: Convicted 4 September 2007 and sentenced to 40 years prison with accessory term of 20 years. Returned to originating court on 7 September 2007.

9. Victims – murdered: Aury Sara Marrugo (trade union branch committee USO), Enrique Arellano Puello (escort).

   Unique case code: 13-001-31-07001-2005-00047-00, received 21 August 2007. For sentencing.

Offence: Aggravated homicide, conspiracy to commit offences, damage to property and taking of hostages.

Accused: Salvatore Mancuso Gómez, Carlos Castaño Gil and Uber Enrique Banquez Martínez.

EPC: Itagüi High and Medium Security (Salvatore Mancuso and Uber Banquez Martínez).

Originating court, city: Single Special Criminal Circuit Court, Cartagena.

Trial court: Second Special Criminal Circuit Decongestion Court (ILO).

Stage of proceedings – Sent for trial. Convicted on 18 October 2007 and sentenced to 40 years prison and accessory terms of 20 years. Returned to the originating court on 19 October 2007.

10. Victim – murdered: Julio Alfonso Poveda Guata (member, Federation of Agriculture and Livestock Cooperatives).

Unique case code: 110013104016-2007-00615-00, received 23 August 2007. Pending initiation of preliminary trial stage.

Offence: Aggravated homicide.

Accused: Eduardo Enrique Corena Morales, Temilda Rosa Martínez de Martínez.

EPC: Current arrest warrant.

Originating court, city: Criminal Circuit Court 17, Bogotá.

Trial court: Single Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: Public hearing in 8 November, continued 10 December 2007. Public hearing proceeded and concluded. Returned to court for judgement. On 14 December 2007, final judgement - acquittal of Mr Eduardo Enrique Corena Morales and Ms Temilda Rosa Martínez de Martínez on the principle of reasonable doubt and arrest warrants cancelled.

11. Victim – murdered: Luciano Enrique Romero Molina (SINTRAINAL).

Unique case code: 200012038001-2007-056-00, received 30 August 2007. Pending initiation of a public hearing.

Offence: Aggravated homicide of a protected person, conspiracy to commit offences and aggravated robbery.

Accused: Ustariz Acuña José Antonio, Contreras Puello Jhonathan David.

EPC: Valledupar.

Originating court, city: Special criminal circuit court, Valledupar.

Trial court: Second Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: Public hearing of 24 September 2007 deferred, and re-set for 4 October 2007. Continued on 6 November 2007, concluded and reserved for judgement. On 26 November 2007, the judgement was handed down, with José Antonio Ustariz Acuña sentenced on the main charge to 40 years prison and a fine of 9,251 times the legal monthly minimum wage. Jhonathan David Contreras Puello was sentenced to 37 years 5 months and payment of a fine of 9,251 times the legal monthly minimum wage and 20 years prison on the accessory charges.

12. Victim: Eufracio Emilio Ruiz Santiago (Engineering Workers' Union, San Carlos de Tulúa Valle).

Unique case code: 768343104001-2007-00144-00, received 6 September 2007. Opening of preliminary proceedings.

Offence: Threats.

Accused: Rubén Jairo Pasos Díaz.

EPC: No arrest warrant, not under arrest.

Originating court, city: First Criminal Circuit Court, Tulúa – Valle.

Trial court: Single Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: Conviction on 9 October 2007, with sentence to 15 months prison and 15 months on the accessory charge. Returned to originating court on 11 October 2007.

13. Victims – murdered: Rafael Jaimes Torra (member of USO), Germán Augusto Corzo García (member of USO).

    Unique case code: 680013107002-2006-0212-00, received 6 September, bundles of copies and originals on 13 September 2007. Set down for public hearing.

    Offence: Aggravated homicide, conspiracy to commit offences, manufacture and illegal carriage of firearms.

    Accused: Luis Fernando Muñoz Mantilla and Ricardo Ramos Valderrama.

    EPC: Tierra Alta Córdoba.

    Originating court, city: Second Special Criminal Circuit Court, Bucaramanga.

    Trial court: Second Special Criminal Circuit Decongestion Court (ILO).

    Stage of proceedings – Sent for trial: 30 October 2007 convicted and sentenced to 40 years of prison and 20 years accessory. Returned to the originating court on 1 November 2007.

14. Victim – murdered: Max Rafael Villa García (belonged to the Atlantico Teachers' Association (ADEA)).

    Unique case code: 080013104007-2007-0039-00, received 14 September 2007. For sentencing.

    Offence: Homicide.

    Accused: Amaury García Gómez, Edwin Alberto Maestre García, Jhon Jairo Bandera and Juan Alberto Torres García.

    EPC: Bosque, Barranquilla (Amaury García Gómez) and the rest of the group in Barranquilla Model Prison.

    Originating court, city: Criminal Circuit Court 7, Barranquilla.

    Trial court: Single Criminal Circuit Decongestion Court (ILO).

    Stage in proceedings – Sent for trial: Final judgement and conviction on 9 October 2007. Edwin Alberto Maestre, Amary García Gómez and Jhon Jairo Bandera Villegas sentenced to 300 months in prison and 20 years accessory and Juan Alberto Castro Torres acquitted and released on bail. On 10 October 2007 returned to originating court.

15. Victim – murdered: Miguel Enrique Lora Gómez (representative of street vendors of Maicao – Guajira).

    Unique case code: 4443031889002-2005-00032-00, received 14 September 2007. For sentencing.

    Offence: Homicide.

    Accused: Víctor Hazbun Cáceres.

    EPC: Arrest warrant in force.

    Originating court, city: Second Mixed Circuit Court, Maicao.

    Trial court: Single Criminal Circuit Decongestion Court (ILO).

    Stage in proceedings – Sent for trial: Final judgment on 28 September 2007 and acquittal of Víctor Hazbun Cáceres and cancellation of arrest warrants. Returned to originating court on 1 October 2007.

16. Victim: the State.

    Unique case code: 730013104003-2005-00105-00, received 17 September 2007. For initiation of public hearing.

    Offence: Rebellion.

    Accused: Félix Antonio Valencia Herrera, Guillermo Tirana Salguero, Jorge Humberto Muñoz Vélez, Gustavo Avila Díaz, Jorge Nelson Ortigoza Díaz, Carlos Alberto Arévalo López, Darío Arévalo López, Fenibal Novoa Rodríguez, Ismael Lozano González, Carlos Julio Vera Pamo, Carmen Rosa Vásquez Camacho, Ramiro Bazurdo González, Yineth Torres Rodríguez (house arrest), Faustino Ortiz García, Ligia Garzón Bonilla, José Antonio Rodríguez Ramos, Justino Tique Ducuara and Elicio Vera (at liberty).

EPC: Not in custody.

Originating court, city: Criminal Circuit Court 6, Ibagué.

Trial court: Single Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: By order of 4 October 2007, returned due to lack of jurisdiction because the victims are not trade unionists. On 8 October 2007 returned to originating court for trial.

17. Victim: the State.

Unique case code: 730013104063-2005-00164-00, received 17 September 2007. For initiation of public hearing.

Offence: Rebellion.

Accused: Jairo Morales Osorio, Jorge Pinzón, Adolfo Tique, Maximiliano González Bazurdo (house arrest), Carlos Arturo Lozano Salguero, Martín Vásquez Camacho, Alvaro Pavón González, Noé Peña Navarro, Alvaro González, José Ignacio Cardona Patiño and Simeón Romero Hernández (Picaleña prison).

EPC: Picaleña Prison, Ibagué.

Originating court, city: Third Criminal Circuit Court, Ibagué.

Trial court: Single Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: By order of 3 October 2007, returned due to lack of jurisdiction because the victims are not trade unionists. On 5 October 2007 returned to originating court for trial.

18. Victims – murdered: Abigail Girón Campos (member of AICA), Elkin Yanin Rivera Girón (son of Abigail).

Unique case code: 18 0013107002-2007-00016-00, received 18 September 2007. For public hearing.

Offence: Aggravated homicide and rebellion.

Accused: Javier Reyes Hernández.

EPC: Chiquinquirá Prison and Penitentiary.

Originating court, city: Second Special Criminal Circuit Court, Florencia – Caquetá.

Trial court: First Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: Continuation of public hearing on 23 October 2007 and judgement reserved. Convicted on 7 November 2007 and sentenced to 40 years prison and 20 years accessory. Returned to Originating court on 7 November 2007.

19. Victim – murdered: Juan Carlos Ramírez Rey (member of ASEINPEC).

Unique case code: 500013107003-2006-00073-00, received 26 September 2007. For initiation of trial proceedings.

Offence: Aggravated homicide, manufacture and illegal carriage of arms and qualified robbery.

Accused: Carlos Eduardo Acosta Hurtado.

EPC: Villavicencio Prison and Penitentiary.

Originating court, city: Third Special Criminal Circuit Court, Villavicencio – Meta.

Trial court: Second Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: Preliminary hearing begun on 13 November 2007 and date set for public hearing on 4 December 2007. Hearing postponed to 11 December 2007. Public hearing held on 11 December and reserved for judgement. On 21 December 2007 conviction handed down and Carlos Eduardo Acosta Hurtado sentenced on the main charge to 32 and a half years in prison and barred from public office for 20 years. On 27 December 2007 the case was partially returned. On 24 January, copies were sent.

20. Victims – murdered: Fabio Coley Coronado (member of CTI), Jorge Luis de Rosa Mejía (member of CTI), Sadith Helena Mendoza (friend), Aida Cecilia Padilla Mercado (friend).

Unique case code: 700013107001-2007-00047-00, received 27 September 2007. For initiation of trial proceedings.

Offence: Aggravated homicide and forced disappearance.

Accused: Rodrigo Antonio Mercado Pelufo, alias "Cadena", Uber Enrique Banquez Martínez and Hernán Giraldo Serna.

EPC: Itagüi (Uber Banquez and Hernán Giraldo). Rodrigo Antonio Mercado missing.

Originating court, city: Special Criminal Circuit Court, Sincelejo – Sucre.

Trial court: First Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: Preliminary hearing begun on 18 October 2007 and order issued on 31 October 2007 that due to lack of jurisdiction, the trial must be returned. On 1 November 2007, the trial was returned to the originating court.

21. Victims murdered: Geiner Antonio Munive Rodríguez (Medical Director of the Recetor Casanare Health Centre), Nairo Omero Chaparro (ambulance driver).

Unique case code: 850013107001-2007-0091-00, received 1 October 2007. For plea bargain.

Offence: Forced disappearance.

Accused: Alexander González Urbina.

EPC: Cómbita Prison (Boyacá).

Originating court, city: Single Special Criminal Circuit Court, Yopal – Casanare.

Trial court: Second Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: Returned to originating court because the victims are not trade unionists. On 17 October 2007 the ILO panel of judges decided to return it for lack of jurisdiction. The same day, returned to originating court.

22. Victims – kidnapped: Roger Alfredo Rendón (SENA instructor), Jairo Miguel Guerra (official of the Instituto Ambiental del Pacífico), Feliz Cuesta Asprilla, Pastor Mostacilla, José Aristarco Mosquera (officials of the Instituto Ambiental del Pacífico), Fabio Emilio Patiño.

Unique case code: 27301-31-07-2001-2007-00082-00, received 1 October 2007. For initiation of trial stage.

Offence: Aggravated kidnapping with extortion and conspiracy to commit offences.

Accused: Julio Emilio Usuga Urrego.

EPC: Cómbita Prison (Boyacá).

Originating court, city: Special Court 9 assigned to the ILO, Medellín.

Trial court: Second Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: Public hearing set down for 27 November 2007. On 27 November 2007 the public hearing was postponed and set for 3 December 2007. Public hearing postponed to 27 December 2007. On 27 December 2007 the public hearing was postponed and set down for 30 January 2008. The hearing took place and the defendant entered an appeal on grounds of conflict of jurisdictions. On 2 April 2008, a decision was received from the High Court in Bogotá and the hearing was set to continue on 10 April 2008. At the request of the defendant, a new date was set for 23 April 2008. The hearing rook place and a new date was set for 6 May 2008. On 6 May, the public hearing was held and judgement reserved. On 30 May, Julio Emilio Usura Urrego was sentenced to 480 months of prison and a fine of 22,000 times the legal minimum monthly wage.

23. Victims murdered: Daniel Cortés Cortés (member of SINTRAELECOL), Leonardo Flores Vega.

Unique case code: 680816000135200600327 (prosecutor's reference), received 3 October 2007. For initiation of trial stage.

Offence: Aggravated homicide, qualified and aggravated robbery, illegal carriage of personal side arms.

Accused: Weimar Alfonso Quintana Murillo, Wilmar Johnson Gallego Cárdenas.

EPC: Arrest warrant in force.

Originating court, city: Special National Human Rights (UNDH) and IHL Unit, Prosecutor's Office 4, ILO, Bucaramanga.

Trial court: Second Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: On 25 October 2007 in Barrancabermeja hearing for presentation of charges (Act No. 906 of 2004). Date set for preliminary hearing on 21 November 2007. Public hearing set for 11, 12 and 13 December 2007. On 11 December 2007 oral evidence was heard (article 366 of Act No. 906 of 2004), the initial charge was presented (article 367). Hearing of evidence (chapter III of Act No. 906/2004). On 12 December 2007 continuation of hearing of evidence, submissions of the parties (article 442 of Act No. 906/04). Decision in the case (article 446 of Act No. 906/04). On 13 December 2007 hearing of decision in the case and sentencing: Weimar Alfonso Quintana Murillo and Wilmar Johnson Gallego Cárdenas sentenced to 45 years of prison for the offences of aggravated homicide with similar and other crimes including aggravated robbery and aggravated trafficking and carriage of illegal arms. Accessory sentence – disbarred from public office for a period of 20 years.

24. Victim – murdered: Jhon Alirio Carmona (street vendors of Pereira – Risaralda).

Unique case code: 660013104006-2007-00010-00, received 26 October 2007. For initiation of trial stage.

Offence: Culpable homicide.

Accused: Luis Eduardo Carvajal Giraldo, Leonardo Antonio González Rodríguez.

EPC: Released from prison.

Originating court, city: Criminal Circuit Court 6, Risaralda.

Trial court: Single Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: 29 October 2007, hearing of legal representatives. Preliminary hearing set for 26 November 2007. Preliminary hearing postponed and set for 3 December 2007. Hearing postponed and set for 9 and 10 January 2008 for public hearing. Hearing set for 28 January 2008. On 28 January 2008 public hearing commenced, concluded and judgement handed down. On 28 March 2008 Luis Eduardo Carvajal Giraldo and Leonardo Antonio González Rodríguez were sentenced to 24 months prison and a fine of ten times the legal minimum monthly wage. Disbarred for the same time as the principal sentence. Suspended sentence.

25. Victim – murdered: Oswaldo Moreno Igabué (president of the Community Action Committee).

Unique case code: 50-001-31-07-2007-00067-00, received 30 October 2007. For prosecution, control of legality and arrest order.

Offence: Aggravated homicide.

Accused: Alvaro Alejandro Ospina Aguirre, Diógenes Garzón Reyes, Edilson Perdomo Monroy, José Dimas Cuero Caicedo, James Yobani Lozano Bedoya, Alvaro Betancourt Guzmán, Francisco Alirio Florez, Juan de Jesús Justacara García, Norbey Cubillos Carrillo, Miguel Alberto Lamprea Céspedes, Joel Hortelio Parrado Parrado and Oswaldo Beltrán.

EPC: Remand in custody of Norbey Cubides Carrillo, Edilson Perdomo Monroy, Joel Hortelio Parrado Parrado and Juan de Jesús Justacara García (Villavicencio Prison).

Originating court, city: Special Prosecutor's Office 10, assigned to the ILO, Villavicencio.

Trial court: Second Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: 30 October 2007, application to the Centre for Judicial Services, Villavicencio, for formal trial and allocation of case number. 31 October 2007, Second Court proposes conflict of jurisdictions and on 1 November case returned to Criminal Circuit Court 3, Villavicencio.

26. Victim – murdered: Isabel Toro Soler (member of FECODE, Yopal).

Unique case code: 850013104002-2007-00130-00, received 30 October 2007. For initiation of trial stage.

Offence: Aggravated homicide.

Accused: Cristian Mauricio Barreto Alvarez.

EPC: Villavicencio District Prison.

Originating court, city: Special Prosecutor's Office 10, assigned to the ILO, Villavicencio.

Trial court: Single Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: 30 October 2007 application to the Office of Judicial Support, Yopal, for formal trial and allocation of case number, and once granted, set down for hearing, deadline for notification under article 400, Criminal Procedures Code (CPP) starts to run and date of preliminary hearing 27 November 2007. On 27 November 2007 preliminary hearing held and public hearing set for 18 December 2007. On 18 December 2007 public hearing commenced and evidence was taken from several witnesses. The public hearing was set to continue on 14 January 2008. On 14 January 2008, the hearing was postponed to 24 January 2008. On 24 January 2008 the public hearing took place and judgement was reserved. On 31 January 2008 a judgement was handed down and Cristian Mauricio Barreto Alvarez was convicted on the main charge to 314 months of prison and on the accessory charges to the same term.

27. Victim – murdered: Marco Antonio Salazar Prado (membership of which trade union to be confirmed).

Unique case code: 520013107002-2007-00095-00, received 30 October 2007. For initiation of trial stage.

Offence: Aggravated homicide.

Accused: César Julián Orozco Sánchez.

EPC: Bogotá Model Prison.

Originating court, city: UNDH–IHL Special Prosecutor's Office 10, Bogotá.

Trial court: First Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: 1 October 2007 application to the Centre for Special Services, Pasto, for formal trial and case number. On 1 November 2007 recommends proceeding and the time limit under article 400 CPP starts to run. Order issued 27 November 2007 for return to the originating court as lacking jurisdiction, and partially returned to the originating court.

28. Victims – murdered: Alberto Márquez García (member of Unión Patriótica "UP" and Colombian Communist Party "PCC"), Nelson Castiblanco Franco (DAS escort).

Unique case code: 730013107002-2007-00275-00, received 7 November 2007. For plea bargain.

Offence: Conspiracy to commit offences, aggravated homicide, illegal carriage of arms and bodily harm.

Accused: Jhon Fredy Rubio Sierra.

EPC: Picaleña.

Originating court, city: Special Criminal Circuit Court 2, Ibagué – Tolima.

Trial court: First Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: proceedings opened on 8 November 2007. 19 November 2007 plea bargain entered and Jhon Fredy Rubio Sierra alias "Mono Miguel" sentenced to prison term of 266 months and 20 days, fine of 2,000 times the legal minimum monthly wage and 20 years on the accessory charges. On 20 November 2007, returned to originating court.

29. Victim – murdered: Luis José Torres Pérez (member of the Union of Health Workers of Atlántico (ANTHOC)).

Unique case code: 080013104007-2007-00731-00, received 23 November 2007. Plea bargain entered.

Incidents: 4 March 2004.

Offence: Aggravated homicide.

Accused: Edgar Ignacio Fierro Florez.

EPC: Barranquilla Model Prison.

Originating court, city: Special Criminal Circuit Court 7, Barranquilla.

Trial court: Single Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: proceedings opened on 23 November 2007 and hearing for plea bargain. On 27 November 2007, acceptance of plea bargain and Edgar Ignacio Fierro Florez sentenced to 150 months and the same term for accessory counts. Partially returned to the originating court on the same date.

30. Victim – murdered: Edgar Manuel Ramírez Gutiérrez (member of SINTRAELECOL, Santander branch).

Unique case code: 680013107002-2007-00171-00, received 26 November 2007. Presentation of indictment for initiation of trial stage.

Incidents: 22 February 2001.

Offence: Aggravated homicide, conspiracy to commit offences and illegal carriage of arms.

Accused: Juvenal Pérez Niño.

EPC: Bosque Model Prison – Barranquilla.

Originating court, city: Special Criminal Circuit Court 2, Bucaramanga.

Trial court: Second Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: proceedings opened on 3 November 2007 and pursuant to article 400 CPP notification starts to run, date of preliminary hearing set for 28 December 2007, hearing held and public hearing set for 22 January 2008. Public hearing held and hearing for judgement set for 31 January 2008. On 31 January 2008, Juvenal Pérez Niño sentenced to 320 months prison and accessory term of 20 years. Returned to originating court on 6 February 2008.

31. Victim – murdered: Julio Otero Muñoz (Academic Vice-Rector of Magdalena University).

Unique case code: 47001-3107-001-2007-00012-00, received 26 November 2007. For sentencing.

Incidents: 14 May 2001 – Santa Marta.

Offence: Aggravated homicide.

Accused: Reinaldo de Jesús Torres Forero.

EPC: Rodrigo de Bastidas de Santa Marta.

Originating court, city: Special Criminal Circuit Court, Santa Marta – Magdalena.

Trial court: Second Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: proceedings opened on 4 December 2007. Reserved for judgement. On 26 December 2007 conviction and sentencing of Reinaldo de Jesús Torres Forero to 25 years prison and accessory term of 20 years.

32. Victim – murdered: Hugo Elias Maduro Rodríguez (student leader at Magdalena University).

Unique case code: 470013107001-2007-00031-00, received 30 November 2007. For trial and plea bargain.

Incidents: 26 May 2000.

Offence: Aggravated homicide and aggravated conspiracy to commit offences.

Accused: Luis Carlos López Castro and Gelmer Sait Hincapié de la Cruz.

EPC: Luis Carlos López Castro (Valledupar Prison) and Gelmer Sait Hincapié de la Cruz (Itagüi Prison).

Originating court, city: Second Special Criminal Circuit Court, Bucaramanga.

Trial court: First Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: On 4 December proceedings opened and decision of lack of jurisdiction issued, and case returned to originating court.

33. Victim – murdered: Blanca Ludivia Hernández Velásquez (member of National Union of Health and Social Security (SINDESS), Armenia Branch (Quindío)).

Unique case code: 631303104001-2006-00212-00, received 11 December 2007. Continuation of trial stage. Public hearing.

Offence: Aggravated homicide.

Accused: Ciro Gómez Rayo.

EPC: Arrest warrant in force.

Originating court, city: Single Criminal Circuit Court, Calarcá – Quindío.

Trial court: Single Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: proceedings opened on 12 December 2007. Public hearing set for 11 January 2008. Public hearing held on 1 February 2008. On 1 February public hearing held and reserved for judgement. 29 February 2008 Ciro Gómez Rayo convicted and sentenced to 25 years prison on the main charge and 20 years on the accessory.

34. Victim – murdered: Helio Rodríguez Ruiz (member of the Union of Catering, Hotel and Other Workers of Colombia (HOCAR), Barrancabermeja branch).

Unique case code: 110013104911-2007-00014-00, received 12 December 2007. Plea bargain.

Incidents: 20 July 2002, Barrancabermeja – Santander.

Offence: Aggravated homicide with other offences, illegal carriage of arms.

Accused: Dagoberto Pérez Giraldo and Wilfred Martínez Giraldo.

EPC: Bucaramanga Model Prison (on another charge).

Originating court, city: UNDH–IHL Special Prosecutor's Office 4, ILO, Bucaramanga.

Trial court: Single Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: proceedings opened on 14 December 2007. 21 December 2007 Dagoberto Pérez Giraldo and Wilfred Martínez Giraldo convicted and sentenced on the main and accessory charges to 13 years and 4 months prison.

35. Victim – murdered: Gustavo Castellón Puentes (member of the National Union of Family Benefit Fund Workers (SINALTRACOMFA), Barrancabermeja branch).

Unique case code: 110013104911-2007-00015-00, received 12 December 2007. Plea bargain.

Incidents: 20 October 2001, Barrancabermeja – Santander.

Offence: Aggravated homicide and other offences, illegal carriage of arms.

Accused: Dagoberto Pérez Giraldo.

EPC: Bucaramanga Model Prison (on other charges).

Originating court, city: UNDH–IHL Special Prosecutor's Office 4, ILO, Bucaramanga.

Trial court: Single Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: proceedings opened 14 December 2007. 21 December 2007 Dagoberto Pérez Giraldo convicted and sentenced on the main and accessory charges to 13 years and 4 months prison.

36. Victim – murdered: Cervanto Lerma Guevara (member of the USO, l Barrancabermeja branch).

Unique case code: 110013104911-2007-00016-00, received 12 December 2007. Plea bargain.

Incidents: 10 October 2001, Barrancabermeja – Santander.

Offence: Aggravated homicide.

Accused: Luis Alfonso Hitta Gómez.

EPC: Bucaramanga Model Prison (on another charge).

Originating court, city: UNDH–IHL Special Prosecutor's Office 4, ILO, Bucaramanga.

Trial court: Single Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: Proceedings opened on 14 December 2007. 21 December 2007 Luis Alfonso Hitta Gómez convicted and sentenced to 150 months prison on the main and accessory charges.

37. Victim – murdered: Cristóbal Uribe Beltrán (member of the ANTHOC, North Santander branch).

Unique case code: 110013104911-2007-00017-00, received 12 December 2007. Plea bargain.

Incidents: 28 June 2001, Esperanza de Tibú District – North Santander.

Offence: Aggravated homicide with other crimes and illegal carriage of arms.

Accused: Edilfredo Esquivel Ruiz and other offences, illegal carriage of arms.

EPC: Bucaramanga Model Prison (on another charge).

Originating court, city: UNDH–IHL Special Prosecutor's Office 4, ILO Bucaramanga.

Trial court: Single Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: proceedings opened on 14 December 2007. 21 December 2007 Edilfredo Esquivel Ruiz convicted and sentence to 13 years and 4 months prison on the main and accessory charges.

38. Victim – murdered: Felipe Santiago Mendoza Navarro (member of the USO, l Barrancabermeja branch).

Unique case code: 110013104911-2007-00018-00, received 12 December 2007. Plea bargain.

Incidents: 15 August 2002, Esperanza Tibú District, North Santander.

Offence: Aggravated homicide.

Accused: Edilfredo Esquivel Ruiz.

EPC: Bucaramanga Model Prison (on another charge).

Originating court, city: UNDH–IHL Special Prosecutor's Office 4, ILO, Bucaramanga.

Trial court: Single Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: proceedings opened on 14 December 2007. 21 December 2007 Edilfredo Esquivel Ruiz convicted and sentence to 150 months prison on the main and accessory charges.

39. Victim – murdered: Manuel Salvador Guerrero Angulo (member of the USO, l Barrancabermeja branch).

Unique case code: 110013104911-2007-00013-00, received 14 December 2007. Commencement of trial stage.

Incidents: 2 and 3 November 2003 – Vereda Potosí, Anaime Estate, municipality of Cajamarca. Department of Tolima.

Offence: Aggravated multiple homicide, aggravated forced disappearance, aggravated torture, aggravated kidnapping and extortion and aggravated qualified robbery.

Accused: Jair Nuñez Reina.

EPC: La Dorada – Caldas.

Originating court, city: UNDH–IHL, prosecutor's office, Bogotá.

Trial court: Second Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: proceedings opened on 20 December 2007. Preliminary hearing set for 18 January 2008. Preliminary hearing set for 1 February 2008. On 1 February preliminary hearing held and appeal entered. 14, 15, 18, 19, 20 and 21 February public hearing held, then adjourned until 25 March 2008. Tracing of witnesses. 25 March proceedings initiated and suspended for non-remission, new date set for 27 March. Adjourned for failure of defence to appear, fixed for 11 April 2008. Hearing held and set to continue on 22 and 23 April 2008. Hearing held and set to continue on 19, 20 and 21 May 2008 at 9 a.m., 19, 20 and 21 May public hearing continued and adjourned to 4, 5 and 6 June. Public hearing held and new dates set for 7, 8 and 9 July. Hearing held and reserved for judgement. 13 August Jair Nuñez Reina acquitted.

40. Victim – murdered: Luis Alberto López Plata (member of the Union of Transport Industry Workers of Santander (SINCOTRAINDER).

Unique case code: 110013107911-2007-0010-00, received 12 December 2007. For plea bargain.

Incidents: 16 October 2001 – Planada del Cerro district, Barrancabermeja, Santander.

Offence: Aggravated homicide, with other offences, illegal carriage of arms.

Accused: Wilmar Alonso Padilla Garrido alias "Sergio or El Orejón", José Ricardo Rodríguez alias "Wilson or Peinilla".

EPC: Barrancabermeja, Municipal Prison.

Originating court, city: UNDH–IHL Special Prosecutor's Office 4, ILO, Bucaramanga.

Trial court: First Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: proceedings opened 14 December 2007. Reserved for judgement 19 December 2007, entry of plea bargain for the criminal offence of manufacture, carriage and trafficking of arms. Wilmar Alonso Padilla Garrido alias "Sergio or El Orejón" and José Ricardo Rodríguez alias "Wilson or Peinilla" to 190 months of prison for the main offence and the same term for the accessory charge.

41. Victim – murdered: Manuel Salvador Guerrero (ex-member of USO).

Unique case code: 110013104911-2007-00014-00, received 12 December 2007. For plea bargain.

Incidents: 16 March 2002, commercial establishment called "La Parranda", Barrancabermeja, Santander.

Offence: Aggravated homicide, and other offences, illegal carriage of arms, qualified and aggravated robbery.

Accused: Wilfred Martínez Giraldo, Edgar Javier Padilla Garrido, Luis Alfonso Hitta Gómez.

EPC: Bucaramanga Model Prison (on another charge).

Originating court, city: UNDH–ILH Special Prosecutor's Office 4, ILO, Bucaramanga.

Trial court: Second Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: proceedings opened 20 December 2007, reserved for sentencing. On 28 December Wilfred Martínez Giraldo alias "Gavilán" sentenced on the main charge to 192 months prison as accomplice in the offence of aggravated homicide. Edgar Javier Padilla Garrido, alias "Rony El Orejón" and Luis Alfonso Hitta Gómez alias "Jacobo" sentenced on the main charge to 241 months prison as accomplices in the offences of aggravated homicide, qualified and aggravated robbery and illegal carriage of firearms. For the accessory offences, the accused were sentenced to be barred from public office for 20 years.

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42. Victim – murdered: Elías Durán Rico (member of SINFUTRANSDIBA).

Unique case code: 110013107911-2008-0001-00, received 16 January 2008, for plea bargain.

Offence: Aggravated homicide.

Accused: Edgar Ignacio Fierro Flórez.

EPC: Barranquilla Model Prison.

Originating court, city: UNDH–ILH Prosecutor's Office 10, Bucaramanga.

Trial court: First Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: 17 January 2008, proceedings opened and reserved for judgement; 31 January 2008 handing down of judgment and acceptance of charges by Edgar Ignacio Fierro Flórez. Sentenced to 230 months prison and an accessory sentence for the same term.

43. Victim – murdered: Adán Alberto Pacheco (ex-president of SINTAELECOL).

Unique case code: 110013107912-2008-000-00, received 16 January 2008, for plea bargain.

Offence: Aggravated homicide.

Accused: Edgar Ignacio Fierro Flórez.

EPC: Barranquilla Model Prison.

Originating court, city: UNDH–ILH Special Prosecutor's Office 4, ILO, Bucaramanga.

Trial court: Second Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: 17 January 2008, proceedings opened and reserved for judgement; 31 January 2008 handing down of judgment and acceptance of charges by Edgar Ignacio Fierro Flórez. Sentenced to 230 months prison and an accessory sentence for the same term.

44. Victims – murdered: Ricardo Espejo Galindo and others (members of the Union of Agricultural Workers of Tolima (SINTRAGRITOL)).

Unique case code: 730043107001-2007-00235-00, received 24 January 2008. Initiation of trial stage.

Offence: Aggravated homicide, torture and other.

Accused: Juan Carlos Rodríguez Agudelo, Wilson Casallas Suescun and Albeiro Pérez Duque.

EPC: Casallas Suescun (Cantón Sur Bogotá); Pérez Duquez (Tolemaida Military Detention Centre); Juan Carlos Rodríguez Agudelo (Bogotá Model Prison).

Originating court, city: Special Criminal Circuit Court 1, Ibagué.

Trial court: First Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: proceedings opened on 28 January 2008, preliminary hearing set for 13 February 2008. Preliminary hearing held and public hearing set down for 3, 4, 5, 6 and 7 March. Public hearing held and further dates set for 1, 2 and 3 April 2008. Tracing of missing witnesses. Date for continuation set for 7, 8 and 9 May 2008. 7 and 8 May hearing continued and continued hearing set for 20 June. Judgement hearing on 19 August. Order on retrial, appeal as subsidiary granted.

45. Victims: Abdón Vesga Pineda, William Hugo Ayala Pérez, María Elsa Páez García, Neftalí Rojas Aguilar, Jesús Gustavo Vargas Suarez (members of the Association of Employers of the National Prison Institute (ASEINPEC)).

Unique case code: 110014004063-2006-00306-00, received 17 January 2008. Commencement of trial stage.

Offence: Violation of rights of meeting and association.

Accused: Ricardo Agreda Pinillos.

EPC: Not in custody.

Originating court, city: Municipal Criminal Court 63, Bogotá.

Trial court: Second Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: 18 January 2008 order to return to originating court due to lack of jurisdiction. 24 January 2008 returned in full to the originating court.

46. Victims: Carlos Manuel Solarte López and Rodrigo Jaramillo Reyes (National Union of Workers of SINTRABRINKS).

Unique case code: 110014004063-2004-0657-01, received 17 January 2008. Commencement of trial stage.

Offence: Violation of rights of meeting and association.

Accused: Maximilano Guerrero and others.

EPC: Not in custody.

Originating court, city: Municipal Criminal Court 63, Bogotá.

Trial court: Second Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: 18 January 2008 order to return to originating court due to lack of jurisdiction. 24 January 2008 returned in full to the originating court.

47. Victims – murdered: Luis Alberto López Plata and Luis Manuel Anaya Aguas (president and treasurer of SINCOTRAINDER).

Unique case code: 110013107911-2008-003-00, received 22 January 2008. Control of legality.

Incidents: 16 and 19 October 2001 in Barrancabermeja.

Offence: Aggravated homicide.

Accused: Norberto Guarín, José Beltrán, Davis Pinto, Ariel Salazar and Héctor Navarro.

EPC: Barranca Prison.

Originating court, city: Special Prosecutor's Office 4, Bucaramanga.

Trial court: First Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: 22 January 2008 proceedings opened and order to notify the accused within five days from 23 January 2008. 31 January the court declares the action for control of legality inadmissible. On 7 February 2008, returned to Special Prosecutor's Office 4, Bucaramanga.

48. Victim – murdered: Gregorio Izquierdo Meléndez (president of SINTRAEMSERPA).

Unique case code: 110013107911-2008-0002-00, received 21 January 2008. Commencement of trial stage.

Incidents: 13 September 2006 in Arauca.

Offence: Aggravated homicide and conspiracy to commit offences.

Accused: Wilmar Benavides Téllez and Leonardo Corrales Martínez.

EPC: Bogotá Model Prison.

Originating court, city: UNDH–IHL Special Prosecutor's Office 20, Bogotá.

Trial court: First Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: 22 January 2008 proceedings opened and order for notification pursuant to article 400, Act No. 600/2000. Preliminary hearing set for 12 March 2008. On 12 March 2008 public hearing commenced and suspended to request public defence lawyer. Measures taken to appoint defence lawyer. Date for preliminary hearing set at 23 April 2008. On 23 April 2008, public defence lawyer appointed and a new date set for the preliminary hearing. Preliminary hearing held and 19, 20 and 21 May 2008 set for public hearing. On 19 and 20 May public hearing held and concluding submissions made. On 6 June, Wilar Benavides and Leonardo Corrales sentence to 420 months prison and fine of 6,500 times the legal minimum monthly wage. On 27 June leave to appeal granted.

49. Victim – murdered: Marco Antonio Salazar Prado (to be confirmed to which trade union he belonged).

Unique case code: 520013107002-2007-00095-00, received 4 February 2008. For initiation of trial stage.

Offence: Aggravated homicide.

Accused: César Julián Orozco Sánchez.

EPC: Bogotá Model Prison.

Originating court, city: Criminal Circuit Court 3, Pasto.

Trial court: Single Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: 5 February proceedings opened. 8 February 2008 decision that the court lacked jurisdiction and order to return the case to the originating court, partially returned to the originating court.

50. Victims – murdered: Alberto Márquez García and Nelson Castiblanco Franco (SINTRAGRITOL).

Unique case code: 110013107911-2008-0005-00, received 6 February 2008. Plea bargain.

Incidents: Natagaima – Tolima 15 July 2003.

Offence: Double aggravated homicide and other.

Accused: Diego José Martínez Goyeneche.

EPC: Picota Penitentiary.

Originating court, city: Prosecutor's Office 5, assigned to the ILO, Neiva.

Trial court: First Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: 7 February 2008 proceedings opened and reserved for judgement. 21 February 2008 judged handed down, proceedings declared partially void. Decision approved in part. Diego José Martínez Goyeneche sentenced on the main charge to 320 months prison and a fine of 2,000 times the legal minimum monthly wage.

51. Victim – murdered: Felipe Santiago Mendoza Navarro (member of USO).

Unique case code: 110013104911-2008-000300-00, received 8 February 2008. Plea bargain.

Incidents: 15 August 2002 in Tibú – North Santander.

Offence: Aggravated homicide and other.

Accused: Gilmar Mena Cabrera.

EPC: Cúcuta Model Prison.

Originating court, city: Special Prosecutor's Office 4, Bucaramanga (ILO), Neiva.

Trial court: Single Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: 8 February 2008 proceedings opened and reserved for judgement. 13 February 2008 Gilmar Mena Cabrera convicted and sentenced on the main charge to 153 months prison. Accessory sentences for the same term as the main charge.

52. Victims – murdered: Jacobo Rodríguez (member of AICA) and Judith Andrade Vargas (wife).

Unique case code: 180013107001-2007-00034-01, received 12 February 2008. Plea bargain.

Incidents: 18 September 2001. Puerto Rico – Caquetá.

Offence: Aggravated homicide.

Accused: Walter Hernández Muñeton.

EPC: Not in custody.

Originating court, city: Special Court No. 1 Florencia – Caquetá.

Trial court: Second Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: 12 February 2008 proceedings opened and reserved for judgement. 28 February 2008 Walter Hernández Muñeton convicted and sentenced to 465 months prison on the main charge and accessory sentence, barred from rights and public office for 20 years. Compensation of 600 times the legal minimum monthly wage.

53. Victim – murdered: Alvaro Granados Rativa (member of SUTIMAC).

Unique case code: 110013104911200800004, received 29 February 2008. Decision to prosecute.

Incidents: 8 February 2004 in Bogotá DC.

Offence: Aggravated homicide and illegal carriage of arms.

Accused: Melquicedet Viuche Hernández.

EPC: Acacias Penitentiary – Meta.

Originating court, city: Prosecutor's Office 10 attached to the special criminal circuit courts, Villavicencio.

Trial court: Single Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: On 3 March 2008 received from the Centre for Administrative Services, proceedings opened and set down for 2 April this year at 10 a.m., for the preliminary hearing. Transfer under article 400 of Act No. 600 of 2000, on 4 March and 7 April 2008, progress in preliminary hearing, since, although set for 2 April, was suspended due to the absence of the defence lawyer. On 22 April this year public hearing, 23 April, reserved for judgement. 15 May 2008, Melquicedet Viuche Hernández convicted and sentenced in the principal charge to 27 years and 2 months prison. Barred from exercise of rights and public office for a term of 20 years. Compensation for injury and moral damages of 250 times the legal minimum monthly wage.

54. Victim – murdered: Ricardo Luis Orozco Serrano (national vice-president of ANTHOC).

Unique case code: 110013310791220080000500, received 4 March 2008. Plea bargain.

Incidents: 2 April 2001 in Soledad – Atlántico.

Offence: Aggravated homicide and aggravated conspiracy to commit offences.

Accused: Carlos Arturo Romero Cuartas.

EPC: Acacias Medium and High Security Penitentiary – Meta.

Originating court, city: UNDH–IHL Special Prosecutor's Office 2.

Trial court: Second Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: 5 March 2008 proceedings opened and reserved for judgement. 27 March 2008 Carlos Arturo Romero Cuartas convicted and sentenced on the main charge to 270 months prison and a fine of 4,333.3 times the legal minimum monthly wage and accessory sentence barred from rights and public office for 20 years. Compensation of 1,000 times the legal minimum monthly wage. Sent to originating court.

55. Victim: Fredy Ocoro Otero (Municipal Trade Union of Bugalagrande (FENANSINTRAP – CUT))

Unique case code: 110011310791120080006, received 4 March 2008. Plea bargain.

Offence: Forced displacement and conspiracy to commit offences to force displacement.

Accused: Elkin Casarrubia Posada and Herbert Veloza García.

EPC: Vista Hermosa Court Cells, Medellín and Court Cells, Itagüi.

Originating court, city: Special Prosecution Unit 8, ILO.

Trial court: First Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: 14 March 2008 order to return to the Single Criminal Circuit Decongestion Court (ILO). 14 March 2008, and accordingly the case was returned.

56. Victim – murdered: Fredy Ocoro Otero (affiliated to the Union of Official Workers of the Municipality of Bugalagrande (FENANSINTRAP – CUT)).

Unique case code: 110011310791120080005, received 14 March 2008. Plea bargain.

Offence: Forced displacement and conspiracy to commit offences to force displacement.

Accused: Elkin Casarrubia Posada and Herbert Veloza García.

EPC: Vista Hermosa Court Cells, Medellín and Court Cells, Itagüi.

Originating court, city: First Special Criminal Circuit Decongestion Court (ILO).

Trial court: Single Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: 14 March 2008 proceedings opened and reserved for judgement. 15 April Elkin Casarrubia Posada and Herbert Veloza García convicted and sentenced in the main charge to 5 years and 4 months prison. Not ordered to pay compensation for material damages. For moral damages, order to pay to the victim the amount of 400 times the legal minimum monthly wage.

57. Victims: Rosa Judith Polanco, Gloria Rodríguez, Elicideth Aguirre (members of ANTHOC).

Unique case code: 500013107001200800017 00, received 14 March 2008. Control of legality.

Offence: Aggravated conspiracy to commit offences, aggravated forced displacement and threats.

Accused: Claudia Lucía Morales Torres, Patricia Mahacha Gutiérrez, Hernando Augusto Sotomayor Rivera, Robinson Isaza Muñoz, Germán Enciso López and Gerardo Fierro Cifuentes.

EPC: Mitú Prison (Vaupez), Bucaramanga Women's Prison (Santander) and Prison of the Judicial District of Villavicencio (Meta).

Originating court, city: First Special Criminal Circuit Court, Villavicencio.

Trial court: First Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: 14 March 2008 control of legality requested by the legal defence lawyers Pedro Julio Gordillo Hernández and Hernán Barreto Moreno on behalf of the accused Claudia Lucía Morales Torres and Patricia Mahacha Gutiérrez admitted. On 31 March the notification lapsed. On 7 April 2008, it was decided: 1. to refuse the action for control of legality against the detention measures filed by the Prosecutor, on 8 April, in accordance with the order of the court, the case was returned to the originating court.

58. Victim – murdered: Lázaro de Jesús Gil Alvarez (ex-official of FECODE).

Unique case code: 110013310791220080000600, received 25 March 2008. Plea bargain.

Incidents: 29 September 2000 in the vía San Francisco – Medellín.

Offence: Homicide against a protected person and simple kidnapping.

Accused: Rodrigo Alonso Agudelo Ciro.

EPC: Bellavista Prison – Antioquia.

Originating court, city: Special Prosecutor's Office, Unit 9, ILO.

Trial court: Second Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: on 28 March proceedings opened and reserved for judgement. 2 April 2008, act of formulation of charges for plea bargain declared void. Order to return the case to Special Prosecutor's Office, Unit 9, to correct the indicated mistake. Order to notify the parties, 17 April. Sent to originating Prosecutor's Office. 29 April received the case with the mistake corrected. 20 May Rodrigo Alonso Agudelo Ciro sentenced to 207 months prison.

59. Victim – murdered: Ernesto Alfonso Giraldo Martínez (member of ADIDA).

Unique case code: 11001-31-04911-2008-00007-00, received 26 March 2008. Plea bargain.

Incidents: 21 March 2002.

Offence: Homicide of a protected person and acts of terrorism.

Accused: Rodrigo Alonso Agudelo Ciro.

EPC: Bellavista Prison – Antioquia.

Originating court, city: Special Prosecutor's Office, Unit 9, ILO.

Trial court: First Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: 27 March referred on grounds of jurisdiction to the Single Criminal Circuit Decongestion Court (ILO).

60. Victim – murdered: Martha Cecilia Maya Amaya.

Unique case code: 11001-31-04911-2008-00006-00, received 27 March 2008. Commencement of trial stage.

Incidents: 6 October 2004.

Offence: Aggravated homicide and rebellion.

Accused: Mario Caamaño Parra, Jimmy José Rubio Suárez and Jhon Geiner Hinojosa López.

EPC: Arrest warrant in force.

Originating court, city: Special Prosecutor's Office Unit, ILO.

Trial court: Single Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: On 28 March 2008 proceedings opened and 21 April set for preliminary hearing. On 14 April ordered to be returned to the Criminal Circuit Court, Valledupar (Trial), because the status of trade unionist was not accredited.

61. Victim – murdered: Ernesto Alfonso Giraldo Martínez (National Association of Teachers (ADIDA)).

Unique case code: 11001-31-04911-2008-00007-00, received 26 March 2008. Plea bargain.

Incidents: 21 March 2002.

Offence: Homicide of protected person and acts of terrorism.

Accused: Rodrigo Alonso Agudelo Ciro.

EPC: Bellavista Prison – Antioquia.

Originating court, city: First Special Criminal Circuit Decongestion Court (ILO).

Trial court: Single Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: On 28 March proceedings opened and reserved for judgement. 18 April 2008 Rodrigo Alonso Agudelo Ciro convicted and sentenced on the main charge to 20 years prison and a fine of 2,000 times the legal minimum monthly wage. Accessory sentence, barred from rights and public office for 15 years. Application for suspended sentence refused. Ordered to pay compensation in the form, terms and amount indicated under the relevant heading.

62. Victims – murdered: César Augusto Fonseca Morales, José Rafael Fonseca Morales and José Ramón Fonseca Cassiani (members of SINTRAGRICOLA).

Unique case code: 11001-31-04911-2008-008, received 3 April 2008. Plea bargain.

Offence: Aggravated homicide and similar offences.

Accused: Edgar Ignacio Fierro Flórez "don Antonio".

EPC: Barranquilla Model Prison.

Originating court, city: Second Special Prosecutor's Office seconded to ILO.

Trial court: Single Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: 3 April returned to court. 4 April proceedings opened and certification of trade union requested. 9 April 2008 reserved for judgement. 30 April judgement: (1) Edgar Ignacio Fierro Flórez, alias "don Antonio" convicted on the main charge to 300 months, i.e. 25 years in prison. Seven hundred and fifty (750) times the legal minimum monthly wage applicable at the time of payment, as compensation for moral damages caused by the punishable act of aggravated homicide and similar offences.

63. Victim – murdered: Soraya Patricia Díaz Arias (Union of Secondary Teachers).

Unique case code: 110013107912-2008-00007-00, received 8 April 2008. Plea bargain.

Incidents: 2 September 2003, in the suburb of Puerto Giraldo, town of Ponedra – Atlántico.

Offence: Homicide of a protected person and conspiracy to commit offences.

Accused: Henry de Jesús Tabares Vélez and Yhon Jairo Agudelo Castrillón.

EPC: La Blanca Prison, Manizales.

Originating court, city: Special Prosecutor's Office 9, attached to the ILO, Medellín.

Trial court: Second Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: 2 April 2008 returned to court. Order to return to Special Prosecutor's Office 9 (ILO). 4 April returned to Prosecutor's Office. 21 April received from Special Prosecutor's Office 9 and returned to Second Court. 21 April proceedings opened and reserved for judgement. 7 May 2008, judgement: **One:** Henry de Jesús Tabares Vélez and Yhon Jairo Agudelo Castrillón sentences on the main charge to 450 months prison and a fine of 6,750 times the legal minimum monthly wage. **Two:** Henry de Jesús Tabares Vélez and Yhon Jairo Agudelo Castrillón ordered to pay compensation for moral damages of 1,000 times the legal minimum monthly wage. **Three:** the entry of this judgement in the Victims Compensation Fund. … **Six:** return of the case to the Special Criminal Circuit Court –Medellín Division (Antioquia). 13 May the original proceeding was returned to the court.

64. Victim – murdered: Roberth Cañarte (SINTRAMUNICIPIO BUGALAGRANDE).

Unique case code: 110013107912-2008-00008-00, received 8 April 2008. Plea bargain.

Offence: Aggravated homicide, simple kidnapping, carriage of arms and conspiracy to commit offences.

Accused: Hebert Veloza Vélez alias "HH" and Elkin Casarrubia Posada.

EPC: Elkin Casarrubia Villahermosa Court Cells, Medellín, Antioquia and Hebert Veloza in Bellavista Prison, Antioquia.

Originating court, city: Special Prosecutor's Office 8, (ILO), Cali – Valle.

Trial court: Second Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: 9 April returned to court. Proceedings opened and reserved for judgement. 24 April 2008 judgement: (1) Hebert Veloza García sentenced to 309 months prison and a fine of 5,880 times the legal minimum monthly wage and Elkin Casarrubia Posada sentenced to 275 months prison and a fine of 90. (2) the criminal investigation of Hebert Veloza Vélez and Elkin Casarrubia Posada in relation to the offence of carriage of firearms closed, as the matter was time-barred in law. (3) certified copies sent to the Office of the Public Prosecutor to investigate Elkin Casarrubia Posada for conspiracy to commit offences. (4) ordered jointly to pay compensation for moral damages in the amount of 1,000 times the legal minimum monthly wage. (5) certified copies sent to Héctor Fabio Correa Victoria, Mayor of Bugalagrande and to the chief of police of the town, Sergeant Juan Carlos Rojas González. 30 April 2008, sent to originating court.

65. Victim – murdered: Jesús Orlando Crespo (SINTRAMUNICIPIO BUGALAGRANDE).

Unique case code: 11001-31-07-911-2008-00009, received 8 April 2008. Plea bargain.

Offence: Aggravated homicide.

Accused: Elkin Casarrubia Posada.

EPC: Villahermosa Prison, Medellín, Antioquia.

Originating court, city: Special Prosecutor's Office 8, (ILO), Cali – Valle.

Trial court: First Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: 9 April. returned to court. Proceedings opened and reserved for judgement. 21 April 2008 Elkin Casarrubia Posada convicted and sentenced to 230 months prison. Accessory sentence barred from rights and public office for 20 years. Moral damages of 500 times the legal minimum monthly wage. Sent to originating court.

66. Victim – murdered:

Unique case code: 110013107911-2008-00010, received 10 April 2008. With decision to prosecute.

Incidents: 26 November 2001 in Abriaqui – Antioquia.

Offence: Kidnapping and extortion.

Accused: Aicardo de Jesús Agudelo Rodríguez.

EPC: Arrest warrant in force.

Originating court, city: UNDH–IHL Special Prosecutor's Office 9.

Trial court: First Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: 11 April 2008 proceedings opened and notice under article 400 CPP. On 7 May preliminary hearing set for 27 May 2008. 22 May order to proceed, resignation of defence lawyer accepted, new official defence appointed. 27 May preliminary hearing held and public hearing set for 10 and 11 June. 10 June public hearing held. 24 June Aicardo de Jesús Agudelo Rodríguez convicted and sentenced to 432 months prison and fine of 999.99 times the legal minimum monthly wage.

67. Victims – murdered: Fidel Antonio Seguro Cano and Ramón Chaverra Robledo (officials of SINTRAOFRAN).

Unique case code: 11001-31-04911-2008-009, received 10 April 2008. Plea bargain.

Incidents: 17 July 2001 in Bolívar – Antioquia.

Offence: Homicide of protected person and acts of terrorism.

Accused: Aldides de Jesús Durango.

EPC: Medium and High Security Prison, Itagüi.

Originating court, city: UNDH–IHL Special Prosecutor's Office 9.

Trial court: Single Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: 14 April proceedings opened and reserved for judgement. 19 May Aldides de Jesús Durango convicted and sentenced to 26 years and 8 months prison and fine of 400 times the legal minimum monthly wage.

68. Victim – murdered: Ana Rubiela Villada Rodríguez (Single Union of Education Workers of Valle (SUTEV)).

Unique case code: 11001-31-0911-2008-0010, received 18 April 2008. Plea bargain.

Incidents: 26 October 2001 in Sevilla – Valle.

Offence: Homicide of protected person and forced disappearance.

Accused: Hebert Veloza Vélez alias "HH" and Elkin Casarrubia Posada.

EPC: Bellavista Prison, Antioquia.

Originating court, city: Special Prosecutor's Office 8 (ILO).

Trial court: Single Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: 18 April 2008 Returned to Single Criminal Circuit Decongestion Court (ILO). 21 April 2008, proceedings opened and proceedings passed to office for plea bargain. 4 June Hebert Veloza Vélez and Elkin Casarrubia convicted and sentenced to 16 years and 8 months prison.

69. Victim – murdered: Oscar David Polo Charry (Union of Teachers of Magdalena (EDUMAG)).

Unique case code: 11001-31-07912-2008-0009, received 25 April 2008. Formulation of indictment in absence.

Incidents: 28 October 2002 in suburb of Medialuna –Pivijay – Magdalena.

Offence: Aggravated homicide and aggravated conspiracy to commit offences.

Accused: José Antonio Blanco Morales, Julio César Noriega Castrillón, Luis Antonio Olea Páez, Roberto Carlos Romo Palacios, Dair Alfonso Patriño Torregoza and Fausto Santander Moreno Polo.

EPC: Arrest warrant in force.

Originating court, city: First Special Prosecutor's Office (ILO).

Trial court: Second Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: 28 April 2008 Returned to Second Special Criminal Circuit Decongestion Court (ILO). 29 April proceedings opened and article 400 CPP notice starts to run. 8 May 2008, notice under article 40 suspended. 11 June, public defender accepted, application for dismissal.. 20 June, dismissal refused. 22 July investigation into the accused. 21 August, public hearing.

70. Victim – murdered: Jaime Alberto Lobato Montenegro (Union of Teachers of Magdalena (EDUMAG)).

Unique case code: 110013107911-2008-0011-00, received 2 May 2008. Formulation of indictment in absence.

Incidents: 3 August 2002 in suburb of Medialuna –Pivijay – Magdalena.

Offence: Aggravated homicide and aggravated conspiracy to commit offences.

Accused: José Antonio Blanco Morales, Julio César Noriega Castrillón, Luis Antonio Olea Páez, Roberto Carlos Romo Palacios, Dair Alfonso Patiño Torregoza and Fausto Santander Moreno Polo.

EPC: Arrest warrant in force.

Originating court, city: First Special Prosecutor's Office (ILO).

Trial court: First Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: 6 May sent to First Special Criminal Circuit Decongestion Court (ILO). 6 May proceedings opened and article 400 CPP notice starts to run. 27 May article 400 notice expires. 28 May order set date of preliminary hearing at 12 June. 4 June 2008, order to proceed with arrest warrant. 6 June order appointing official defender. 11 June public defender accepted and application of copies allowed. 12 June preliminary hearing, refusal of application for dismissal, defender enters appeal, which is granted and sent to Court. 22 August public hearing.

71. Victims – murdered: Emerson Iván Herrera Ruales and Luz Mariela Díaz López (Teachers Union of Putumayo).

Unique case code: 868656000520200801600O, received 2 May 2008. Act of indictment, Act No. 600-2000.

Incidents: 1 April 2008, Vereda Los Pomos – town of la Hormiga – Putumayo.

Offence: Aggravated homicide with illegal carriage of arms.

Accused: Edgardo Alexander Díaz.

EPC: Mocoa Penitentiary – Putumayo.

Originating court, city: UNDH Special Prosecutor's Office 48, Bogotá DC.

Trial court: Single Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: 2 May Returned to Single Criminal Circuit Decongestion Court (ILO). Date for hearing for formulation of charge set for 16 May 2008. 16 May, hearing for formulation of charge. 10 June, preliminary hearing. 18 an 19 July 2008, oral hearing. 1 August conclusion of oral hearing. 22 September for judgement.

72. Victim – murdered: Hugo Alfonso Iguaran Cotes (SINTRAUNICOL).

Unique case code: 110013107911-2008-0012, received 7 May 2008. Plea bargain with arrest.

Incidents: 10 September 2000 in Montería – Córdoba.

Offence: Aggravated homicide and conspiracy to commit offences.

Accused: Walter José Mejía López.

EPC: San Sebastián de Ternera.

Originating court, city: First Special Prosecutor's Office, ILO, Cartagena.

Trial court: First Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: 8 May, sent to First Special Criminal Circuit Decongestion Court (ILO) and originals sent. 8 May 2008, proceedings opened and reserved for judgement.

20 May, plea bargain, sentencing of Walter José Mejía Lópezto 233 months prison and a fine of 3,610.11 times the legal minimum monthly wage. In course of notification.

73. Victims – murdered: Luis Alfonso Brito and Eneida Quintero Apiayu (Teachers Association of Guajira (ASODEGUA)).

Unique case code: 110013107912-2008-0010-00, received 12 May 2008. Plea bargain with arrest.

Incidents: 4 February 2006 in Barbacoas (Guajira).

Offence: Aggravated homicide and conspiracy to commit offences.

Accused: Roger Adán Pérez Romero and Jaiber Rodríguez Rincón.

EPC: Barranquilla Model Prison.

Originating court, city: First Special Prosecutor's Office, ILO, Cartagena.

Trial court: Second Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: 13 May, sent to Second Special Criminal Circuit Decongestion Court (ILO) and originals sent. 15 May proceedings opened and plea bargain entered. 21 March, proceedings returned for addition of charge. 29 May proceedings returned and admitted to court for judgment. 12 June Roger Adán Pérez Romero and Jaiber Rodríguez Rincón convicted and sentenced to 303 prison and fine of 3,900 times the legal minimum monthly wage.

74. Victims – murdered: Alfredo Rafael Francisco Correa de Andreis (ASOPROSIMBOL) and Edelberto Ochoa Martínez (escort).

Unique case code: 08001310720080027-01, received 20 May 2008. Formulation of charge with arrest and application for plea bargain.

Incidents: 17 September 2004 in Barranquilla – Atlántico.

Offence: Aggravated homicide, Homicide of protected person and aggravated conspiracy to commit offences.

Accused: Rodrigo Tovar Pupo, alias "Jorge 40", Juan Carlos Rodríguez León, alias "El Gato" and Edgar Ignacio Fierro Flórez alias "don Antonio".

EPC: Barranquilla Model Prison (Fierro Flórez and Rodríguez León).

Originating court, city: Single Special Criminal Circuit Court, Barranquilla.

Trial court: Second Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: 28 May proceedings opened and article 400 CPP notice starts to run. Date set for preliminary hearing. 25 July hearing took place and adjournment of the proceedings ordered. Public hearing set for 10 September.

75. Victim – murdered: Miguel Alberto Fernández Orozco (CUT, Cauca branch).

Unique case code: 19001310400420070004000, received 23 May 2008. Received for public hearing.

Incidents: 2005 – Popayán – Cauca.

Offence: Threats.

Accused: Alba Susana Chávez Muñoz.

EPC: Not in custody.

Originating court, city: Criminal Circuit Court 4, Popayán.

Trial court: Single Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: 23 May proceedings opened and public hearing set for 18 June. Public hearing held and reserved for judgement. 4 July, order for dismissal, including decision to close investigation.

76. Victim – murdered: María Teresa Trujillo de Orozco (Cauca Teachers Association (ASOINCA)).

Unique case code: 196986000633200800360O, received 29 May 2008. Admitted for preliminary hearing.

Incidents: 2008 – Santander de Quilichao.

Offence: Aggravated homicide.

Accused: Wilson Cristo Herrera Pineda.

EPC: Santander de Quilichao Circuit Prison.

Originating court, city: First Criminal Circuit Court, Santander de Quilichao.

Trial court: Single Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: 7 May proceedings opened and date set for preliminary hearing on 20 June 2008. Preliminary hearing held. 8, 9 and 10 July oral hearing. 25 July 2008 continuation of oral hearing. 21 August 2008 continuation of oral hearing.

77. Victims: Miguel Angel Rendon Graciano (vice-president, trade union committee, Union of Public Employees of Sena (SINDESENA)) and others.

Unique case code: 110013107912-2008-00012-00, received 29 May 2008. Decision to prosecute.

Incidents: 2002 Quibdo – Chocó.

Offence: Aggravated kidnapping and extortion and conspiracy to commit offences.

Accused: Ogli Angel Padilla Romero and Carlos William Palacios Cuesta.

EPC: Arrest warrant in force.

Originating court, city: Special Prosecutor's Office 9, Medellín.

Trial court: Second Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: 3 June 2008 proceedings opened, article 400 notice starts to run. 5 August set as date for preliminary hearing. 25 August conclusion of public hearing.

78. Victim – murdered: Jorge Eliecer Guillén Leal (Union of Chemical Industry Workers (SINTRAINQUIGAS)).

Unique case code: 680816000135200600704, received 5 June 2008. Received with submission of charges (Act No. 906).

Incidents: 2006 – Barrancabermeja – Santander.

Offence: Conspiracy to commit offences, aggravated homicide and carriage of arms.

Accused: Juan David Guerra Ortega and Klever Guillermo Herrera Ruiz.

EPC: DAS – Bucaramanga (Juan David) Montería Prison (Klever).

Originating court, city: UNDH–IHL Prosecutor's Office 79.

Trial court: First Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: 6 June 2008 sent to court. 6 June proceedings opened. 23 June hearing for verification and specification of sentence and judgement. Judgement: (1) Juan David Guerra convicted and sentenced to 176 months of prison and fine of 4,762.5 times the legal minimum monthly wage. (2) Klever Guillermo Herrera Ruiz convicted and sentenced to 245 months of prison. Appeal filed by the defence which was allowed and sentence suspended. 23 June 2008 sent to High Court, Criminal Division.

79. Victim: Germán Ignacio Vargas Tarquino.

Unique case code: 110013107911-2008-00014-00, received 6 June 2008. Decision to prosecute without arrest.

Incidents: 4 February 2002 in Prado (Tolima).

Offence: simple kidnapping and threats.

Accused: Diego Hernán Vera Roldan and Ricaurte Soria Ortíz.

EPC: Picaleña Ibague (Vera Roldan) and Acacias Medium Security Prison (Soria Ortíz).

Originating court, city: Prosecutor's Office 5 attached to the ILO Special Criminal Circuit Court Tolima, Huila and Caquetá.

Trial court: First Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: 6 June 2008 proceedings opened and article 400 notice starts to run. On grounds of jurisdiction, order to return the proceedings as the victim was not a trade union member or leader.

80. Victim – murdered: Helio Rodríguez Ruiz (Union of Catering, Hotel and Other Workers of Colombia (HOCAR)).

Unique case code: 110013107912-2008-0013-00, received 9 June 2008. Decision to prosecute without arrest.

Incidents: 2000 in Bucaramanga (Santander).

Offence: Aggravated homicide and carriage of arms.

Accused: Guillermo Hurtado Moreno and Ricardo Ramos Valderrama.

EPC: Arrest warrant in force.

Originating court, city: UNDH–IHL Prosecutor's Office 79.

Trial court: Second Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: 13 June 2008 proceedings opened and article 400 notice starts to run. 11 July 2008 sent to Single Special Criminal Circuit Decongestion Court (ILO) on grounds of jurisdiction.

81. Victim – murdered: Gustavo Castellón Puentes (SINALTRACOMFA).

Unique case code: 110013107911-2008-0015-00, received 9 June 2008. Decision to prosecute without arrest.

Incidents: 2001 in Bucaramanga (Santander).

Offence: Aggravated homicide and carriage of arms.

Accused: Guillermo Hurtado Moreno and Wilfredo Osorio Gil.

EPC: Arrest warrant in force.

Originating court, city: UNDH–IHL Prosecutor's Office 79.

Trial court: First Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: 10 June 2008 assigned to court, proceedings opened and article 400 notice starts to run. 11 July ordered sent to Single Special Criminal Circuit Decongestion Court (ILO) on grounds of jurisdiction.

82. Victims: Luis Carlos Herrera Monsalve and Aymer Velásquez Urrego (vice-president, Association of Departmental Employees (ADCA)).

Unique case code: 110013107912-2008-0014-00, received 18 June 2008. Decision to prosecute without arrest.

Incidents: 2004 in Caicedo (Antioquia).

Offence: Aggravated kidnapping with extortion.

Accused: Aircardo de Jesús Agudelo Rodríguez.

EPC: Arrest warrant in force.

Originating court, city: Special Prosecutor's Office 9, ILO, Medellín – Antioquia.

Trial court: Second Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: 19 June 2008 assigned to court. Article 400 notice starts to run. 26 August public hearing concludes.

83. Victims: María Eloisa Vega Guzmán and Zenaida Bermúdez Castro (UNIMAC).

Unique case code: 11001-31-04911-2008-00014, received 19 June 2008. Decision to prosecute without arrest.

Incidents: 2000.

Offence: Illegal coercion.

Accused: Oscar Antonio Hernández Gómez.

EPC: No.

Originating court, city: Criminal Circuit Court 55, Bogotá.

Trial court: Single Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: 20 June proceedings opened. 15 July preliminary hearing, appeal and sent to High Court.

84. Victim – murdered: Jorge Eliecer Guillen Leal (Union of Chemical Industry Workers (SINTRAINQUIGAS)).

Unique case code: 6808160000002008001600, received 23 June 2008. Admitted with statement of agreement (Act No. 906).

Incidents: 2006 – Barrancabermeja – Santander.

Offence: Aggravated homicide Nos 7 and 3.

Accused: Luis Fernando Niño Cala and Yolver Andrés Gutiérrez Garnica.

EPC: Bucaramanga Model Prison – Santander.

Originating court, city: UNDH–IHL Prosecutor's Office 79.

Trial court: Single Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: 23 June 2008 sent to trial court: Single Criminal Circuit Decongestion Court (ILO). 24 June proceedings opened. Sentenced to 208 months prison.

85. Victim: Fredy Ocoro (official of the Trade Union of the Municipality of Bugalagrande (SINTRAMUNICIPIO)).

Unique case code: 110013107911-2008-0016, received 25 June 2008. Received with decision to prosecute.

Incidents: 2000 Bugalagrande – Valle.

Offence: Conspiracy to commit offences and forced displacement.

Accused: Edgar Antonio Salgado.

EPC: Arrest warrant in force.

Originating court, city: ILO Special Prosecutor's Unit 82, Santiago de Cali – Valle.

Trial court: First Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: 26 June 2008 proceedings opened and article 400 notice starts to run. 5 August set for preliminary hearing. 26 August public hearing concluded.

86. Victims – murdered: Alexander Amaya Bueno and Marco Antonio Beltrán Banderas (SUTEV).

Unique case code: 1100013104911200800016, received 26 June 2008. Plea bargain entered.

Incidents: 2002 Palmira – Valle.

Offence: Homicide of protected person and carriage of arms.

Accused: Herber Veloza García.

EPC: Bellavista Prison, Medellín.

Originating court, city: ILO Special Prosecutor's Unit 82.

Trial court: Single Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: 26 June 2008 Returned to Single Court. 27 June proceedings opened. Herber Veloza García sentenced to 300 months prison.

87. Victim – murdered: Orlando Frías Parada (Union of Communication Workers (USTC)).

Unique case code: 1100013104911200800017, received 27 June 2008. Plea bargain entered.

Incidents: 2003 Villanueva – Casanare.

Offence: Aggravated homicide and carriage of arms.

Accused: Josue Dario Orjuela Martínez, alias "Solin".

EPC: Bogotá Model Prison.

Originating court, city: ILO Special Prosecutor's Unit 88, Villavicencio – Meta.

Trial court: Single Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: 27 June 2008 Returned to Single Court. 1 July proceedings opened and admitted by court for plea bargain. 22 August sentenced to 14 years and 7 months prison.

88. Victim – murdered: Emerson José Pinzón Pertuz (SINDESS).

Unique case code: 1100013107911200800017, received 7 July 2008. Plea bargain entered.

Incidents: 2003 Ciénaga – Magdalena.

Offence: Aggravated homicide and conspiracy to commit offences.

Accused: José Gregorio Mangones Lugo.

EPC: Barranquilla Model Prison.

Originating court, city: ILO Special Prosecutor's Unit 84, Cartagena de Indias.

Trial court: First Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: 8 July 2008 Returned to Court, proceedings opened and plea bargain entered. José Gregorio Mangones Lugo convicted and sentenced to 260 months prison.

89. Victim – murdered: Herberto de Jesús Fihol Pacheco (EDUMAG).

Unique case code: 1100013107912200800015, received 7 July 2008. Plea bargain entered.

Incidents: 2003 Ciénaga – Magdalena.

Offence: Aggravated homicide and conspiracy to commit offences.

Accused: Jorge Gregorio Mangones Lugo.

EPC: Barranquilla Model Prison.

Originating court, city: ILO Special Prosecutor's Unit 84, Cartagena de Indias.

Trial court: Second Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: 8 July 2008 Returned to Court. 24 July 2008, found guilty.

90. Victim – murdered: Roberth Cañarte (SINTRAMUNICIPIO Bugalagrande).

Unique case code: 1100013107911200800018, received 7 July 2008, decision to prosecute.

Incidents: 2000, Bugalagrande, Valle.

Offence: Aggravated homicide, aggravated conspiracy to commit offences, kidnapping and carriage of arms.

Accused: Eduard Antonio Salgado Pérez, alias "Catore".

EPC: Arrest warrant in force.

Originating court, city: ILO Special Prosecutor's Unit 82, Santiago de Cali – Valle.

Trial court: First Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: 8 July 2008, Returned to Court. Proceedings opened, article 400 notice starts to run. 25 August hearing held and 2 and 3 September set for continuation.

91. Victims – murdered: Alexander Amaya Bueno and Marco Antonio Bernal Bandera (SUTEV).

Unique case code: 110013104911200800021, received 7 July 2008, plea bargain.

Incidents: 2002, Palmira, Valle.

Offence: Homicide of protected person and illegal carriage of arms.

Accused: Elkin Casarrubia Posada.

EPC: Bellavista Court Cells.

Originating court, city: ILO Special Prosecutor's Unit 82, Santiago de Cali – Valle.

Trial court: Single Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: 8 July 2008, Returned to Court. 16 July, proceedings opened and plea bargain entered. 28 July 2008, sentenced to 25 years prison and fine of 1,980 times the legal minimum monthly wage.

92. Victim: Yesid Plaza Escobar (SINTRAMUNICIPIO Bugalagrande).

Unique case code: 110013104911200800018, received 7 July 2008, plea bargain.

Incidents: Bugalagrande – Valle.

Offence: Aggravated forced displacement.

Accused: Elkin Casarrubia Posada.

EPC: Bellavista Court Cells.

Originating court, city: ILO Special Prosecutor's Unit 82, Santiago de Cali – Valle.

Trial court: Single Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: 8 July 2008, Returned to Court. 16 July, proceedings opened and plea bargain entered. Elkin Casarrubia Posada sentenced to 300 months prison.

93. Victims – murdered: Dionila Vitonas Chilhueso and Heber Valencia Valencia (SUTEV).

Unique case code: 110013104911200800020, received 7 July 2008, plea bargain.

Incidents: 2002, Florida, Valle.

Offence: Homicide of protected person and illegal carriage of arms.

Accused: Hebert Veloza García.

EPC: Bellavista Court Cells.

Originating court, city: ILO Special Prosecutor's Unit 82, Santiago de Cali – Valle.

Trial court: Single Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: 8 July 2008, Returned to Court. 16 July, proceedings opened and plea bargain entered. 12 August 2008, sentenced to 22 years and six months prison and fine of 1,500 times the legal minimum monthly wage.

94. Victim: Yesid Plaza Escobar (SINTRAMUNICIPIO Bugalagrande).

Unique case code: 110013104911200800019, received 7 July 2008, plea bargain.

Incidents: Bugalagrande, Valle.

Offence: Aggravated forced displacement.

Accused: Hebert Veloza García.

EPC: Bellavista Court Cells.

Originating court, city: ILO Special Prosecutor's Unit 82, Santiago de Cali – Valle.

Trial court: Single Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: 8 July 2008, returned to court. 9 July, proceedings opened and plea bargain entered. 11 August 2008, sentenced to 45 months prison and fine of 395 times the legal minimum monthly wage.

95. Victim – murdered: Fanny Toro Vásquez (ANTHOC).

Unique case code: 110013107912200800016, received 8 July 2008, decision to prosecute.

Incidents: 2003, Fresno, Tolima.

Offence: Aggravated homicide and aggravated conspiracy to commit offences.

Accused: Alexander López Acosta and Jhon Jairo Ospina Delgado.

EPC: López Acosta, "Doña Juana" Prison; Ospina Delgado escaped from the Chinchiná-Caldas Municipal Prison.

Originating court, city: Prosecutor's Office 5 attached to the ILO Special Criminal Circuit Court Tolima, Huila and Caquetá.

Trial court: Second Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: 9 July 2008, Returned to Court. 14 July, article 400 notice starts to run. Preliminary hearing set for 4 August 2008. Trial adjourned and public hearing set for 29 August.

96. Victim – murdered: Helio Rodríguez Ruiz (Union of Catering, Hotel and Other Workers of Colombia – HOCAR).

Unique case code: 110013107912-2008-0013-00, received 9 June 2008, in progress without arrest.

Incidents: 2000, in Bucaramanga (Santander).

Offence: Aggravated homicide and carriage of arms.

Accused: Guillermo Hurtado Moreno and Ricardo Ramos Valderrama.

EPC: Arrest warrant in force.

Originating court, city: Second Special Criminal Circuit Decongestion Court (ILO).

Trial court: Single Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: 11 July, Returned to Court. 6 August preliminary hearing held and public hearing set for 1 September.

97. Victims – murdered: César Augusto Fonseca Morales, José Rafael Fonseca Morales and José Ramón Fonseca Cassiani (SINTRAGRICOLA).

Unique case code: 110013107911200800l9, received 11 July 2008, decision to prosecute without arrest.

Incidents: 2000, in Bucaramanga (Santander).

Offence: Aggravated homicide and aggravated conspiracy to commit offences.

Accused: Luis Alberto Cabarcas Amador and Wilson Manuel Naranjo Castro.

EPC: Tierralta-Córdoba Penitentiary (Cabarcas Amador), Naranjo Castro – arrest warrant in force.

Originating court, city: UNDH–IHL Special Prosecutor's Office 78, Barranquilla.

Trial court: First Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: 11 July, returned to Court. 14 July, article 400 notice starts, expires 1 August. 25 August, public hearing held and trial suspended.

98. Victim – murdered: Gustavo Castellón Puentes (SINALTRACOMFA).

Unique case code: 110013107911-2008-0015-00, received 9 June 2008, Decision to prosecute without arrest.

Incidents: 2001, in Bucaramanga, Santander.

Offence: Aggravated homicide and carriage of arms.

Accused: Guillermo Hurtado Moreno and Wilfredo Osorio Gil.

EPC: Arrest warrant in force.

Originating court, city: First Special Criminal Circuit Decongestion Court (ILO).

Trial court: Single Special Criminal Circuit Decongestion Court (ILO).

Stage in proceedings – Sent for trial: 14 July, returned to Court. 6 August, preliminary hearing held and public hearing set for 1 September.

99. Victim: Alexander López Maya (SINTRAEMCALI).

Unique case code: 110013104056200800015-00, received 17 July 2008, plea bargain.

Incidents: Cali, Valle.

Offence: Threats.

Accused: Hebert Veloza García.

EPC: Bellavista Court Cells.

Originating court, city: UNDH–IHL Special Prosecutor's Office 8, Cali – Valle.

Trial court: Criminal Circuit Court 56, Bogotá DC.

Stage in proceedings – Sent for trial: 18 July, Returned to Court. 23 July, proceedings opened.

100. Victim – murdered: Manuel Salvador Guerrero Angulo (USO).

Unique case code: 110013104056200800016-00, received 21 July 2008, decision to prosecute.

Incidents: 2006, Barrancabermeja, Santander.

Offence: Aggravated homicide Nos 3 and 7.

Accused: Guillermo Hurtado Moreno and Ricardo Ramos Valderrama.

EPC: Arrest warrant in force.

Originating court, city: UNDH–IHL Special Prosecutor's Office 79, Bucaramanga, Santander.

Trial court: Criminal Circuit Court 56, Bogotá DC.

Stage in proceedings – Sent for trial: 22 July, Returned to Court. 23 July, proceedings opened, article 400 notice starts to run.

101. Victims – murdered: Alfredo Rafael Francisco Correa de Andrés (ASOPROSIMBOL) and Edelberto Ochoa Martínez (Escort).

Unique case code: 11001310701120080000100, received 20 May 2008 (suspension of trial proceedings), plea bargain.

Incidents: 17 September 2004 in Barranquilla-Atlántico.

Offence: Aggravated homicide, Homicide of protected person and aggravated conspiracy to commit offences.

Accused: Edgar Ignacio Fierro Florez alias "Don Antonio".

EPC: Barranquilla Model Prison.

Originating court, city: Single Special Criminal Circuit Court, Barranquilla.

Trial court: Special Criminal Circuit Decongestion Court 11 (ILO).

Stage in proceedings – Sent for trial: 23 July 2008, suspension of trial ordered. 12 August 2008, Edgar Ignacio Fierro Florez sentenced to 504 months prison and fine of 2,200 times the legal minimum monthly wage.

102. Victims – murdered: Alfredo Rafael Francisco Correa de Andrés (ASOPROSIMBOL) and Edelberto Ochoa Martínez (Escort).

Unique case code: 11001310701120080000200, received 20 May 2008 (suspension of trial proceedings), plea bargain.

Incidents: 17 September 2004 in Barranquilla-Atlántico.

Offence: Aggravated homicide, Homicide of protected person and aggravated conspiracy to commit offences.

Accused: Juan Carlos Rodríguez León.

EPC: Barranquilla Model Prison.

Originating court, city: Single Special Criminal Circuit Court, Barranquilla.

Trial court: Special Criminal Circuit Decongestion Court 11 (ILO).

Stage in proceedings – Sent for trial: 25 July 2008, suspension of trail proceedings ordered. Public hearing held on 27 and 28 August.

103. Victim – murdered: Fanny Toro Vásquez (ANTHOC).

Unique case code: 11001310701120080000300, received 28 July 2008, plea bargain.

Incidents: 20 March 2008, in Fresno, Tolima.

Offence: Aggravated homicide.

Accused: Evelio de Jesús Aguirre Hoyos.

EPC: Picaleña Prison.

Originating court, city: Special Prosecutor's Office 86, Neiva.

Trial court: Special Criminal Circuit Decongestion Court 11 (ILO).

Stage in proceedings – Sent for trial: 31 July 2008, sent to court. 20 August 2008, Evelio de Jesús Aguirre Hoyos sentenced to 207 months prison.

104. Victim – murdered: Cervando Lerma Guevara (USO).

Unique case code: 110013104056200800018-00, received 1 August 2008, plea bargain.

Incidents: 10 October 2001 in Barrancabermeja, Santander.

Offence: Homicide of protected person.

Accused: José Raúl Sánchez.

EPC: Bucaramanga Model Prison (Santander).

Originating court, city: UNDH–IHL Special Prosecutor's Office 79, Bucaramanga, Santander.

Trial court: Criminal Circuit Court 56, Bogotá DC.

Stage in proceedings – Sent for trial: 1 August 2008, sent to court. 6 August, proceedings opened. 8 August, plea bargain entered.

105. Victim – murdered: Ernesto Alfonso Giraldo Martínez (ADIDA).

Unique case code: 110013104056200800017-00, received 4 August 2008, decision to prosecute.

Incidents: 21 March 2002, in San Francisco, Antioquia.

Offence: Homicide of protected person.

Accused: Carlos Alirio García Usme.

EPC: Arrest warrant in force.

Originating court, city: UNDH–IHL Special Prosecutor's Office 85, Medellín, Antioquía.

Trial court: Criminal Circuit Court 56, Bogotá DC.

Stage in proceedings – Sent for trial: 4 August 2008, sent to court. 29 August, proceedings opened. Preliminary hearing set for 10 September.

106. Victim – murdered: Fanny Toro Vásquez (ANTHOC).

Unique case code: 11001310701120080000400, received 8 July 2008, plea bargain, trial proceedings suspended.

Incidents: 2003, Fresno, Tolima.

Offence: Aggravated homicide and aggravated conspiracy to commit offences.

Accused: Alexander López Acosta.

EPC: López Acosta, "Doña Juana" Prison.

Originating court, city: Prosecutor's Office 5 attached to the Special Criminal Circuit Decongestion Court, ILO, Tolima, Huila and Caqueta.

Trial court: Special Criminal Circuit Decongestion Court 11 (ILO).

Stage in proceedings – Sent for trial: 6 August, trial proceedings suspended. 21 August, Alexander López Acosta sentence to 387 months prison and fine of 5,880 times the legal minimum monthly wage and accessories.

107. Victims – murdered: Dionila Vitonas Chilhueso and Heber Valencia Valencia (SUTEV).

Unique case code: 110013107010200800010O, received 12 August 2008, plea bargain.

Incidents: 2002, Florida, Valle.

Offence: Homicide of protected person and aggravated conspiracy to commit offences.

Accused: Daniel Mazuera Pineda.

EPC: "Villa las Palmas" Penitentiary, Palmira, Valle.

Originating court, city: UNDH–IHL Special Prosecutor's Office 82, Cali, Valle.

Trial court: Special Criminal Circuit Decongestion Court 10 (ILO).

Stage in proceedings – Sent for trial: 12 August, returned to court. 26 August, Daniel Mazuera Pineda sentenced to 466 months and 20 days prison and fine of 5,500 times the legal minimum monthly wage and accessories.

108. Victims – murdered: Luis Eduardo Duque Varón, Antonio José Varón and Alfonso López Nivia (TRADE UNION).

Unique case code: 110013107010200800020O, received 15 August 2008, decision to prosecute.

Incidents: 2004, Líbano, Tolima.

Offence: Aggravated homicide, aggravated conspiracy to commit offences and illegal carriage of arms.

Accused: Diego José Martínez Goyeneche, Atanael Matajudios Buitrago and Honorio Barreto Rojas.

EPC: La Picota Penitentiary, Bogotá DC.

Originating court, city: UNDH–IHL Special Prosecutor's Office 85, Neiva, Huila.

Trial court: Special Criminal Circuit Decongestion Court 10 (ILO).

Stage in proceedings – Sent for trial: 19 August, returned to court. 20 August, proceedings opened.

109. Victims – murdered: Dionila Vitonas Chilhueso and Heber Valencia Valencia (SUTEV).

Unique case code: 110013104056200800019-00, received 19 August 2008, plea bargain.

Incidents: 2002, Florida, Valle.

Offence: Homicide of protected person and illegal carriage of arms.

Accused: Elkin Casarrubia Posada.

EPC: Bellavista Court Cells, Antioquia.

Originating court, city: UNDH–IHL Special Prosecutor's Office 82, Cali, Valle.

Trial court: Criminal Circuit Court 56, Bogotá DC.

Stage in proceedings – Sent for trial: 19 August, returned to court. 22 August 2008, proceedings opened and admitted to court.

110. Victim – murdered: Luis José Torres Pérez (ANTHOC).

Unique case code: 110013107011200800005O0, received 21 August 2008, decision to prosecute.

Incidents: 2004, Barranquilla, Atlántico.

Offence: Aggravated homicide and aggravated conspiracy to commit offences.

Accused: Henry Antonio Díaz Gamarra.

EPC: Arrest warrant in force.

Originating court, city: UNDH–IHL Special Prosecutor's Office 78, Barranquilla, Atlántico.

Trial court: Special Criminal Circuit Decongestion Court 11 (ILO).

Stage in proceedings – Sent for trial: 22 August, returned to court. 25 August, proceedings opened.

111. Victim – murdered: Zully Esther Codina Pérez (SINDESS).

Unique case code: 1100131070102008000300, received 22 August 2008, plea bargain.

Incidents: 2003, Santa Marta, Magdalena.

Offence: Aggravated homicide.

Accused: Rolando Leonel Bonilla Guerrero.

EPC: Santa Marta Court Cells, Magdalena.

Originating court, city: UNDH–IHL Special Prosecutor's Office 12, Bogotá DC.

Trial court: Special Criminal Circuit Decongestion Court 10 (ILO).

Stage in proceedings – Sent for trial: 25 August, returned to court. 25 August, proceedings opened.

112. Victim: State.

Unique case code: 1100131070112008000050O, received 22 August 2008, plea bargain.

Offence: Conspiracy to commit offences.

Accused: Roberto Luis Peinado López.

EPC: Barranquilla Model Prison.

Originating court, city: UNDH–IHL Special Prosecutor's Office 12, Bogotá DC.

Trial court: Special Criminal Circuit Decongestion Court 11 (ILO).

Stage in proceedings – Sent for trial: 25 August, returned to court. 26 August, proceedings opened and admitted to court.

113. Victim – murdered: Jesús Orlando Crespo (SINTRAMUNICIPIO Bugalagrande).

Unique case code: 815075, received 26 August 2008, decision to prosecute.

Incidents: 2000, Bugalagrande.

Offence: Aggravated homicide and illegal carriage of arms.

Accused: Edwar Antonio Salgado Pérez and Edilson de Jesús Cadavid Marín.

EPC: Villahermosa Court Cells (Edilson Cadavid). Salgado (absent).

Originating court, city: UNDH–IHL Special Prosecutor's Office 82, Cali, Valle.

Trial court: Special Criminal Circuit Decongestion Court 56 (ILO).

Stage in proceedings – Sent for trial: 27 August, returned to court. Returned on grounds of jurisdiction to the Special Criminal Circuit Courts of Bogotá (Decision No. 4449).

114. Victims – murdered: César Augusto Fonseca Morales, José Rafael Fonseca Morales and José Ramón Fonseca Cassiani (SINTRAGRICOLA).

Unique case code: 1100131070102008000400, suspension of trial proceedings, plea bargain.

Incidents: 2000, in Bucaramanga (Santander).

Offence: Aggravated homicide and aggravated conspiracy to commit offences.

Accused: Luis Alberto Cabarcas Amador.

EPC: Tierralta Penitentiary, Córdoba.

Originating court, city: UNDH–IHL Special Prosecutor's Office 78, Barranquilla.

Trial court: Special Criminal Circuit Decongestion Court 10 (ILO).

Stage in proceedings – Sent for trial: 25 August, order for suspension of trial proceedings and reserved for judgement.

115. Victim – murdered: Miguel Rojas Quiñones.

Unique case code: 815075, decision to prosecute.

Incidents: 2003, in Bucaramanga (Santander).

Offence: Aggravated homicide and conspiracy to commit offences and carriage of arms.

Accused: Edwar Antonio Salgado Pérez and Edilson de Jesús Cadavid Marín.

EPC: Eilson (Bucaramanga Model Prison), Salgado (arrest warrant).

Originating court, city: UNDH–IHL Special Prosecutor's Office 82, Cali (Valle).

Trial court: Special Criminal Circuit Decongestion Court 11 (ILO).

Stage in proceedings – Sent for trial: 28 August, sent to court.

116. Victim – murdered: Jesús Orlando Crespo (SINTRAMUNICIPIO, Bugalagrande).

Unique case code: 189235, decision to prosecute.

Incidents: 2000 in Bugalagrande (Valle).

Offence: Aggravated homicide and conspiracy to commit offences.

Accused: José Orlando Estrada Rendón, alias "El Paisa" and Luis Jesús García Ortega, alias "Mono Chucho".

EPC: Villahermosa Prison.

Originating court, city: UNDH–IHL Special Prosecutor's Office 79, Bucaramanga (Santander).

Trial court: Special Criminal Circuit Decongestion Court 11 (ILO).

Stage in proceedings – Sent for trial: 28 August, sent to court.

ILO Homicides – Prioritized

– Name of Victim: Daniel Ruiz Bedoya.

Case No.: 050016000206200780032-1.

Date of the incident: 9 January 2007.

Offence: Homicide.

Stage of proceedings: Investigation.

Prosecutor's office: Special Prosecutor's Office 9, Medellín.

Trade Union: SIGGINPEC.

State of investigation: 27 May 2008, a meeting was held between the prosecutor and the criminal police to follow up the orders of the criminal police.

– Name of victim: Luis Fabián Moreno Marín.

Case No.: criminal notice 660016000035200700219.

Date of the incident: 1 February 2007.

Offence: Homicide.

State of proceedings: Trial.

Prosecutor's office: Prosecutor's Office 5, Homicide, Pereira-Risaralda, for the offence of Homicide.

Trade Union: SER.

Stage in the investigation: Criminal Circuit Court 3, 23 April 2008 date and time set down for hearing of the case under a plea bargain between the prosecutor's office and the accused.

– Name of victim: Marleny Berrio de Rodríguez.

Case No.: notice No. 410016000586200702109.

Date of the incident: 10 June 2007.

Offence: Aggravated homicide.

State of proceedings: Convicted, serving sentence.

Prosecutor's office: Special Prosecutor's Office 4, Florencia.

Trade Union: AICA.

Stage in the investigation: Hermes Alberto Jiménez and Jair Farfán sentenced to 40 years prison.

– Name of victim: Wilson Martínez Arenas.

Case No.: 1100160000282006-01847.

Date of the incident: 10 July 2006.

Offence: Homicide.

State of proceedings: Trial.

Prosecutor's office: Prosecutor's Office 9, First Homicide Unit, Bogotá.

Stage in the investigation: the trade unionist is the defendant Elber Orozco Pinzón who at the time of the incident was apparently a trade unionist. On 10 June 2008, bill of indictment for acceptance of charges. August 2008, hearing to determine punishment and sentence.

– Name of victim: Mario de Jesús Giraldo Aristizabal.

Case No.: 0-05006000206200607803.

Date of the incident: 7 June 2006.

Offence: Homicide.

State of proceedings: Investigation.

Prosecutor's office: Prosecutor's Office 221, Medellín.

State of investigation: archived because of impossibility of identifying the perpetrator of the crime. Application of the order of 5 July 2008 of Dr Yesid Ramírez Bastinas.

– Name of victim: Pedro Pablo Hurtado Molina.

Case No.: 768926000190200780203.

Date of the incident: 30 July 2007.

Offence: Homicide.

State of proceedings: Convicted, serving sentence.

Prosecutor's office: Prosecutor's Office 156, Yumbo, Valle.

Trade Union: Club San Fernando Workers.

State of investigation: found guilty by Criminal Circuit Court 10, Cali.

– Name of victim: Omar Ariza.

  Identity document: 6208400.

  Case No.: 767366000186200800154.

  Date of the incident: 8 April 2008.

  Offence: Homicide.

  State of proceedings: Investigation.

  Prosecutor's office: Section 7, Sevilla.

  Trade Union: SUTEC.

  State of investigation: 2 July 2008: custodial sentence of 35 months. The juveniles are currently in the Valle de Lili Centre.

– Name of victim: Tomás Alberto Chiquillo Pascual.

  Identity document: 12703467.

  Case No.: 472886001025200880093.

  Date of the incident: 10 May 2008.

  Offence: Homicide.

  State of proceedings: Investigation.

  Prosecutor's office: Prosecutor's Office, Section 26, Fundación Magdalena.

  Trade Union: SINTROPROACEITE.

  State of investigation: 12 August 2008, criminal police report submitted, passed to court.

– Name of victim: Israel Alfonso Pérez Montes.

  Identity document: 77191571.

  Case No.: 200016001074200880043.

  Date of the incident: 11 January 2008.

  Offence: Homicide.

  Prosecutor's office: Prosecutor's Office 13, Homicide Unit, Valledupar.

  Trade Union: SINTRADRUMOND.

  Prosecutor's office: Prosecutor's Office 13: 11 April 2008, inspection order. Criminal police report submitted, passed to court.

– Name of victim: Rafael Antonio Leal Medina.

  Identity document: 19091074.

  Case No.: 730306000457200880036.

  Date of the incident: 4 April 2008, vía panamericana.

  Offence: Homicide.

  Prosecutor's office: Prosecutor's Office 13, Lérida Ibague.

  Trade Union: AICA/DOCENTE.

  Prosecutor's office: Prosecutor's Office 13: 21 April 2008, methodological programme 21 April 2008. In letter No. 15507 of 23 June 2008 the section directorate, Ibague, was requested for an executive report and opinion on the change of assignment of the case to the National Human Rights Unit.

– Name of victim: José Fernando López Quiroz.

Identity document: 1212615667, Porto viejo.

Case No.: 865686000529200880294.

Date of the incident: 13 March 2008.

Offence: Homicide.

Prosecutor's office: Prosecutor's Office 44, Puerto Asis.

Trade Union: FENSUAGRO.

State of investigation: A methodological programme was drawn up and orders issued to the criminal police to establish the circumstances in which the incident occurred and to ascertain whether the death occurred in a fight. In letter No. 15505 of 23 June 2008 the section directorate, Mocoa, was requested for an executive report and opinion on the change of assignment of the case to the National Human Rights Unit.

– Name of victim: Rafael Antonio Leal Medina.

Identity document: 19091074.

Case No.: 730306000457200880036.

Date of the incident: 4 April 2008, vía panamericana.

Offence: Homicide.

Prosecutor's office: Prosecutor's Office 31 Lérida Ibague.

Trade Union: AICA/DOCENTE.

State of investigation: 21 April 2008, methodological programme. 21 April 2008, in letter No. 637, of 13 August 2008, referred to the National Human Rights Unit.

– Name of victim: Luis Mayusa Prada.

Identity document: 17352766.

Case No.: 817366109539200880116.

Date of the incident: 8 August 2008.

Offence: Homicide.

State of proceedings: Investigation.

Prosecutor's office: Special Prosecutor's Office, Arauca.

Trade Union: Pending confirmation.

State of the investigation: 8 August 2008, urgent measures taken, methodological programme.

– Name of victim: Haly Martín Mendoza Carreño.

Identity document: 13481563.

Case No.: 54001616079200880498.

Date of the incident: 10 July 2008.

Offence: Homicide.

Prosecutor's office: Prosecutor's Office 6, Cucuta.

Trade Union: ASINORT.

State of the investigation: Urgent measures being taken as required.

CASE NO. 2434

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

Complaint against the Government of Colombia presented by
— the World Confederation of Labour (WCL) and
— the National Association of Telephone and Communications Engineers (ATELCA)

Allegations: (1) Limitation of the right to collective bargaining by virtue of the recent adoption of Legislative Act No. 1 of 22 July 2005; (2) harassment of SINTRAPROAN founder member and official Franco Cuartas through successive disciplinary proceedings; (3) dismissal of SINTRAPROAN members Luis Carmelo Cataño Cataño, Carlos Romero Aguilar and Silvio Elías Murillo, despite their trade union immunity, and of SINTRAPROAN members Jhon Jair Silva and Jesse Moisés Gutiérrez Herrera

522. The Committee last examined this case at its March 2008 meeting and presented an interim report to the Governing Body [see 349th Report, paras 614–671, approved by the Governing Body at its 301st Session].

523. ATELCA submitted further information in a communication dated 26 August 2008.

524. The Government sent its observations in communications dated 29 May, 5 June and 28 November 2008.

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

A. Previous examination of the case

526. In its previous examination of the case in March 2008, the Committee made the following recommendations [see 349th Report, para. 671]:

(a) With regard to the allegations relating to the limitation of the right to collective bargaining by virtue of the recent adoption of Legislative Act No. 01 of 22 July 2005, which amends article 48 of the Constitution on social security, the Committee:

(i) with regard to agreements concluded prior to the entry into force of the legislation, once again requests the Government to adopt the necessary measures to ensure that collective agreements containing pensions clauses, which are valid beyond 31 July 2010, remain in effect until their expiry date;

(ii) with regard to agreements concluded after the entry into force of Legislative Act No. 01, again requests the Government, in view of the particular circumstances of this case and in order to ensure harmonious industrial relations in the country, to hold new in-depth consultations on retirement and pensions, exclusively with the social partners, in order to find a solution acceptable to all the parties concerned in accordance with the Conventions on freedom of association and collective bargaining ratified by Colombia, in particular ensuring that the parties involved in collective bargaining can improve the legal provisions on retirement and pension schemes by mutual agreement.

(b) …

(c) With regard to the allegations of persecution through successive disciplinary procedures of Mr Franco Cuartas, founder member and leader of SINTRAPROAN, the Committee requests the Government to take the necessary measures to carry out without delay an independent investigation into these allegations and, if they are found to be true, to take the necessary measures to cancel the disciplinary measures taken against Mr Franco Cuartas.

(d) With regard to the alleged dismissal of Luis Carmelo Cataño Cataño, Carlos Romero Aguilar and Silvio Elías Murillo, despite enjoying trade union immunity, in order to be able to formulate conclusions based on all the information, the Committee requests the Government to send a copy of the judicial decisions denying the reinstatement.

(e) The Committee requests the Government to send its observations without delay with regard to the new allegations presented by the CGT relating to the dismissal of SINTRAPROAN members Jhon Jair Silva and Jesse Moisés Gutiérrez Herrera.

B. New allegations

527. In its communication of 26 August 2008, ATELCA again refers to the limitation of the right to collective bargaining by virtue of the adoption of Legislative Act No. 01 of 22 July 2005, which amends article 48 of the Constitution relating to social security, and presents a political and legal evaluation of the situation. The communication does not mention any new circumstances or facts relating to freedom of association.

C. The Government's reply

528. In its communications of 29 May, 5 June and 28 November 2008, the Government sent the following observations.

529. With regard to recommendation (a) concerning the limitation of the right to collective bargaining by virtue of the adoption of Legislative Act No. 01 of 22 July 2005, which amends article 48 of the Constitution relating to social security, and with regard to the new communication from ATELCA, the Government repeats the observations already examined by the Committee and points out that the new constitutional rule prevents it from complying with the Committee's recommendation since the Constitution prescribes that the validity of clauses in collective agreements relating to pensions may not extend beyond 31 July 2010.

530. The Government adds that, in view of the existence of a constitutional rule which prohibits any conditions other than those laid down by law from being agreed, any new consultation on the matter would give rise to false expectations among the social partners regarding constitutional reform, since the ways in which the latter may be undertaken are laid down by the Constitution itself and these do not include consultation of the people.

531. With regard to recommendation (c) concerning the allegations of harassment of Mr Franco Cuartas through successive disciplinary proceedings, with respect to which the Committee

requested the Government to conduct an independent investigation without delay and, if the allegations were found to be true, to quash the disciplinary measures taken against him, the Government reiterates that the Office of the Attorney-General, in accordance with section 3 of Act No. 734 of 2002, is the permanent body which has the disciplinary power to initiate, continue or refer any investigation or proceedings relating to the competence of the internal disciplinary mechanisms of public entities. One of the responsibilities of the Office of the Attorney-General is to monitor compliance with the Constitution, the law, court decisions and administrative acts. It is also responsible for high-level supervision of the official conduct of persons performing public duties, expediting the corresponding investigations and imposing the respective penalties in line with national law (article 277 of the Constitution). The Government points out that disciplinary proceedings (disciplinary investigation No. 030 123975/05) were instituted against Mr Franco Cuartas and in the context thereof an application for a declaration of nullity is pending. The Government adds that due process has been observed with respect to Mr Franco Cuartas, as provided for by article 29 of the Constitution.

532. With regard to recommendation (d) concerning the alleged dismissal of Luis Carmelo Cataño Cataño, Carlos Romero Aguilar and Silvio Elías Murillo, despite their trade union immunity, the Government states that the Office of the Attorney-General sent its own observations, attaching the court rulings in the proceedings relating to the workers concerned. As regards Mr Romero Aguilar, the chief of the Human Resources Division of the Office of the Attorney-General said that his name does not appear on the list of members of SINTAPROAN committees or subcommittees and that he is currently employed as citations officer in the Caquetá Regional Prosecutor's Office.

533. As regards Silvio Elías Murillo, the said person was employed as an attorney from 1 September 2005 to 28 February 2007. The prosecutor's office sent a copy of the ruling issued by the Quibdó District High Court confirming the first-instance court ruling which established that Mr Murillo was not covered by trade union immunity at the time of his dismissal.

534. In the case of Luis Carmelo Cataño Cataño, the Fourth Labour Court of the Bogotá Circuit ruled in favour of Mr Cataño, and this decision was appealed against by the Attorney-General. The High Court of Bogotá quashed the original ruling, absolving the Office of the Attorney-General, on the grounds that Mr Cataño was not covered by trade union immunity at the time of his dismissal.

535. With regard to recommendation (e) concerning the allegations brought by the CGT relating to the dismissal of SINTRAPROAN members Jhon Jair Silva and Jesse Moisés Gutiérrez Herrera, the Government indicates that the Office of the Attorney-General stated that Jhon Jair Silva commenced employment on 19 March 1996 as a grade 9 security officer in the Medellín security section and is currently employed as a grade 15 investigations officer in the National Directorate of Special Investigations, Antioquia section.

536. With regard to Jesse Moisés Gutiérrez Herrera, the said person was employed at the Office of the Attorney-General on a temporary basis from 1 September 2005 to 28 February 2007, when he was informed of the non-renewal and consequent expiry of his appointment. Mr Gutiérrez Herrera was not covered by trade union immunity, as certified by the Human Resources Division of the Office of the Attorney-General.

D. The Committee's conclusions

537. *The Committee notes the additional information presented by ATELCA and the observations sent by the Government with respect to the matters which remain pending.*

538. *With regard to recommendation (a) concerning the limitation of the right to collective bargaining by virtue of the adoption of Legislative Act No. 01 of 22 July 2005, which amends article 48 of the Constitution relating to social security and consequently limits the right to free and voluntary collective bargaining, the Committee observes that the additional information sent by ATELCA does not contain any new particulars regarding freedom of association and that the Government in its reply repeats the observations previously examined by the Committee. Under these circumstances, the Committee, observing that it has already stated its views with regard to the substance of these allegations, and recognizing that constitutional amendments would be required to give effect to the Committee's recommendations, wishes to reiterate its previous recommendations, remain fully valid notwithstanding these difficulties.*

(i) with regard to agreements concluded prior to the entry into force of the legislation, the Committee once again requests the Government to adopt the necessary measures to ensure that collective agreements containing pensions clauses which are valid beyond 31 July 2010 remain in effect until their expiry date;

(ii) with regard to agreements concluded after the entry into force of Legislative Act No. 01, the Committee again requests the Government, in view of the particular circumstances of this case and in order to ensure harmonious industrial relations in the country, to hold new in-depth consultations on retirement and pensions, exclusively with the social partners, in order to find a solution acceptable to all the parties concerned in accordance with the Conventions on freedom of association and collective bargaining ratified by Colombia, in particular ensuring that the parties involved in collective bargaining can improve the legal provisions on retirement and pension schemes by mutual agreement. The Committee requests the Government to keep it informed of any further developments in this respect.

539. *With regard to recommendation (c) regarding the alleged harassment of SINTRAPROAN founder member and official Mr Franco Cuartas through successive disciplinary proceedings, the Committee recalls that it requested the Government to take the necessary steps to conduct an independent investigation into these allegations without delay and, if they were found to be true, to take the necessary steps to quash the disciplinary measures taken against Mr Franco Cuartas. The Committee notes the Government's statement to the effect that: (1) the Office of the Attorney-General is the permanent body which has the disciplinary power to initiate, continue or refer any investigation or proceedings relating to the competence of the internal disciplinary mechanisms of public entities; (2) disciplinary proceedings (disciplinary investigation No. 030 123975/05) were instituted against Mr Franco Cuartas and in the context thereof an application for a declaration of invalidity is pending and (3) due process has been observed, as provided for by article 29 of the Constitution.*

540. *In this regard, the Committee recalls that the previous examination of the case shows that Mr Franco Cuartas was employed as an attorney and was a founder member and official of SINTRAPROAN. The Government stated that in view of the fact that Mr Franco Cuartas did not fulfil the obligations corresponding to his post, disciplinary proceedings were instituted and he was consequently obliged to resign from his post. In order to be able to determine the exact sequence of events and the grounds for the disciplinary proceedings instituted against Mr Franco Cuartas a few years ago, the Committee requests the Government, in the particular circumstances of this case, to inform it of the outcome of the*

nullity proceedings brought by Mr Franco Cuartas in respect of the circumstances which led to his resignation and, if the allegations are proven true, to take the necessary steps for his reinstatement.

541. *With regard to recommendation (d) concerning the alleged dismissal of Luis Carmelo Cataño Cataño, Carlos Romero Aguilar and Silvio Elías Murillo despite their trade union immunity, the Committee notes that the Government has forwarded the information supplied by the Office of the Attorney-General including the rulings in the court proceedings relating to the workers concerned. The Committee notes that: (1) Mr Romero Aguilar's name does not appear on the list of members of SINTAPROAN committees or subcommittees and is currently employed as citations officer in the Caquetá regional prosecutor's office; (2) Mr Silvio Elías Murillo was employed as an attorney from 1 September 2005 to 28 February 2007 and the Quibdó District High Court confirmed the first-instance court ruling which established that Mr Murillo was not covered by trade union immunity at the time of his dismissal; (3) the Fourth Labour Court of the Bogotá Circuit ruled in favour of Mr Cataño, a decision which was quashed by the High Court of Bogotá on the grounds that Mr Cataño was not covered by trade union immunity at the time of his dismissal. The Committee notes this information.*

542. *With regard to recommendation (e) relating to the allegations brought by the CGT concerning the dismissal of SINTRAPROAN members Jhon Jair Silva and Jesse Moisés Gutiérrez Herrera, the Committee notes that Jhon Jair Silva is currently employed as a grade 15 investigating officer in the National Directorate of Special Investigations, Antioquia section, and that Jesse Moisés Gutiérrez Herrera (who, as certified by the Human Resources Division of the Office of the Attorney-General, was not covered by trade union immunity) was employed at the Office of the Attorney-General on a provisional basis until 28 February 2007, when he was informed of the non-renewal and consequent expiry of his appointment.*

The Committee's recommendations

543. ***In the light of is 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 developments in relation to the effective recognition of the right to collective bargaining in relation to pensions benefits.

(b) With regard to the alleged harassment of SINTRAPROAN founder member and official Mr Franco Cuartas through successive disciplinary proceedings, the Committee in the particular circumstances of this case, requests the Government to inform it of the outcome of the nullity proceedings in respect of the circumstances which led to his resignation of and, if the allegations are proven true, to take the necessary steps for his reinstatement.

CASE NO. 2498

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

Complaints against the Government of Colombia
presented by
— the National Union of Workers in Non-Governmental and Social Organizations (SINTRAONG'S)
— the Single Confederation of Workers of Colombia (CUT)
— the Confederation of Workers of Colombia (CTC)
— the General Confederation of Workers (CGT)
— the Union of Workers at Santo Tomás University (SINTRAUSTA)
— the Union of Employees in the University of Medellín and
— the International Trade Union Confederation (ITUC)

Allegations: Refusal of the labour inspectorate to register the National Union of Workers in Non-Governmental and Social Organizations (SINTRAONG'S), allegations submitted by the Union of Employees in the University of Medellín of anti-trade union interference such as insisting on a list of candidates for the steering committee, the dismissal of Ms Dorelly Salazar for reporting these facts, pressure and threats of dismissal which led to 29 workers leaving the trade union, forbidding teaching staff to join a trade union, the dismissal without just cause of Norella Jaramillo, Ulda Mery Castro, Carlos Mario Restrepo and Julieto Ríos in March 2001; and the subsequent dismissal of two more workers (Wilman Alberto Ospina and Jesús Alberto Munera Betancur) after they became union members

544. The Committee last examined this case at its March 2008 session and submitted an interim report to the Governing Body [see 349th Report, paras 703–745, approved by the Governing Body at its 301st Session].

545. The Government sent its observations in a communication dated 29 May 2008.

546. 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. Previous examination of the case

547. In its previous examination of the case, the Committee made the following recommendations [see 349th Report, para. 745]:

(a) with regard to the alleged refusal by the labour inspectorate to register SINTRAONG'S, the Committee requests the Government to take the necessary measures to register it without delay and to keep it informed in that respect and invites SINTRAONG'S organization to ensure that it respects the legal and statutory provisions with regard to the procedure for electing a steering committee;

(b) ...

(c) ...

(d) with regard to the allegations presented by SINTRAUSTA regarding legal action to reinstate workers under union protection, the Committee requests the complainants to specify how many workers were dismissed and to provide their names and the circumstances in which this occurred, in order to be able to examine the allegation in full knowledge of the facts; and

(e) with regard to the allegations presented by the Union of Employees in the University of Medellín regarding anti-union interference by insisting on a list of candidates for the steering committee, the dismissal of Ms Dorelly Salazar for reporting it, pressure and threats of dismissal which led to 29 workers leaving the trade union, forbidding teaching staff to join a union, the dismissal without just cause of Norella Jaramillo, Ulda Mery Castro, Carlos Mario Restrepo and Julieta Ríos in March 2001, as well as the later dismissal of two more workers (Messrs Wilman Alberto Ospina and Jesús Alberto Munera Betancourt) following their membership, and the repeated violation of the collective agreement signed in 2004; taking account of the seriousness of these allegations, the Committee requests the Government to carry out an investigation without delay into all reported acts and, if they are found to be true, to take the necessary measures without delay to reinstate the dismissed workers. The Committee requests the Government to keep it informed in that respect.

B. The Government's reply

548. In its communication of 29 May 2008, the Government sent the following observations.

549. As regards subparagraph (a) of the recommendations concerning the registration of SINTRAONG'S, the Government points out that given that the trade union organization has exhausted the government channels for registration, it could bring the matter before the court competent for reviewing decisions handed down by the administration, in this case by the Ministry of Social Protection.

550. The Government adds that the present case was brought before the Special Committee on the Handling of Conflicts referred to the ILO (CETCOIT) and that a hearing for bringing both parties together was held in the Subcommittee, attended by representatives of SINTRAONG'S and officials from the Ministry of Social Protection; it was agreed to hold a subsequent meeting with the trade union organization and the Head of the Inspection, Monitoring and Surveillance Unit of the Ministry of Social Protection. The Government points out that the second meeting did not take place because the trade union organization failed to attend, without their having made any request to date for it to be held.

551. As regards subparagraph (e) of the recommendations concerning the allegations submitted by the Union of Employees in the University of Medellín with respect to trade union interference, such as insisting on a list of candidates for the steering committee, the dismissal of Ms Dorella Salazar for reporting on these facts, pressure and threats of dismissal which led to 29 workers leaving the trade union, forbidding teaching staff to join a trade union, the dismissal without just cause in March 2001 of Norella Jaramillo, Ulda Mery Castro, Carlos Mario Restrepo and Julieta Ríos, as well as the subsequent dismissal of two more workers (Wilman Alberto Ospina and Jesús Alberto Munera Betancur) after they became union members and the repeated violation of the collective agreement signed in 2004, the Government points out that the Ministry of Social Protection is competent to

deal with cases relating to trade union persecution and to hand down the corresponding penalties but is not competent to pronounce on dismissals, which is a matter for ordinary labour courts. Therefore, it is up to the workers to bring the necessary actions before the aforementioned jurisdiction and to inform the Ministry of the alleged trade union persecution, but they have failed to do so. The Government points out that legal proceedings could no longer be taken as, in accordance with section 488 of the Substantive Labour Code, any court action with respect to rights under this Code are restricted to a period of three years.

552. The Government adds that the Rector of the University of Medellín sent his own observations, pointing out that the Committee's previous conclusions had taken note of the trade union organization's statements that had not been proved, and that the events reported by the Union of Employees in the University of Medellín would be serious if they had actually occurred. The allegations of the university employees' trade union are, according to the Rector, rash. The documents annexed to the trade union organization's complaint, supposedly to provide evidence, are sketchy and biased. Some are extracted from selective investigations which entirely absolved the University, a fact that the complainants fail to mention. Others (a complaint, a notification of a hearing) are incomplete copies of administrative proceedings which were also subsequently dismissed, as there was no proof of the alleged irregularities; the complainants also remained silent on this subject. Other documents, such as the alleged report of the trade union's legal adviser, which moreover is undated, are really anonymous because they are not authenticated and lack the author's signature.

C. The Committee's conclusions

553. *The Committee notes the Government's observations on the matters that were pending.*

554. *As regards subparagraph (a) of the recommendation concerning the alleged refusal of the labour inspectorate to register SINTRAONG'S, the Committee had requested the Government to take the necessary measures to register it without delay. In this respect, the Committee notes that the Government pointed out that once the trade union organization had exhausted the government (administrative) channels for registration, it could bring the matter before the court competent for reviewing decisions handed down by the administration and that the trade union did not attend the last meeting set by the Special Committee on the Handling of Conflicts referred to the ILO (CETCOIT) to which the case was submitted.*

555. *In this respect, the Committee recalls that a previous examination of the case revealed that: (a) the trade union was created on 12 September 2005 and its registration was requested on 13 September 2005; (b) the labour inspectorate formulated objections in a ruling on 26 September the same year and the assembly of members decided to correct some aspects of the statutes that had been objected to, but did not modify the clauses regarding the nature of the labour relationship of its members so it could continue accepting the membership of workers even if they did not have an employment contract but were nonetheless linked via other types of labour relationship such as service providers' contracts or building works contracts; and (c) that through resolution No. 02741 of 5 December 2005, the labour inspectorate again rejected the request for registration and the legal appeals launched against the resolution, as there had been an appeal for protection made before the Constitutional Court.*

556. *The Committee recalls that in its observations, the Government had recalled that the trade union had refused to modify the provisions of the statute allowing membership of "persons who offer their services in various ways", thereby not complying with current labour legislation which requires that members of trade unions have a labour relationship*

established by an employment contract, and that the appeal for protection was not selected for review by the Constitutional Court.

557. *As in its previous examination of the case, the Committee recalls that Article 2 of Convention No. 87 establishes that all workers without distinction should have the right to establish and to join organizations of their own choosing, and that the criterion for determining the persons covered by that right is not based on the existence of an employment relationship. Given that the trade union's request for registration was made in 2005, the Committee firmly expects that the registration authority has registered or will register SINTRAONG'S without delay should the union so desire and requests the Government to keep it informed in that respect.*

558. *As regards subparagraph (d) of the recommendations concerning the allegations presented by SINTRAUSTA and CUT with respect to legal action to reinstate workers under union protection, the Committee had requested the complainants to specify how many workers had been dismissed and to provide their names and the circumstances in which this had occurred, in order to be able to examine the allegation in full knowledge of the facts. Noting that the trade union organizations have not sent further information on the allegations, the Committee is unable to proceed with an examination of them.*

559. *With regard to subparagraph (e) of the recommendations concerning the allegations presented by the Union of Employees in the University of Medellín with respect to anti-union interference, such as insisting on a list of candidates for the steering committee, the dismissal of Ms Dorelly Salazar for reporting it, pressure and threats of dismissal which led to 29 workers leaving the trade union, forbidding teaching staff to join a union, the dismissal without just cause of Norella Jaramillo, Ulda Mery Castro, Carlos Mario Restrepo and Julieta Ríos in March 2001, as well as the later dismissal of two more workers (Wilman Alberto Ospina and Jesús Alberto Munera Betancourt) after they became union members, and the repeated violation of the collective agreement signed in 2004, the Committee had, taking account of the seriousness of these allegations, requested the Government to carry out an investigation without delay into all reported acts and, if they were found to be true, to take the necessary measures without delay to reinstate the dismissed workers. The Committee notes that, according to the Government, the workers concerned had not instigated legal proceedings for dismissal and that these were now statute-barred. It also notes that the Government sent observations made by the Rector of the University of Medellín to the effect that the Committee, in its previous examination of the case, had taken account of statements made by the trade unions that had not been proved, that the complaints were rash and that the documents annexed to the trade union complaints were sketchy and biased.*

560. *In this respect, the Committee recalls that, in its previous examination of the case, it had requested the Government to carry out an independent investigation into the allegations and, if they were found to be true, to reinstate the dismissed workers. The Committee stresses that the objective of such an independent investigation is to ascertain the truth, or not, of the allegations presented by the Union of Employees in the University of Medillín and that, in the context of this inquiry, both the Government and the University authorities would have the opportunity to submit evidence to refute these allegations. The Committee therefore urges the Government to keep it informed of any action taken or change in the proceedings initiated by the dismissed employees of the University of Medellín and, if they are found to be true, to reinstate the dismissed workers and ensure that the teaching staff are guaranteed their trade union rights. The Committee requests the Government to keep it informed in that respect.*

The Committee's recommendations

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

(a) With respect to the refusal by the labour inspectorate to register SINTRAONG'S, the Committee expects that the union has been registered or will be registered without delay, should the union so desire, and requests the Government to keep it informed in this respect.

(b) With respect to the allegations presented by the Union of Employees in the University of Medellín regarding anti-union interference, such as insisting on a list of candidates for the steering committee, the dismissal of Ms Dorelly Salazar for reporting it, pressure and threats of dismissal which led to 29 workers leaving the trade union, forbidding teaching staff to join a union, the dismissal without just cause of Norella Jaramillo, Ulda Mery Castro, Carlos Mario Restrepo and Julieta Ríos in March 2001, as well as the subsequent dismissal of two more workers (Wilman Alberto Ospina and Jesús Alberto Munera Betancourt) after they became union members, and the repeated violation of the collective agreement signed in 2004, the Committee urges the Government to inform it of any action taken or change in the proceedings initiated by the dismissed employees of the University of Medellín and, if they are found to be true, to reinstate the dismissed workers and ensure that the teaching staff are guaranteed their trade union rights. The Committee requests the Government to keep it informed in this respect.

CASE NO. 2619

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

Complaint against the Government of Comoros presented by the Confederation of Workers of Comoros (CTC)

Allegations: Suspension of workers of a hydroelectric company for signing a list of claims; harassment and dismissal of teacher trade union leaders for staging a strike on the island of Anjouan; refusal of the authorities to initiate collective bargaining with the National Union of Port Workers and dismissal of dockers, including trade union leaders, following a strike

562. The complaint is contained in communications dated 8 June and 7 December 2007 sent by the Confederation of Workers of Comoros (CTC).

563. The Government sent partial information on the allegations made in a communication dated 2 February 2009.

564. Comoros 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

565. In its communications dated 8 June and 7 December 2007, the CTC alleges that teachers and primary school teachers on the island of Anjouan, one of the three islands of the Union of Comoros, were replaced and dismissed in February 2007 due to their participation in a strike. The complainant organization notes that a week after the strike was staged the striking teachers were replaced by contract workers. On the same day, the Council of Ministers declared the strike illegal and dismissed 259 strikers. According to the complainant organization, the dismissed workers included all teachers' union officials, including a number of leaders of the CTC who are teachers, in particular Mr Soulaimana Combo, Deputy Secretary-General of the CTC, Mr Aloba, Regional Secretary of the National Union of Comorian Primary School Teachers, and Ms Baraka Anli, member of the regional office of the National Union of Comorian Teachers. The complainant organization adds that Ms Anli was obliged to leave the island of Anjouan with her husband and children in September 2007 due to persecution and harassment by the island's Government. She is currently residing on the island of Grande Comore.

566. According to the CTC, the wages of the striking teachers were withheld from January 2007, one month before the strike was staged, in order to pay the wages of the replacement workers. When the new academic year started in October 2007, all the teachers were reinstated but without receiving their wages which had not been paid since January 2007, with the exception of the three trade union representatives mentioned above who are still unemployed. The complainant organization indicates that the island's Government still intends not to pay the wages owed for this period. The complainant organization emphasizes that the strike was carried out in accordance with the legal procedures, including the one month's notice stipulated by the national legislation, and indicates that the reason for the strike, which was held by all teachers, was the non-payment of two months' wages. The complainant organization explains that the island's Government interpreted it as a political strike called to support the central Government's campaign for national unity.

567. Furthermore, according to the complainant organization, the island's Government and the government of the Union have refused to recognize the representation and bargaining rights of the National Union of Port Workers (SNTP), which represented the port workers of the Comoros Cargo Handling Company (COMACO), as was the case in January 2007, when the government of the Union refused to negotiate with the SNTP. The complainant organization explains that the purpose of the strike was to protect the employment of the workers during the transfer of competences between the public enterprise COMACO and the private company Al-Marwan which was to take over the handling of the port. The complainant organization indicates that the SNTP wanted to include a clause in the concession agreement obliging the new enterprise to employ the former workers of COMACO. As soon as the strike was carried out, workers were hired to carry out the handling work at the port while the military blocked the entrance. No negotiations were held and 405 dockers and port workers were dismissed and prohibited from entering the workplace, including all the trade union members and leaders, in particular the Secretary-General, Mr Bacar Soilihi. The workers concerned filed a complaint with the court of Moroni which ruled in their favour and granted them limited compensation, but the port authority lodged an appeal against this decision. According to the complainant organization, Al-Marwan has not employed any of the dismissed workers.

568. In its communication dated 8 June 2007, the complainant organization indicates that the staff of Ma-Mwé, a Comoros water and electricity company, drew up a list of claims after observing a policy of questioning workers' social rights and other benefits. The complainant organization reports that workers were suspended for signing the list of claims. The CTC indicates that the imposition of disciplinary sanctions is common practice in this company since it was ordered to pay costs for the same reason in 2006. In a communication dated 7 December 2007, the complainant organization also indicates that the workers targeted by the dismissal note have all been reinstated in their duties. However, it emphasizes that, despite the regulatory provision which stipulates that a disciplinary board must be convened or prior warning given if an offence has been observed, the company directors have a tendency to dismiss all workers at their will without initiating disciplinary proceedings.

B. The Government's reply

569. In a communication dated 2 February 2009, the Government indicates that the alleged cases of violation of freedom of association have been redressed. In particular, the three trade union leaders from the island of Anjouan were reinstated in March 2008, when the central authorities of the Union of Comoros took control over the island. With regard to the dockers, the Government indicates that they have won the court case and have been compensated pursuant to the court ruling.

C. The Committee's conclusions

570. *The Committee notes that the present case concerns allegations of violations of the right to strike, the right to collective bargaining and freedom of expression.*

571. *The Committee notes the allegations made by the complainant organization that teachers on the island of Anjouan, including trade union leaders, were dismissed following their participation in a general strike. According to the CTC, the strike was carried out due to the non-payment of wages and in accordance with the legal procedures. It considers that the island's Government interpreted the strike as political action. The complainant organization indicates that a week after the start of the strike, the striking teachers were replaced by contract workers and the Council of Ministers declared the strike illegal and dismissed 259 strikers, including certain leaders of the CTC. According to the CTC, the wages of the striking teachers were withheld from January 2007, one month before the strike, in order to pay the wages of the replacement workers. At the start of the new academic year in October 2007, all the teachers were reinstated, but without recovering their unpaid wages from January 2007, with the exception of Mr Soulaimana Combo, Deputy Secretary-General of the CTC, Mr Aloba, Regional Secretary of the National Union of Comorian Primary School Teachers, and Ms Baraka Anli, member of the regional office of the National Union of Comorian Teachers, who are still unemployed. The Committee notes that, according to the Government, the three trade union leaders from the island of Anjouan were reinstated in March 2008, when the central authorities of the Union of Comoros took control over the island.*

572. *The Committee also notes the allegations of violation of the right to strike and the right to collective bargaining in the port sector. According to the complainant organization, the authorities refused to engage in collective bargaining with the SNTP, which represented the port workers of the COMACO in the context of the transfer of competences from a public enterprise to the private company Al-Marwan. The SNTP wanted to include a clause in the concession agreement obliging the new enterprise to employ the former workers of COMACO. As soon as the strike was staged, workers were hired to carry out the cargo handling work at the port while the military blocked the entrance. No*

negotiations were held and 405 dockers and port workers were dismissed and prevented from accessing the workplace, including all the trade union members and leaders, in particular the Secretary-General, Mr Bacar Soilihi. The workers concerned lodged a complaint with the court of Moroni, which ruled in their favour and granted them limited compensation, but the port authority appealed against this decision. According to the complainant organization, Al-Marwan has not reinstated any of the dismissed workers. The Committee notes the Government's indication that the dockers have won the court case and have been compensated pursuant to the court ruling.

573. *The Committee reminds the Government that neither the teaching sector nor the port sector are essential services in the strict sense of the term in which the right to strike may be restricted, though the obligation to maintain a minimum service could be introduced in these sectors. With regard to the strike of February 2007 in the teaching sector, the Committee is bound to emphasize that protest strikes in a situation where workers have for many months not been paid their salaries by the Government are legitimate trade union activities [see* ***Digest of decisions and principles of the Committee on Freedom of Association****, fifth edition, 2006, para. 537]. Furthermore, the Committee considers that, while strikes of a purely political nature do not fall within the scope of the principles of freedom of association [see* ***Digest****, op. cit., para. 528], trade unions should be able to have recourse to protest strikes, in particular where aimed at criticising the Government's economic and social policies, and reminds the Government that the occupational and economic interests which workers defend through the exercise of the right to strike do not only concern better working conditions or collective claims of an occupational nature, but also the seeking of solutions to economic and social policy questions and problems facing the undertaking which are of direct concern to the workers [see* ***Digest****, op. cit., paras 526 and 529]. Consequently, the Committee considers that the two strikes in question are legitimate trade union activities.*

574. *The Committee notes that the strikers in the teaching and port sectors were replaced by contract workers. In this regard, the Committee reminds the Government that the hiring of workers to break a strike in a sector which cannot be regarded as an essential sector in the strict sense of the term, and hence one in which strikes might be forbidden, constitutes a serious violation of freedom of association [see* ***Digest****, op. cit., para. 632]. Consequently, the Committee is of the opinion that measures taken to mobilize teachers and port workers at the time of disputes in services of this kind were such as to restrict the workers' right to strike as a means of defending their occupational and economic interests. The Committee requests the Government to refrain from taking such measures in the future.*

575. *The Committee also notes the indication that the Council of Ministers declared the teachers' strike illegal. It recalls that responsibility for declaring a strike illegal should not lie with the Government, but with an independent body which has the confidence of the parties involved [see* ***Digest****, op. cit., para. 628]. The Committee therefore requests the Government to take this principle into account in the future.*

576. *The Committee also notes that there have been large-scale dismissals of strikers, affecting 259 teachers and 405 dockers and port workers. In this regard, the Committee is bound to emphasize that the use of extremely serious measures, such as dismissal of workers for having participated in a strike and refusal to re-employ them, implies a serious risk of abuse and constitutes a violation of freedom of association [see* ***Digest****, op. cit., para. 666]. Furthermore, the Committee regrets that, in the context of the transfer of enterprise which led to a reduction in staff, the Government appears not to have consulted the SNTP or attempted to conclude an agreement with this organization.*

577. *The Committee notes that the dismissed dockers and port workers have still not been reinstated, including all the trade union members and leaders, in particular their*

Secretary-General, Mr Bacar Soilihi. The Committee notes that these workers lodged a complaint with the court, which ruled in their favour and, according to the complainant, granted them limited compensation. However, the port authority filed an appeal against this lower court ruling and has not reinstated any of the dismissed workers. In view of the very limited reply from the Government, the Committee can only conclude that these trade unionists and trade union leaders were dismissed for having exercised their right to strike, were punished for their trade union activity and have been the subject of anti-union discrimination. The Committee therefore asks the Government to ensure the holding of consultations with the SNTP and the Al-Marwan enterprise with a view to reinstating, where possible, all the workers dismissed following the strike. While noting the Government's indication that the dockers have been compensated pursuant to the ruling of the court, the Committee requests the Government to clarify whether the reference is made to the ruling of the court of Moroni or to the ruling of the court of appeal. Considering that the workers concerned should be paid adequate compensation representing a sufficiently dissuasive sanction against anti-union dismissals, the Committee requests the Government to indicate the manner in which the dismissed workers were compensated.

578. *With regard to the striking teachers, the Committee notes that they were called back to work at the start of the new academic year in October 2007, with the exception of the three trade union representatives who are still unemployed (Mr Combo, Mr Aloba and Ms Baraka Anli). The Committee also notes that the wages of the striking teachers were withheld from January 2007 to their reinstatement in October 2007. In the light of its conclusions on the nature of the strike and on the fact that these teachers were punished for their legitimate trade union activities, the Committee requests the Government to re-examine, with the trade union concerned, all the cases of dismissal of teachers with a view to compensating them for their dismissal in February 2007 and the non-payment of their wages and benefits up to their reinstatement in October 2007. The Committee requests the Government to keep it informed in this regard.*

579. *Furthermore, 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 [see* ***Digest****, op. cit., para. 799]. While noting that, according to the Government, the three trade union leaders, Mr Combo, Mr Aloba and Ms Baraka Anli, were reinstated in March 2008, the Committee requests the Government to ensure, if it has not been done already, that any salary arrears owed as well as adequate compensation which would constitute a sufficiently dissuasive sanction against anti-union dismissals is paid to them without delay. The Committee requests the Government to keep it informed in this regard.*

580. *The Committee notes that, according to the complainant organization, Ms Anli, a member of the regional office of the National Union of Comorian Teachers, was obliged to leave the island of Anjouan due to persecution and harassment by the island's Government. The Committee is bound to emphasize that the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and it is for governments to ensure that this principle is respected [see* ***Digest****, op. cit., para. 44]. The Committee requests the Government to carry out an independent investigation into this case in order*

to determine responsibility, punish the guilty parties and prevent the repetition of such events, and to keep it informed in this regard.

581. *The Committee notes the allegation made by the CTC that workers of the company Ma-Mwé (hydroelectric sector) were suspended and subsequently dismissed for having signed a list of claims intended to object to the company's policy of questioning the workers' social rights. While noting that all the dismissed workers have since been reinstated in their duties, the Committee recalls that the right to express opinions through the press or otherwise is an essential aspect of trade union rights [see* ***Digest****, op. cit., para. 155] and considers that workers should under no circumstances be dismissed for the simple reason that they have signed a list of claims; these dismissals constitute a serious act of discrimination.*

582. *The Committee notes the CTC's allegation that the employer fails to respect the principle of grading sanctions and that the directors of the enterprise have a tendency to dismiss workers without warning regardless of the seriousness of the offence committed and its further allegation that the employer exercises its power arbitrarily without complying with the regulations of the enterprise, which stipulate that a disciplinary board must be convened and prior warning given for any offence. The Committee recalls that no person should be dismissed or prejudiced in employment by reason of trade union membership or legitimate trade union activities, and it is important to forbid and penalize in practice all acts of anti-union discrimination in respect of employment [see* ***Digest****, op. cit., para. 771]. The Committee requests the Government to take steps, in consultation with the social partners concerned, including through the adoption of legislative provisions, to ensure comprehensive protection against anti-union discrimination in the future, providing for recourse to rapid procedures that may impose sufficiently dissuasive sanctions against such acts. It requests the Government to keep it informed in this respect.*

The Committee's recommendations

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

(a) The Committee considers that the measures taken to mobilize teachers and port workers at the time of disputes in services of this kind are such as to restrict their right to strike as a means of defending their occupational and economic interests. The Committee requests the Government to refrain from taking such measures in the future.

(b) The Committee requests the Government to take into account in the future the principle that responsibility for declaring a strike illegal should not lie with the Government, but with an independent body which has the confidence of the parties involved.

(c) The Committee asks the Government to ensure the holding of consultations with the SNTP and the Al-Marwan enterprise with a view to reinstating, where possible, all the workers dismissed following the strike. It also requests it to clarify whether the court of appeal upheld the decision of the court of Moroni, which ruled in favour of the dismissed dockers and granted them compensation. The Committee further requests the Government to indicate the manner in which the dismissed workers were compensated.

(d) The Committee requests the Government to re-examine, with the trade union concerned, all the cases of dismissal of teachers with a view to compensating them for their dismissal in February 2007 and the non-payment of their wages and benefits up to their reinstatement in October 2007. The Committee requests the Government to keep it informed in this regard.

(e) With regard to the three trade union representatives, Mr Combo, Mr Aloba and Ms Baraka Anli, reinstated in March 2008, the Committee requests the Government to ensure, if it has not been done already, that any salary arrears owed as well as adequate compensation which would constitute a sufficiently dissuasive sanction against anti-union dismissals is paid to them without delay. The Committee requests the Government to keep it informed in this regard.

(f) The Committee requests the Government to carry out an independent investigation into the allegation concerning the persecution and harassment suffered by Ms Anli, member of the regional office of the National Union of Comorian Teachers, by the island's Government with a view to determining responsibility, punishing the guilty parties and preventing the repetition of such events. The Committee requests the Government to keep it informed in this regard.

(g) The Committee requests the Government to take steps, in consultation with the social partners concerned, including through the adoption of legislative provisions, to ensure comprehensive protection against anti-union discrimination in the future, providing for recourse to rapid procedures that may impose sufficiently dissuasive sanctions against such acts. The Committee requests the Government to keep it informed in this regard.

CASE NO. 1865

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

Complaints against the Government of the Republic of Korea presented by
— the Korean Confederation of Trade Unions (KCTU)
— the Korean Automobile Workers' Federation (KAWF)
— the International Confederation of Free Trade Unions (ICFTU)
— the Korean Metalworkers' Federation (KMWF)
— the Korean Federation of Transportation, Public and Social Service Workers' Unions (KPSU)
— the Korean Government Employees Union (KGEU)
— the Building and Wood Workers' International (BWI)
— Public Services International (PSI) and
— Education International (EI)

Allegations: The complainants' pending allegations concern the non-conformity of several provisions of the labour legislation, including the Establishment and Operation of the Public Officials' Trade Unions Act and the Trade Union and Labour Relations Amendment Act, with freedom of association principles; severe measures of repression against the leaders and members of the Korean Government Employees Union (KGEU); the unjust prosecution and imprisonment of trade union organizers and officials from the Korea Federation of Construction Industry Trade Union (KFCITU) so as to prevent the effective organization of construction workers; the death of two trade unionists during industrial action; numerous acts of anti-union discrimination for participation in strikes; instigation of criminal charges against trade union leaders for obstruction of business connected to industrial action and financial suits against trade unions for large amounts of compensation on the same grounds

584. The Committee already examined the substance of this case at its May–June 1996, March and June 1997, March and November 1998, March 2000, March 2001, March 2002, May–June 2003, November 2004, March 2006 and May–June 2007 meetings, when it presented an interim report to the Governing Body [304th Report, paras 221–254; 306th Report, paras 295–346; 307th Report, paras 177–236; 309th Report, paras 120–160; 311th Report, paras 293–339; 320th Report, paras 456–530; 324th Report, paras 372–415; 327th Report, paras 447–506; 331st Report, paras 165–174; 335th Report, paras 763–841; 340th Report, paras 693–781; 346th Report, paras 488–806, approved by the Governing Body at its 266th, 268th, 269th, 271st, 273rd, 277th, 280th, 283rd , 287th, 291st, 295th and 299th Sessions (June 1996, March and June 1997, March and November 1998, March 2000, March 2001, March and June 2003, November 2004, March 2006 and June 2007).

585. In a communication dated 5 July 2007 the Building and Wood Workers' International (BWI – former International Federation of Building and Wood Workers, IFBWW) submitted additional allegations. In a communication dated 10 June 2008, the Korean Confederation of Trade Unions (KCTU) submitted new allegations. In a communication dated 25 June 2008, Education International (EI) associated itself with the complaint.

586. The Government provided its observations in a communication dated 30 May 2007, 28 May 2008 and 25 February 2009.

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

A. Previous examination of the case

588. At its May–June 2007 session, the Committee called the Governing Body's attention to this case because of the serious and urgent matters therein and made the following recommendations:

(a) With regard to the Act on the Establishment and Operation of Public Officials' Trade Unions and its Enforcement Decree, the Committee requests the Government to give consideration to further measures aimed at ensuring that the rights of public employees are fully guaranteed by:

(i) ensuring that public servants at all grades without exception and regardless of their tasks or functions, have the right to form their own associations to defend their interests;

(ii) guaranteeing the right of firefighters, prison guards, public service workers in education-related offices, local public service employees and labour inspectors to establish and join organizations of their own choosing;

(iii) limiting any restrictions of the right to strike to public servants exercising authority in the name of the State and essential services in the strict sense of the term;

(iv) allowing the negotiating parties to determine on their own the issue of whether trade union activity by full-time union officials should be treated as unpaid leave.

The Committee requests to be kept informed of any measures taken or contemplated in this respect.

(b) The Committee requests the Government to ensure that the following principles are respected in the framework of the application of the Act on the Establishment and Operation of Public Officials' Trade Unions:

(i) that in the case of negotiations with trade unions of public servants who are not engaged in the administration of the State, the autonomy of the bargaining parties is fully guaranteed and the reservation of budgetary powers to the legislative authority does not have the effect of preventing compliance with collective agreements; more generally, as regards negotiations on matters for which budgetary restrictions pertain, to ensure that a significant role is given to collective bargaining and that agreements are negotiated and implemented in good faith;

(ii) that the consequences of policy and management decisions as they relate to the conditions of employment of public employees are not excluded from negotiations with public employees' trade unions;

(iii) that public officials' trade unions have the possibility to express their views publicly on the wider economic and social policy questions which have a direct impact on their members' interests, noting though that strikes of a purely political nature do not fall within the protection of Conventions Nos 87 and 98.

The Committee requests to be kept informed in this respect.

(c) As regards the other legislative aspects of this case, the Committee urges the Government:

(i) to take rapid steps for the legalization of trade union pluralism at the enterprise level, in full consultation with all social partners concerned, so as to ensure that the right of workers to establish and join the organization of their own choosing is recognized at all levels;

(ii) to ensure that the payment of wages by employers to full-time union officials is not subject to legislative interference and thus enable workers and employers to conduct free and voluntary negotiations in this regard;

(iii) to amend the emergency arbitration provisions of the TULRAA (sections 76–80) so that emergency arbitration can only be imposed by an independent body which has the confidence of all parties concerned and only in cases in which strikes can be restricted in conformity with freedom of association principles;

(iv) to repeal the provisions prohibiting dismissed and unemployed workers from keeping their union membership and making non-union members ineligible to stand for trade union office (sections 2(4)(d) and 23(1) of the TULRAA);

(v) to bring section 314 of the Penal Code (obstruction of business) in line with freedom of association principles.

The Committee requests to be kept informed of the progress made in respect of all of the abovementioned matters.

(d) Noting with interest that compulsory arbitration for disputes in essential public services has been abolished and a minimum services requirement was introduced instead in strikes in public services, the Committee requests the Government to keep it informed of the specific instances in which minimum service requirements have been introduced in case of strikes in essential public services, the level of minimum service provided and the procedure through which such minimum service was determined.

(e) The Committee requests the Government to keep it informed of the progress of the appeal proceedings in respect of Kwon Young-kil.

(f) The Committee requests the Government to reconsider the dismissals of Kim Sang-kul, Oh Myeong-nam, Min Jum-ki and Koh Kwang-sik in the light of the adoption of the Act on the Establishment and Operation of Public Officials' Trade Unions and to keep it informed in this respect. It also requests the Government to provide information on the outcome of the pending administrative litigation and requests for examination concerning the dismissals of Han Seok-woo, Kim Young-kil, Kang Dong-jin and Kim Jong-yun and expresses the hope that the new legislation will be taken into consideration in rendering the relevant decisions. The Committee once again requests the Government to provide copies of the relevant decisions.

(g) With regard to the application of the provisions concerning obstruction of business, the Committee requests the Government:

(i) to continue making all efforts to adopt a general practice of investigation without detention of workers;

(ii) to provide information on the specific grounds for the criminal prosecution of 26 KALFCU officers and 198 Korea Railway Workers' Union (KRWU) officers for obstruction of business in relation to strikes staged in the railroad and airlines sectors and to communicate any court judgements handed down in these cases;

(iii) to inform the Committee of the current status of Kim Jeong Min, Seoul provincial president of the KRWU, who was still in prison at the time of the complaint on obstruction of business charges; and

(iv) to continue to provide details, including any court judgements, on any new cases of workers arrested for obstruction of business under the terms of the present section 314 of the Penal Code.

(h) The Committee once again urges the Government to refrain from imposing compulsory or emergency arbitration in cases which fall outside essential services in the strict sense of the term and public servants exercising authority in the name of the State, and requests the Government to keep it informed of the status of the 2,680 KRWU members suspended by the Korean Railroad Corporation and undergoing disciplinary procedures as well as any KALFCU members transferred to standby, pursuant to the Government's intervention in their industrial dispute, through compulsory or emergency arbitration.

(i) The Committee trusts that there are no further charges pending against the Korean Government Employees Union (KGEU) President Kim Young-Gil and General Secretary Ahn Byeong-Soon for actions aimed at acquiring recognition, de facto and de jure, of the basic rights of freedom of association of public servants and that there is no penalty remaining in relation to the previous convictions under the now repealed Public Officials Act.

(j) Noting with regret that the Government does not reply to the allegations concerning the imprisonment of the president of the Seoul Gyeonggi-Incheon Migrant Workers' Trade

Union (MTU), Anwar Hossain, the Committee requests the Government to provide information on the grounds for his imprisonment and his current status in its next report.

(k) The Committee expresses regret and deep concern at the prevalent climate of violence which emerges from the complainants' allegations and the Government's reply and calls on all sides to exercise maximum restraint so as to avoid escalating violence and to undertake genuine dialogue conducive to the establishment of a constructive and stable industrial relations climate.

(l) While noting that the KGEU has refused to register under the relevant Act because it considers it not to be in line with freedom of association principles, the Committee expresses deep regret at the gravity of the allegations involving serious acts of extensive interference in the activities of the KGEU and requests the Government to immediately cease all acts of interference, in particular the forced closure of KGEU offices nationwide, the unilateral discontinuance of the check-off facility, the disallowance of collective bargaining, the pressure on KGEU members to resign from the union as well as administrative and financial sanctions against local governments which fail to comply with the Government's directive. It further calls upon the Government to abandon these directives and to take all possible measures with a view to achieving conciliation between the Government (in particular the Minister of Government and Home Affairs (MOGAHA)) and the KGEU so that the latter may continue to exist and ultimately to register within the framework of the legislation which should be in line with freedom of association principles. The Committee requests to be kept informed in this respect.

(m) The Committee expresses its deep regret at the death of Kim Tae Hwan, president of the FKTU Chungju regional chapter, who was run over by a cement truck on 14 June 2005 while on the picket line in front of the Sajo Remicon cement factory, and the treatment of his death as a simple car accident. It requests the Government to institute an independent investigation into the circumstances of Kim Tae Hwan's death and in particular the role of the police and unidentified civilians in the incident, so as to shed full light, determine where responsibilities lie, punish any guilty parties and prevent the repetition of similar events.

(n) The Committee expresses its deep regret at the death of Ha Jeung Koon, member of the Pohang local union of the Korean Federation of Construction Industry Trade Union (KFCITU), during a demonstration organized by the union; it requests the Government to keep it informed of the outcome of the investigation under way, and trusts that such investigation will be concluded swiftly and will determine where responsibilities lie, allowing for the guilty parties to be punished and the repetition of similar events to be prevented.

(o) The Committee requests the Government to communicate the text of the court decisions convicting: six unionists from the Daejeon/Chungcheong Construction Workers' Union to six to eight months' imprisonment with a two-year suspension of execution; Park Young-Jae, president of the Cheonan/Asan Construction Workers' Union, to one year imprisonment and Rho Seon-Kyun, vice-president of the same union, to a fine; three trade unionists from the Western Gyeonggi Construction Workers' Union to eight months to one year in prison with a two-year suspension of execution and another six to a fine of 3 million won; and to keep the Committee informed of the outcome of the appeals in these cases. The Committee further invites the complainant, IFBWW, to transmit any further information it considers appropriate in response to the information provided by the Government.

(p) Noting the Government's indication that the second instance court upheld the convictions of the officials at Daegu Construction Workers' Union on charges under the Act on Punishment of Violence, the Committee requests the Government to provide a copy of the court judgement in question and to keep it informed of the outcome of any further appeals.

(q) The Committee requests the Government to undertake further efforts for the promotion of free and voluntary collective bargaining over terms and conditions of employment in the construction sector covering, in particular, the precarious "daily" workers. In particular, the Committee requests the Government to provide support to construction sector employers and trade unions with a view to building negotiating capacity and

reminds the Government that it may avail itself of the technical assistance of the Office in this regard, if it so wishes. The Committee requests to be kept informed of developments in this respect.

(r) Considering that the presence of police forces in close proximity to the room where minimum wage negotiations take place is liable to invalidate the free and voluntary nature of negotiations, the Committee considers that any police presence in the vicinity of meeting rooms where negotiations are taking place must be strictly justified by the circumstances and requests the Government to provide details of the circumstances giving rise to the presence of the police force in this instance.

(s) The Committee reminds the Government of its commitment to ratify Conventions Nos 87 and 98 made to the ILO high-level tripartite mission which visited the country in 1998 and reported to the Governing Body in March 1998 (see document GB.271/9).

B. The complainants' new allegations

Allegations by the BWI

589. In a communication dated 5 July 2007, the BWI, former IFBWW, provides additional information with regard to its complaint concerning the arrests of officials and organizers of the KFCITU. The BWI indicates that not only has the Government failed to implement the Committee's previous recommendations on this matter, but has continued to arrest union officials of Kyonggi, Chungnam and Daegu/Kyungbuk regional construction unions in the same manner that brought about the 2004 complaint. In total, 18 trade unionists from these three unions have been arrested, constituting a serious threat to the union activities of the KFCITU, while also obstructing the day-to-day union activities and severely curtailing its organizing efforts.

590. The BWI further indicates that, even though wages for full-time union officials and the conclusion of collective bargaining agreements with the main construction companies have been ruled as being legal in recent court rulings, and an appeals court ruled that charges of coercion against the Daegu/Kyungbuk union were unfounded (April 2007), the Government continues to distort the facts. Despite the recommendations of the Committee on this issue, the Government has not only failed to take the necessary steps but submitted a report in January 2007 (examined during the Committee's last examination of this case) which further distorts the activities of the construction unions.

591. With regard to investigations and arrests of KFCITU officials, the BWI indicates the following:

– ***Daegu/Kyungbuk regional construction union:*** (i) this union was created in 1998 and has been active since, having concluded collective agreements with main construction companies as well as subcontractors; (ii) in 2005, the police and the prosecutor's office investigated the union for the same reasons that they had investigated other KFCITU local unions back in 2003, but closed the process after a secret investigation; (iii) however, after the union went on strike in June 2006, the police and prosecutor's office issued subpoenas and arrested five trade union officials on charges related to the case that had been closed in 2005, leading the union to believe that the police action was a deliberate attempt to break the strike; (iv) the Daegu High Court decided that the former President of the union Cho Ki Hyun and three other union officials were not guilty of charges linked to the collective agreements signed with the main construction companies.

– ***Kyonggi Regional Construction Union:*** (i) this union was formed in 2002 from the merger of ten local construction unions; it has in its record collective agreements with both the main and sub contracting construction companies since 1999 as well as

various other successful activities described in detail by the complaint; (ii) when union officials from Chunahn, Daejeon and Kyonggi Subu were arrested in 2003, officials from the Kyonggi trade union were also investigated but not charged; (iii) however, in July 2006, subpoenas for 15 union officials from this union were issued, and 10 of them were eventually arrested, including the head and the former head of the Kyonggi union (the latter had in the meantime become vice-president of the Korean Confederation of Trade Unions); (iv) the investigation is being carried out by a department charged with investigating organized crime, which shows that the police and prosecution have chosen to see trade union activities in the same light as organized crime; (v) the first trial is currently underway, while the trade union officials have been released on bail; (vi) the trade union's activities have been seriously curtailed due to the multiple arrests.

– ***Choongnam Regional Construction Union:*** (i) this union is the successor of the former Chunahn/Asan union after the arrest of the later union's officials Park Unthaw and Noh Sun-Kyun for activities related to the conclusion of a collective agreement; (ii) after the strike of the Daegu/Kyungbuk union, subpoenas were issued for Ha Dong Hyun and Lee Ok Sun, President and Organizing Director of the Choongnam union; they were immediately arrested when they appeared at the police station and denied visits with the exception of family members during the initial stages of their detention; former President Park Yong Jae, who had been released on bail after being arrested in 2004, was again indicted; (iii) the Prosecutor's Office, in an unusual move, circulated a press release denouncing the union officials as having committed extortion and coercion, and added a libel case to the prosecution on the basis of a complaint filed by the union for violation of industrial safety and health standards; the complaint in question – the legitimacy of which ironically, had been recognized by the Ministry of Labour – was a result of the union raising the issue of high-risk practices at construction sites; (iv) more than ten months have passed since the arrests but the first trial is still in progress; (v) the delay has made normal trade union activities impossible.

592. The complainant also describes problems with the 2006 investigation by the police, which constitute a continuation of problems first revealed during the 2003 investigation and arrest of trade union officials. During that time, police officers from the public security or criminal division, with no experience regarding labour issues, were put in charge of the investigation and, based on the arbitrary premise that the trade union activities were illegal "extortion" and "coercion", induced and fabricated statements from construction site managers. In particular, during the 2003 process; (i) several construction site managers who were witnesses for the prosecution stated that their statements taken during the investigation were different from those presented at the trial; the court acknowledged this and requested that the prosecution drop several of its witnesses; (ii) it was revealed that an organizer identified by the police as a suspect was not active as an organizer at the construction site during the time frame of the allegations; the statements were rewritten, and the court revoked the arrest warrant; (iii) several construction site managers indicated that although they had not been forced or coerced to sign collective bargaining agreements, they felt compelled to sign statements to this effect under pressure from the police which had come prepared with written statements; relevant records exist; (iv) it has been confirmed that several witnesses who had stated that they had been coerced by the construction union were not working at the construction sites during that time.

593. The complainant further indicates that, as a continuation of these practices, during the 2006 investigation, the following problems appeared:

– ***Daegu Kyungbuk Union trial:*** (i) the site managers from the main construction company stated, contrary to the prosecutors' charges, that they did not receive any

threats from the union; (ii) during the arrests, it was falsely reported in the press that union officials had used their wages to go on a trip abroad; however, the Daegu/ Kyungbuk union officials had gone to the Philippines to participate in a rank and file organizers' training exchange programme with the Philippines construction union organized by the IFBWW which shouldered the majority of the expenses with participants covering their personal expenses. Distorting this exchange programme as a sightseeing trip had the intention of undermining the reputation of the union.

– ***Kyonggi Construction Union trial:*** (i) the prosecutors' written evidence indicated that there were no directly affiliated trade union members in the region; however, this statement was reversed during the trial; (ii) the prosecutors' statement denied that wages for union officials had been paid as a result of a collective agreement, but then accepted it during the trial; (iii) a prosecution witness had stated in a written statement that he had been forced into a collective agreement and wage payments, but then testified during the trial that there were several consultations at the construction site and that a collective agreement had been reached after the staging of collective action; (iii) a prosecution witness stated in a written statement that an organizer had physically beaten a construction site manager, but during the trial, it was revealed that there had been pushing and shoving over a dispute regarding length of contracts and that the site manager himself had been reprimanded by the company; (iv) a written statement submitted by the prosecutor stated that the union had not been active at the site level after the conclusion of a collective agreement, but during the trial it was revealed that the union had organized and proceeded with various activities including electing (by direct vote) industrial safety and health committee members, activities at the committee itself, and numerous union programmes with workers employed at subcontractors and the main company. The BWI adds that these incidents have been based on the premise that freedom of association and collective bargaining needs to be controlled through the criminal code and that collective bargaining should take place only with the direct employer, since the labour laws presuppose an enterprise-based system.

594. The BWI provides a detailed reply to the Government's statements in its January 2007 communication reporting legal protection and support for construction workers.

595. In particular, the BWI states that while the Government had indicated that the core issue in the negotiations was priority employment for union members and that when negotiations with the collective bargaining partner (subcontractor) failed, the union had violently occupied the offices of the principal contractor, a third party to the negotiations, the facts are that the core issues of the negotiations were low wages, refusal to conclude a collective agreement, and reduction of working hours. In the case of the Pohang regional union, the main issue was the introduction of the five-day week, based on the amended labour standards bill, and the refusal of collective bargaining. In the case of the Daegu/Kyunbuk union, the points of contention were wages and reduction of working hours. For the Ulsan Plant union the main issues were basic rights such as the installation of bathrooms and cafeterias.

596. As for the "occupation" of offices of the principal contractor, a third party, the BWI indicates that the principal contractors had absolute authority regarding the contents of the collective agreements and had directly intervened in the collective bargaining process and in trade union affairs. POSCO for instance, had anticipated the sit-in months ahead by extending the construction period, introducing replacement workers, gathering information through the police, and lobbying local politicians, the press, and employer organizations. This was confirmed by internal documents that were disclosed during the strike and the responsible manager at POSCO was reprimanded. SK refused employment to the members of the Ulsan construction plant union in order to force the members to resign from the

union. As for the Daegu/ Kyungbuk construction union, in the area of civil engineering and construction, the responsibility for employment insurance, retirement pay deductions, and industrial safety lies, by law, with the main construction company; as a result, regional unions have been concluding collective agreements with the main construction company and the courts have recognized the employer status of these companies.

597. As for the Government's statement that the Pohang construction union sit-in demonstration was a planned action, not an accidental incident and that this was demonstrated by the fact that water and food had been stocked in advance, the BWI states that the sit-in demonstration at POSCO was initiated due to the illegal recruitment of replacement workers by the company and its ensuing refusal of an official apology. Water and food had been prepared because of the risk that the police might cut off access to water and food, which is exactly what happened a few days after the dispatch of the Government's report to the Committee. The clashes with the police were the result of anxiety caused by the attempted break-up of the sit-in by the police.

598. With regard to the Government's statement to the effect that the Daegu/Kyungbuk Regional union conducted sit-ins in roads leading up to offices/companies of the principal contractor third party and carried out violent acts during these sit-downs, the BWI indicates that after the Daegu/Kyungbuk regional union went on strike on 1 June 2006, the police arrested union officials and brought charges for the conclusion of collective agreements with the principal company. Demonstrations against the arrests were held in front of the police station. The demonstrations had been notified and were legal, but the police blocked access to the demonstration site and attempted to violently break it up. Clashes ensued.

599. With regard to the statement in the Government's Report concerning the occupation of SK, the BWI indicates that SK attempted to render the union powerless by demanding that union members submit a letter of withdrawal from the union in order to receive an entry card. SK was not a third party as it directly intervened and attacked the union. Also, the core demands of the Ulsan construction plant union, the installation of bathrooms, restaurants and break rooms, are facilities that the main company or ordering company needs to install. Thus, SK was a relevant party to the actions and demands of the union.

600. With regard to the Government's statements concerning Ha Joong-Keun (i.e. that he died during excessively violent demonstrations on 16 July 2006 which had been planned beforehand and were followed by attacks with steel pipes by masked men against the police as a result of which about 2,500 steel pipes were removed from the site; the prosecutors are currently investigating the cause of death), the BWI indicates that the demonstration was to demand that police allow the delivery of food and water to the workers conducting a sit-in at POSCO. The fact that the police were the first to attack has been confirmed by the National Human Rights Commission study, which recommended changes to police action. The masks, steel pipe attacks, and the removal of 2,500 steel pipes are a fabrication and the complainant demands that the Government submit supporting evidence. The investigation for the cause of Ha Joong-Keun's death has been transferred to the Prosecutors' Office, but the investigation had yet to start at the time of the communication.

601. With regard to the Government's indications on efforts to support construction workers and the construction trade union, in particular, the adoption of a law and action plan for construction workers, measures such as industrial accident, health, and employment insurance, the BWI indicates that the bill for the improvement of working conditions for construction workers was a result of the struggles and demands of the construction union. The basic plan for the improvement of employment conditions for construction workers has shown little concrete results. Construction workers have low levels of basic insurance

coverage. Building projects of less than US$22,000 are excluded from coverage. In the case of health insurance and pensions, those employed for less than one month are excluded, which means that the short-term contracts of most construction workers excludes them from coverage. As of April 2007, health insurance and pensions have been accessible to those construction workers that work over 20 days a month and a measure that reflects the costs of basic insurance in the total construction cost has been passed in the National Assembly, but has yet to go into effect. Employment insurance was only recently expanded (2004) to include those employed for less than a month, but building projects of less than US$22,000 were again exempted. The Ministry of Health and Welfare, the Ministry of Construction and Transportation, the Presidential Committee on Social Inclusion have all raised the issue of basic insurance for construction workers, but the government agency responsible for improving the problem is still neglecting the issue.

602. With regard to the Government's statement on a five-year plan to prevent industrial accidents, the BWI indicates that data compiled since the 1980s indicate that about 600–800 workers at construction sites die from industrial accidents each year while workers have not been able to seek industrial accident compensation for job-related diseases or sicknesses. The results from a Ministry of Labour analysis show that industrial accidents at construction sites are mostly caused by lack of safety measures and facilities. The Ministry of Labour has also abolished in 2004 sections within the organization that dealt with industrial accidents at construction sites. Fewer construction sites have industrial safety inspectors, and deregulation regarding safety and health has been concentrated in the construction industry. In 2006, under employers' pressure the Government attempted to abolish the Committee for Industrial Health and Safety, but revoked the bill when the union protested.

603. With regard to the Government's statement that it has financially supported the construction unions' job placement centres since 1998, the BWI indicates that the KFCITU has been operating a job placement centre since before 1998. When unemployment became a serious social problem during the financial crisis, the "National Commission to Overcome Unemployment" was set up with citizens' donations, and the construction unions' job placement work received funding from the Commission. Support for training programmes was initiated only in 2006.

604. With regard to the Government's statement that it has not obstructed or repressed the organizing efforts of the construction unions, the BWI indicates that the conclusion of collective agreements by regional unions affiliated to the KFCITU were part of an organizing programme for construction workers that was supported by BWI. It does not make sense to state that the Ministry is not obstructing organizing work when it has characterized the organizing programme and collective agreements as extortion and coercion. During the strike by the construction and transportation union in 2001, police broke up the sit-in at a local park by using axes to smash the parked construction vehicles. In 2005, during the peaceful march by the Ulsan Construction Plant union, 700 were forcefully taken to the police station. In 2008 during the Pohang Construction union's strike, it was revealed that the Prosecutors' Office had participated in the POSCO company's meeting to discuss countermeasures to the strike, siding with the company in what was a just act on the part of the workers.

605. With regard to the Government's statement that the union's data on working hours, social welfare, industrial safety, and precarious work is distorted (average hours of work per week is 42.8, increased pay for overtime work has been guaranteed, health and industrial accident insurance is applied), the BWI indicates that the data submitted by it were based on studies from government-funded institutes and the government statistics office. The construction workers do not receive increased overtime pay, and calls for the situation to be improved have not been addressed. According to the labour statistics report from the

Ministry of Labour, construction workers' wages are lower than the average wage, and the average wage for irregular workers in construction is half the average wage of regular workers (about US$1,200–1,500).

606. With regard to the Government's statement that unpaid wages were paid through the wage guarantee bond system, the BWI indicates that the union provides counselling and registers cases of unpaid wages across the country. Unions have settled unpaid wages because the Ministry of Labour's mechanism for dealing with workers' unpaid wages is inadequate. The wage guarantee bond system has failed to resolve the issue of unpaid wages at the building operation level which makes for 75 per cent of all cases of unpaid wages in the sector, according to an inspection by the Board of Audit and Inspection. When a public complaint centre for construction workers was established by the Ministry of Construction and Transportation in January of 2005, about 300 petitions for unpaid wages were registered within two months. This reflects how ineffective the Ministry of Labour's regional offices and the wage guarantee bond system have been. The BWI presents statistical data according to which almost 15 million in delayed wages were reported to the KFCITU as of September 2003. The number of construction workers who stated that they would seek help at the Government labour agencies for unpaid wages was only 11 per cent of the total.

607. With regard to the claims of extortion on the part of the regional construction union, the BWI indicates that the Government continues with its outdated practice of prosecuting trade union activities on the basis of the criminal code despite the recommendations of the Committee and continues to reiterate the contents of the indictment, without taking into account the construction unions' concrete positions and assertions. In fact, elements in the indictment that were proven to be distorted during the trial continue to be cited without change in the report.

608. With regard to the Government's statement that union officials who were not employed by any company demanded collective agreements that contained payments of wages, the BWI indicates that due to the short-term contracts of construction workers, the latter are organized into regional level industrial unions, and have been legally recognized by the Government in such form. There is no regulation in the labour law that requires one to be employed in a specific worksite in order to be a union official. In the manufacturing sectors, union officials have been guaranteed wages regardless of employment status, under the collective agreements (metalworkers). Court rulings have also found that payment of wages for union officials do not presuppose employment relations and can be decided through collective agreement, and that the question of who becomes a paid union official is up to the union to decide. Also, the collective agreements in question refer to a variety of issues like "safety education, employer–employee consultations, employment insurance, pension deduction schemes", but the Government singles out the wage payments, intentionally omitting the other elements of the agreements and thereby distorting the efforts of the construction union.

609. With regard to the Government's statement that the union did not respond to requests to provide the union member list and demanded payments under the collective agreement although it did not have any members on the site, threatening to file complaints if the company refused, the BWI indicates that presenting a list of members is not a precondition for the conclusion of a collective agreement. The refusal to disclose the members did not run counter to any legal provision and was due to the fear of layoffs and unfair labour practices which are common in the construction sector. Furthermore, most of the provisions of a collective agreement do not apply only to members but to the entire staff as they reflect basic labour rights guaranteed to all workers by law; low levels of compliance with basic rights in the construction industry, have led to collective agreements functioning

as a vehicle for ensuring adherence with the law. The Government's report distorts this reality and presents the construction union as a group of common thieves.

610. With regard to the Government's statement that the objective of the construction union officials was to receive money from employers, and not to conclude collective agreements, the BWI indicates that many construction site managers testified during the investigation and trials that they "offered money to the union in exchange for not entering into a collective agreement, but met with fierce protests and refusals" (trial records). The Government needs to present clear evidence that the unions have acted with the objective of receiving money and not concluding a collective agreement.

611. With regard to the Government's statement that union officials ceased to appear at construction sites after collective agreements were concluded and the money was sent, the BWI indicates that construction site managers have testified during the trials that after the conclusion of the collective agreement, activities such as "regular worker-employer consultations on problems at the work site, prevention of industrial accidents, monthly safety education" took place (trial records). It is a serious misrepresentation of the facts to state that unions disappeared after payments were received.

612. In the case of the Daejon regional construction union, its activities have been selected as a model of industrial accident prevention. The Kyonggi Subu union has, through direct vote by its members and collective bargaining, guaranteed two days off a month. The Kyonggi union has formed a total of 60 industrial safety and health committees from 2002 to 2006, and 300 workers have been elected as members to these committees which meet every one to three months to discuss and implement projects for industrial accident prevention. This union has also raised wages for its members, and has been active in improving their working conditions. Regional unions in general have been active at the construction sites, in areas ranging from installing bathrooms and checking safety measures, to managing employment insurance for members. All of the above has been reported numerous times in the press.

613. With regard to the Government's statement on obstruction of business through sit-ins at building sites where payments were refused, the BWI indicates that this is a misrepresentation of trade union activities by equating refusal to make money payments to refusal to implement the provisions of a collective agreement. The sit-ins were due to a failure of the employers to implement the contents of a collective agreement which aimed to ensure adherence to labour laws.

614. With regard to the Government's statement that those companies that refused payments would face false complaints regarding safety helmets for which the union has been punished on libel charges, the BWI indicates that in sites where a collective agreement was concluded there was a willingness to work together with the union to address safety and health issues, and therefore the union reacted to violations of the law by first requesting redress at the level of the company and then filing a complaint if the request was not met; however, when the company refuses to negotiate a collective agreement, this is tantamount to not recognizing the union; requests for changes go unanswered, and therefore the only option is to file a complaint. The Government's report does not describe the problems on the ground (lack of basic protective equipment such a safety helmets and boots) and has given the impression that the unionists were filing complaints for their own irresponsible acts. Also, the Ministry of Labour, based on fabricated documents from employers, has recklessly issued no-fault decisions to companies that have faced complaints. This has resulted in an abnormally high number of industrial accidents due to the absence of basic safety measures: 3,000 workers die from industrial accidents a year in the Republic of Korea, while only ten employers have been arrested. The Ministry needs to present proof that the unions have filed false complaints, since the union has not been found guilty of

libel charges. The Choongnam union still faces this charge but the trial is still in process. Even in this case the Ministry of Labour confirmed that the industrial safety law had been violated.

615. With regard to the Government's statement that wages were received by union officials in their personal accounts and used for personal purposes, the BWI indicates that this constitutes an insult to the activists who have engaged in organizing and collective bargaining over the years, receiving only US$500–1,000 a month in order to improve working conditions at construction sites and measures will be taken to counter such insults. The issue of the use of wages has already been cleared by the domestic courts. Wiring wages for union officials to personal accounts was due to the fact that site managers would refuse to send the money to the union account. Regardless of the account, the wages were managed by the union. The Ministry of Labour needs to provide exact proof of the assertion that "about half of the wages were used for personal purposes, unrelated to union activities, and the other half was shared among union officials and used at their discretion, not for the union".

616. With regard to the Daegu High Court's decision of 15 April 2007 (Case No. 2006/595), the BWI provides the following summary. The Court found that Cho Ki Hyun, former President of the Daegu local construction union and three other union members were not guilty of extortion or blackmail and bribery. With regard to the issue of signing site agreements with the principal contractor rather than subcontractors, the court found that even though the daily construction workers in the Daegu metropolitan area were hired by sub contractors, and thus were not directly employed by the principal contractors overseeing the construction projects, nevertheless, the main contractors were still responsible for these daily workers in the area of safety and health, industrial accident insurance, workmen's compensation, contribution to pensions, etc. Thus, the principal contractor was recognized as a bargaining partner in the site bargaining agreement process. As a result of this decision, the bargaining partner is not necessarily the counterpart in the employment contract but rather the one who is in reality responsible for the overall working conditions of the employee and thus, in a construction site, the principal contractor. A relationship of subordination is the criterion for deciding the status as a party to collective bargaining.

617. With regard to the issue of wages for full time union officials on the basis of a collective agreement, the court found that the payment of wages to union officials constitutes a point to be bargained between the trade union and the principal contractor. Even though the defendants were not employed by the principal contractor, as long as they are considered legally to be workers who have a right to join the trade union, it should be up to the union in question to decide whether they should be its officials. Thus, if a collective agreement provides that wages will be paid to union officials, the union has the right to decide who are the officials in question. Employment relations at the construction sites do not have a bearing on this issue.

618. With regard to whether there was an act of extortion, the Court found first, that from the point of view of the worker, who has a different set of interests from that of the employer, it is legitimate and natural to report on any illegal actions taken by principal contractors if these actions endanger the workers. In addition, it is within the scope of the union's normal activities to claim a collective agreement and pressure the principal contractor to sign collective agreements. Secondly, even if the defendants had taken the position that they would file a complaint regarding the industrial safety of the sites during the collective bargaining process, pointing out and urging change to problems that are directly related to the working conditions of the members, and when refused, collecting evidence or filing a complaint, they exercised a natural and everyday activity of a trade union. Just because such trade union activities were carried out during the bargaining process, it does not

constitute coercion or extortion. Therefore, if the Daegu/Kyungbuk regional construction union concluded a collective agreement and part of that agreement calls for wage payments or other forms of financial provision, extortion cannot be said to exist. In addition, payment to union officials was part of the bargaining process and the payments were agreed upon by the principal contractor and the union and thus, this cannot be viewed as a form of blackmail or extortion.

619. The BWI adds that on appeal, the Daegu/Kyungbuk regional construction union was absolved of the charges of signing a collective agreement with the main company – a third party – and payments for full-time union officials and was found not guilty of the criminal charges of extortion. However, trials are ongoing with regard to the Kyunggi Subu and Chunan regional construction unions. Although the Committee's recommendations were submitted to the court, and the collective agreements and the wages for union officials were recognized as legal, the officials have been found guilty of the criminal charges of extortion. Also, several union officials from the Daegu/Kyungbuk union are in the midst of their second trial, and Kyunggi and Chungnam regional construction unions are going through their first trial.

620. An amendment to the labour law submitted by the KCTU and the Democratic Labour Party which would expand the responsibility for guaranteeing freedom of association and collective bargaining beyond the direct employer to employers that exert a parallel influence on workers and their rights has been submitted to the National Assembly. In order for the collective bargaining rights and freedom of association for construction workers to be recognized, the complainant requests that the ILO again recommend that the relevant laws and court decisions be reviewed, and that an ILO fact-finding mission take place on this issue.

Allegations by the KCTU

621. In a communication dated 10 June 2008, the KCTU along with the Korean Federation of Public Services & Transportation Workers' Union (KPSU), and the Korea Health & Medical Workers' Union (KFHU) state that the labour law amendments of 2006 have had serious negative repercussions for the public sector workers in the Republic of Korea. Despite promises that domestic legislation would be reformed to conform with international labour standards, trade union pluralism remains outlawed in the Republic of Korea, and compulsory arbitration has been replaced by three-tier regulations which continue to restrict basic labour rights.

622. The Government has presented the recently introduced "essentially maintained services" system as an institution that, based on agreement between employers and workers, balances the right to strike with the public interest, but the actual contents of the system has taken industrial relations in the Republic of Korea further away from the international labour standards promoted by the ILO. Starting with the Seoul Metropolitan Rapid Transit Corporation in January 2008, then followed by the Busan Transportation Corporation, the five power plants, Seoul Metro, Donga University Hospital, and Korea Gas Corporation, employers at all these companies have refused to respond to calls from trade unions for negotiations and have applied for decision as an essentially maintained service at the Labour Commission. Even in the health-care and medical sector, where industrial bargaining was beginning to take root, the essentially maintained service institution gave the employers an excuse to evade collective bargaining.

623. Thus, current restrictions on public sector workers' basic labour rights, such as the essentially maintained services policy, rests on an arbitrary and distorted interpretation of the ILO's international labour standards and collective action for public sector workers has been completely blocked.

624. The KCTU indicates that on 30 December 2006, an amendment was adopted to the Trade Union and Labour Relations Adjustment Act (TULRAA). Major revisions were made regarding limitations on collective action in "public services". The abolition of compulsory arbitration, which had been recommended by the ILO, has been offset by measures expanding the scope of public services, introducing minimum service, and allowing for replacement workers. Moreover, emergency arbitration remains in place. Through these mechanisms and institutions, collective action has been rendered pointless.

625. Five new clauses have been added to section 42 of the amended law, in order to stipulate what constitutes minimum services in public services. The revised bill has added airline transportation and blood supply services to the list of public services, and has instituted a new obligation to provide a minimum service in operations deemed to endanger the life, personal safety or health of the whole or part of the population when interrupted below a certain level of operation and maintenance. The concrete scope of minimum services is laid out in the enforcement decree.

626. According to the enforcement decree, workers and employers should conclude an agreement on the scope of operations and staff levels needed to maintain minimum services during the dispute. However, if an agreement cannot be reached, one or both parties will apply for mediation to the Labour Relations Commission (Special Mediation Committee), which will in turn decide on the minimum scope and level of service maintenance. If an agreement can be reached between labour and management, or after the Labour Relations Commission decides on the level of minimum services, then trade unions have the obligation to inform the employers of the members that will remain on the job, after which employers will give notice to the workers and the union. In the case of the union failing to meet this obligation, the employers will designate the workers and inform them as well as the unions.

627. The revised TULRAA has also allowed for replacement or newly hired workers at public services (including contracting out such services), but limits such replacement labour to 50 per cent of trade union membership, or the number of workers participating in the strike.

628. According to the KCTU, the amended TULRAA introduces successive limitations to the right to strike which can render collective action meaningless. There is no need for both a preventive control mechanism, such as minimum services, and a post facto control institution like emergency arbitration. Allowing for both does not strike a balance between the public interest and basic rights but rather results in multiple restrictions on the right to strike. Furthermore, allowing replacement workers numbering up to 50 per cent of strike participants at any time during the dispute, regardless of whether minimum services are being provided or not, also runs directly against ILO standards according to which replacement labour should be used only in essential services where strikes are not allowed and in case of emergencies.

629. Furthermore, the Government has added airline transportation and blood supply services to the scope of public services and narrowed bank operations to solely the operations of the Bank of Korea. However, such measures run counter to the numerous ILO recommendations on this issue.

630. The amendment defines minimum services as "operations at public services whose stoppage or discontinuance would endanger the life, safety, health or everyday lives of the public", to be decided by "presidential decree". The criterion for deciding what is a minimum service takes into account the public's life, safety and health, but also the very broad "everyday life" of the public. This means that minimum services could include

anything that causes discomfort or disadvantage to the public's everyday life, resulting in an expansion of the services which fall under this category.

631. This institution clearly runs counter to the ILO's basic aim of differentiating between "essential services" and "minimum services". In terms of concepts, the ILO's essential services can be said to be a concept similar to the Government's essential public services, in the sense that strikes can be restricted or prohibited for the public good if they fall under the scope of the concept. On the other hand, minimum services mean services which need to be guaranteed during strikes, without infringing upon the workers' right to strike, a concept which overlaps with the public services in the amended TULRAA. However, public services as stipulated by the Korean Government include and expand upon the list of essential public services, and at the same time provide for a minimum service over these essential public services, resulting in a double regulation on the same services. This is contrary to freedom of association principles differentiating between essential and minimum services: the former is to allow restrictions on the right to strike with a strict application, while the latter is to protect labour rights by guaranteeing a minimum level of operation.

632. Furthermore, the amendment's definition of minimum services is so broad that it risks rendering strikes ineffective and leading to a denial of the right to collective action.

633. In addition, the views of the trade unions were not reflected when deciding on the scope of minimum services. The amended law stipulates that the specific services that need to be maintained will be decided through the enforcement decree. The decree states that the operations to be kept running during strikes should be decided through agreement between labour and management, which can be considered to be partially drawing on the ILO's concept of negotiated minimum services. However, according to the ILO's explanation on minimum services, the definition, scope, and period needs to be decided with the guaranteed participation of the trade union. The Government has nevertheless effectively negated the union's participation in the process of deciding on the level and scope of essentially maintained services.

634. Stipulating in advance by decree the essential services that need to be maintained renders agreement between workers and employers nearly impossible, which in turn means that it will be up to the Government organs to reach a decision. This will mean a return to compulsory arbitration.

635. Another serious problem is that because agreement between workers and employers regarding the level of minimum services at the workplace is practically impossible, all parties must rely on the Labour Relations Commission's decision which has the authority to decide on the level of minimum services. However, there is no provision clarifying whether this decision has a status equal to a collective agreement. Therefore trade unions may have no means to prevent employers from evading an agreement. Already, employers have been applying for a decision at the Labour Relations Commission without sufficient consultation with the union, and that is why the current system can be said to have the same effect as compulsory arbitration.

636. Furthermore, stipulating criminal responsibility and civil liability for individual union members threatens to nullify the right to collective action. During the period when compulsory arbitration existed, if a decision was violated the responsibility lied with the trade union. However, under the current system of minimum services, the employer designates the individual workers on the basis of the collective agreement or Labour Relations Commission ruling; in case of violation of minimum services, the individual worker bears the responsibility. This added pressure on union members can render strikes meaningless.

637. In addition, there is a problem with the extent to which replacement work is possible. The amended TULRAA allows for replacement work in all public services irrespective of whether they involve minimum services or not. Such policy runs counter to the original objective of introducing minimum services, and renders the attempted balance between the public interest and the right to strike meaningless. It also runs against the ILO's position on the issue. The ILO has deemed replacement labour as legitimate when there is a strike at enterprises providing essential services or in case of an acute crisis. It views replacement workers at legal strikes in non-essential services as infringing upon freedom of association principles. The new amendment, allowing replacement workers in all public services (regardless of whether they have to comply with minimum service requirements), fails to meet ILO standards.

638. Thus, the new law has preserved the strike-banning effect that compulsory arbitration had by allowing replacement workers in all essential services, and defining minimum services broadly, so that such services cannot be stopped and a minimum level of operation goes on uninterrupted. The Labour Relations Commission has decided that 50 per cent of normal operation is the minimum essential service for which replacement labour can be introduced, and 100 per cent of normal operation when such workers cannot be introduced (Busan Labour Relations Commission, 14 May). If such decisions continue, then employers will be able to maintain their level of service provision even in the case of strikes.

639. The KCTU expresses concern that this policy will lead to unnecessary clashes between management attempting to send in replacement workers and trade unions trying to block their entry. In particular, the non-stoppage of replacement workers' work could make personnel management difficult after the end of the strike, especially because it will lead to tensions between the two groups of workers. This will constitute a source of instability in industrial relations.

640. The Government has argued that replacement work needs to be allowed citing examples from other countries. However, the fact that other countries do not explicitly prohibit the use of replacement labour in their laws does not mean that the use of replacement workers is the norm. In most western countries, where industrial unions have considerable control over the labour force, it is the general rule that even during strikes replacement workers are not hired.

641. In 2008, starting with small and medium sized enterprises, where the bargaining power of the unions tends to be weaker, agreements regarding minimum services have been concluded. Without exception, these agreements have stipulated a very high level of operation maintenance – over 80 per cent – during disputes. The Government had originally stated that "because this is a newly revised law, it will be complemented as it is implemented". However, it has shifted from its position and has responded to the KCTU's calls for dialogue with little substance.

642. The same holds for employers who avoid dialogue with the KCTU. A particularly salient case concerns the Seoul Metro, Korea Railways, Korea Power Plants, and others, all of whom evaded negotiations over minimum services and went on to apply for a decision to the Seoul Labour Relations Commission two days after the Korean Federation of Public Services and Transportation Workers' Union officially requested the conclusion of an agreement on the matter. Moreover, the Korean Health and Medical Workers' Union had demanded discussions on the issue of replacement workers at the industrial level, but the employers characterized the agreement on minimum services as a non-negotiable issue. This has resulted in destabilizing collective bargaining in the sector.

643. Finally, the KCTU indicates that, on 31 January 2008, the Seoul Labour Relations Commission issued a decision regarding minimum services according to which : (i) in case of strikes on Saturdays and weekdays, subways must operate at a minimum of 79.8 per cent compared to normal periods; (ii) 100 per cent must be maintained during rush hour, and (iii) on Sundays subways must run at 50 per cent of the level during normal periods. Also, duties and jobs that must be maintained are designated: operation of train related duties (driver/trainmen), traffic control duties (electricity, signs, communication, equipment, facilities), inspectors, and railway repair. This includes almost all jobs except cleaning and ticketing.

644. Another example of how workplaces can keep running at normal levels even in the case of strikes through essentially maintained services and replacement workers is the case of the Busan Labour Relations Commission decision concerning Donga Hospital (14 May 2008). Citing section 42 of the amended TULRAA, the commission decided that the minimum service is 50 per cent of normal operation levels. It thereby decided that of the 12 duties at the hospital, six (childbirth, surgery, dialysis, anaesthesia, diagnosis and treatment) will have to maintain 50 per cent operation levels, and the other six 100 per cent.

645. According to the KCTU, if a trade union is to go on strike under the revised law, it will have to proceed without the participation of a substantial number of members due to the minimum services policy. The trade union will have to decide whether to continue with an ineffective strike or raise the stakes by calling on the workers providing minimum services to join the strike. In other words, the amended TULRAA forces upon trade unions a decision between giving up basic labour rights or proceeding with an illegal strike.

646. Despite consistent recommendations by the ILO, labour repression has not decreased, and new measures that seriously violate basic labour rights have been introduced under new names and provisions. The recent institutional and legal changes regarding essential public services run counter to the ILO's recommendations for a reduction of essential public services and stressed the need for symmetry between the public good and the protection of the right to collective action. Also, close attention needs to be paid to the recent tendency, on the part of the Labour Relations Commission and relevant administrative organs to reach decisions that in effect deny workers in these services the right to strike. The KCTU recognizes that in light of the recent changes that have further limited the exercise of basic labour rights for public sector workers, the Korean case will be a key test for the effectiveness and relevance of international labour standards regarding the protection of basic labour rights.

C. The Government's reply

647. In a communication dated 28 May 2008, the Government indicates that, thanks to continuous dialogue and efforts, the Republic of Korea has made much progress in its industrial relations laws and systems, despite its relatively short experience in this area. Although improvements remain to be made, the claims by some labour groups that the Korean Government suppresses the labour movement and unfairly restricts basic labour rights is not true. Nor is this possible in a modern democratic society leading the era of informatization.

Act on the Establishment, Operation, etc., of Public Officials' Trade Unions and Enforcement Decree

Right to organize

648. All public officials subject to the Public Officials Act in the Republic of Korea are those who exercise authority in the name of the State, whose status is unique and whose job is of a public nature. Therefore, it is inevitable to limit public officials' right to organize to a certain extent. In particular, public officials at grade V or above usually hold a managerial position and either directly participate in deciding major government policies or perform the duty of directing or commanding their subordinates. In addition, the public officials system in the Republic of Korea is based on a grade scheme under which general public servants are divided into ranks ranging from grade I to grade IX, with public officials at grade V or above accounting for only 4 per cent of a total of 940,000 public officials. Given these characteristics, they are not eligible to join a trade union. The Labour Relations (Public Service) Convention, 1978 (No. 151), states that the right to organize of "high-level employees whose functions are normally considered as policy-making or managerial, or employees whose duties are of a highly confidential nature" may be restricted by national laws or regulations. In other countries, too, public officials, who are management officials or supervisors, are usually excluded from those for whom the right to organize should be guaranteed.

649. Moreover, among public officials at grade VI or below, those who perform the function of administrative authorities in relation to trade unions, such as those who exercise the authority to direct or supervise other public officials and those who are involved in work relating to personnel and remunerations, are excluded from public officials eligible to join a trade union. If they were allowed to join a trade union, they could hold sway over, or interfere in, the operations of the trade union, and thus undermine the union's independence. Restricting their right to organize is intended to embody the principle of labour–management autonomy by striking a balance of power between labour and management, which confront each other during collective bargaining.

650. In the case of firefighters and correctional officers, maintaining the command and control system of their organization is especially necessary because their duties are directly related to the people's lives and safety. Labour inspectors are also inevitably prohibited from joining a trade union given the unique nature of their job, which requires neutrality and impartiality because they perform duties affecting the interests of labour and management.

Right to strike

651. All public officials in the Republic of Korea are those who exercise authority in the name of the State. Their right to collective action is inevitably restricted by law given their unique status, the public nature of their job, the need to ensure the continuity of their functions and the fact that their working conditions are set by law. As a safeguard against this restriction, "the Labour Relations Adjustment Committee for Public Officials", a neutral body, has been set up and is operating to mediate labour–management disputes for public officials. Even in ILO Conventions, there is no provision stipulating that the right to collective action, including the right to strike, shall be guaranteed to public officials. The Committee on Freedom of Association affirms that the right to collective action may be restricted for public officials who exercise authority in the name of the State and public officials engaged in essential services. It should also be noted that in many other ILO member countries, including Japan and Germany, public officials' right to collective action is not guaranteed given the situation of their industrial relations.

Treatment of full-time union officials

652. The responsibility to pay wages to full-time union officials engaged in union activities rests with the trade union concerned. This is not only consistent with the notion of the operational and financial independence of trade unions but is also an international norm. And given the distinctive nature of public officials' wages which are paid from the national coffer, it is necessary to set basic principles concerning the recognition and treatment of full-time union officials.

653. Accordingly, the current law in the Republic of Korea provides for procedures for recognizing public officials as full-time union officials with the consent of the appointing authority. Once recognized as such, they are ordered to withdraw temporarily from office and paid wages in accordance with the remuneration principles applicable during such a period. Standards for the protection of full-time union officials have been put in place to ensure that public officials shall not suffer any disadvantage in terms of promotion, length of service, etc., due to their trade union activities.

Principles in the framework of the application of the Act

654. the Republic of Korea's current law gives public officials the right to freely establish a trade union and allows them to conclude collective agreements on working conditions through collective bargaining with the Government's bargaining representative. However, unlike private-sector workers, public officials' job security is guaranteed by the Constitution and laws, and most of their working conditions are set in the Constitution and laws, and limited by budgets. Therefore, there are some limitations on deciding their working conditions through collective bargaining. Furthermore, since the National Assembly, the body representing the people, is granted legislative and budgetary powers under the Constitution, even collective agreements concluded between the public officials' union and its counterpart cannot be seen as prevailing over the laws and regulations or budgets passed by the National Assembly. Yet the Act on the Establishment and Operation of Public Officials' Trade Unions not only recognizes public officials' right to conclude collective agreements but also imposes the obligation of the government's bargaining representative to make efforts to implement collective agreements in good faith. Meanwhile, matters concerning policy decisions or personnel appointments are excluded from those subject to collective bargaining. Such a restriction is inevitable because they constitute the government's managerial prerogatives, and similar examples can be found in many other countries.

655. Considering the ILO's recommendations, the Government has engaged in good faith bargaining with public officials' trade unions over their working conditions, and had various opinions from the unions reflected in the process. As of April 2008, collective bargaining was conducted in a total of 118 workplaces, including the central administration and local governments. Among them, in 69 workplaces collective agreements were concluded between the Government and its counterpart union. Especially on working conditions affecting all public officials, such as remuneration, pensionable age, etc., central-level bargaining was concluded on 14 December 2007 through dialogue and compromise between ten unions of public officials, including the Korea Federation of Government Employees (KFGE), and the Government's bargaining representative, the Ministry of Public Administration and Security. Since then, the Government has implemented what was agreed upon in good faith.

Other legislative aspects

Trade union pluralism at the enterprise level and payment of wages by employers to full-time union officials

656. The current Trade Union and Labour Relations Adjustment Act (TULRAA) stipulates that workers are free to establish or join a trade union, thereby allowing union pluralism. It also states that workers can engage in union activities without performing their job, as full-time union officials, with the consent of their employer or under a collective agreement, but that in principle, they are prohibited from getting wages from their employer while serving as full-time union officials. However, the entering into force of these provisions has been postponed until 30 December 2009.

657. The postponement is due to the unique characteristics of the industrial relations in the Republic of Korea. Most of the trade unions in the Republic of Korea have been organized at the enterprise level, so union pluralism, if fully implemented, could bring chaos to industrial sites and lead to labour–management conflicts, because of a lack of measures to establish a single bargaining channel and wide differences in opinions between labour and management.

658. Under the full-time union official system, which is an industrial relations practice unique to the Republic of Korea, the wages of full-time union officials are often borne by their employer because of trade unions' weak finances in the Republic of Korea where enterprise-level unions are dominant and trade unions have a relatively brief history. However, workers engaging full time in union activities are, in effect, considered to be in a state of temporary suspension from duty, so in principle, there is no reason for their employer to pay wages to them. If an employer paid wages to full-time union officials, this would result in the employer bearing the union's labour costs, and the trade union's independence would be impaired (article 2, subparagraph 4, of the TULRAA). Wage payment to full-time union officials by employers is considered as an act of domination or interference in the operation of a trade union and thus constitutes an unfair labour practice. (article 81(4) of the TULRAA). In addition to this, it is not ethically justified for a trade union, which is put on an equal footing with an employer, but operates in opposition to him, to have its full-time union officials involved in full time union activities without performing their original jobs, receiving wages from the employer. In other countries, including advanced ones, the payment of entire wages to full-time union officials by their employers is considered an infringement upon the independence of unions. In the United States, wage payment to full-time union officials is banned by law, and it is hard to find a trade union which demands the employer to pay wages to its full-time union officials during collective bargaining, as happens in the Republic of Korea.

659. In the Republic of Korea, there has been controversy over the absurdity of wage payment by employers to full-time union officials. However, rather than making voluntary efforts to achieve financial independence, trade unions have strongly opposed the ban on wage payment by employers to full-time union officials because of weak finances. So in order to rectify the long-standing wrong practice, the ban on wage payment to full-time union officials was inevitably introduced in the law in 1997, through an agreement among the social partners after long discussions. This provision is not intended to suppress union activities nor make things difficult for unions but rather to encourage unions to achieve financial independence and pursue sound labour movements in the long run. In addition, as at present there is no regulation on the collection of membership fees by union members, there are many ways for trade unions to come up with measures to operate independently. Moreover, the enforcement of the provision has been put on hold for more than ten years since its introduction to give trade unions enough preparation time.

660. On the other hand, business circles have argued that allowing union pluralism without solving the chronic problem of wage payment to full-time union officials would put huge burdens on business operation. As a result, the two issues, that is, the introduction of union pluralism and the ban on wage payment to full-time union officials, became tied to each other. Labour and management, which had refused to make concessions to each other, finally agreed to put off their implementation until 2006 (amendment in 2001). And again in 2006, they agreed to have another three-year grace period before the implementation, postponing the effective date to 31 December 2009.

661. The Korean Government will actively push for legislation concerning measures to establish a single bargaining channel so as not to postpone the enforcement date of the related provisions any further. The Tripartite Commission organized a group of experts from labour, management, the government and public interest groups in order to share the results of discussions and research conducted so far (October 2007–March 2008). Utmost efforts will continue to be made to find rational solutions through intensive tripartite discussions.

Emergency arbitration

662. Under the TULRAA, if industrial action is related to public services, or is huge in scale and of a special nature so that it could considerably damage the national economy or endanger people's everyday lives, the Minister of Labour may decide to settle the case through emergency arbitration. Neutrality, in such a decision, is secured by requiring the Minister of Labour to hear opinions from the chairperson of the National Labour Relations Commission, a neutral and independent body, before making that decision.

663. According to the ILO, it is possible to refer a labour dispute to compulsory arbitration in the case of essential services whose stoppage could threaten the life, personal safety or health of the whole or part of the population. But disputes subject to emergency arbitration are not limited to essential services. Even in the case of general services, if industrial action spreads so widely and lasts so long that similar emergency situations could occur as a consequence, the dispute may be referred to emergency arbitration. In the same context, it should be recalled that the CFA stated, "What is meant by essential services in the strict sense of the term depends to a large extent on the particular circumstances prevailing in a country. Moreover, this concept is not absolute, in the sense that a non-essential service may become essential if a strike lasts beyond a certain time or extends beyond a certain scope, thus endangering the life, personal safety or health of the whole or part of the population" [***Digest of decisions and principles of the Freedom of Association Committee***, fifth edition, 2006, para. 582]. Emergency arbitration is invoked very rarely, as an exception rather than the rule in the Republic of Korea, and was applied only in 1969, 1993 and 2005. The Korean Government will apply emergency arbitration carefully, so as to respect the principles of freedom of association and after weighing the risks to the people's safety. The Government has no plan to revise the current system, nor is there a great need to do so.

Trade union membership, standing for trade union office, etc.

664. Despite government efforts to allow the unemployed to become members of a union above the enterprise level, the tripartite representatives agreed on 10 August 2006 to leave the current law intact. Moreover, in recent years, in addition to enterprise-level unions, trade unions have been organized at higher levels, such as industry, sector or regional levels, and there are some higher level unions where unemployed or dismissed people have joined and engaged in union activities. Given all these elements, at present, the Government has no specific plan to make institutional improvements in the near future.

"Obstruction of business"

665. The Constitution of the Republic of Korea guarantees the right to association, the right to collective bargaining and the right to collective action to improve workers' working conditions (article 33, paragraph (1)) and stipulates the freedom to operate a business as a fundamental constitutional right (article 15). These two provisions should be interpreted in a balanced way so that both fundamental rights can be mutually respected when it comes to industrial relations. In case these two fundamental rights are not consistent with each other, they may be restricted by law when it is necessary on grounds of national security, order or public welfare (article 37(2) of the Constitution). Just like an employer who violates workers' freedom of association can be subject to criminal punishment under the TULRAA, if a workers' organization infringes upon an employer's freedom to operate a business, it can be subject to criminal punishment pursuant to article 314 (obstruction of business charge) of the Criminal Act. In this light, the Government would like to remind the CFA of Article 8, paragraph 1, of ILO Convention No. 87 stating that "In exercising the rights provided for in this Convention, workers and employers and their respective organizations, like other persons or organized collectivities, shall respect the law of the land". According to article 314 of the Criminal Act, "an act of interfering with another person's business by a threat of force" is subject to punishment. Workers' collective refusal to perform their jobs can be seen as constituting a threat of force which is an element of obstruction-of-business charges, but workers' legitimate collective action aimed at improving their working conditions is protected by the TULRAA and therefore not punished on charges of obstruction of business. However, illegal collective acts outside of the legal confines, exclusively consisting of acts seriously violating an employer's freedom to operate a business, are carefully assessed and become subject to obstruction of business charges. In other words, the provision is intended not to regulate industrial action itself, but to punish illegal action in case it causes damage by interfering with an employer's business and economic activities. Thus the Korean Government would like to make it clear that the provision is applied in such a way as to neither restrict nor breach the essence of workers' freedom of association.

666. In other countries, if union members obstruct non-union workers or replacement workers in performing their job or force other members to participate in industrial action, they are punished on charges of coercion. Regrettably, many strikes in the Republic of Korea still involve illegal and violent means, such as blocking access to the workplace by occupying it by force, destroying facilities, physically abusing policemen and managers, physically obstructing other workers and employer in performing their work. In reality, many of the arrests were made for committing violence with weapon-like tools, hindering other union members from returning to work, or occupying workplace facilities for a long time. The Korean Government would like to emphasize that under the laws of other countries, these acts would be criminally punished.

667. Regarding the criminal punishment of Korean Air's union workers, on 12 May 2005, Shin Man-soo and another 27 workers were cleared of charges (due to insufficient evidence) at the Southern Seoul District Prosecutor's Office. Meanwhile, Kim Jeong-min, the head of the Seoul Regional Chapter of the Korea Railroad Workers' Union indicted for charges of obstruction of business on 26 July 2006, was sentenced to ten months in prison with two years of probation in the first instance court on 26 September 2006 and to one year in prison with two years of probation in the second instance court on 20 September 2007. The Government submits the text of this court decision.

668. With regard to the new cases of workers arrested for obstruction of business, Chung Gap-deuk and two other workers were prosecuted for obstruction of business on 10 December 2007 and sentenced to two years in prison with three years of probation on 8 January 2008. The Government submits the text of the related court decision.

669. As for the strike by the Korea Railroad Workers' Union on 1 March 2006, of the 2,823 workers relieved of duties, 2,754 filed a request seeking remedy with the Regional Labour Relations Commission. The Commission ruled in favour of 1,498 but against 1,256. A total of 2,730 filed an appeal with the National Labour Relations Commission. Out of them, 2,540 won their case but 189 appeals were turned down because of the deadline. This case was concluded as the workers who had won the case were all reinstated.

670. Regarding disciplinary action against members of the Korean Air pilots' union in 2005, disciplinary measures, such as suspension, were taken against 26 union members according to the company's regulations. The case was closed as no suit was brought against the disciplinary measures. However, Choi Seong-jin, the only dismissed union member, filed a suit seeking to invalidate the dismissal decision which is now before the second instance court.

Minimum service requirements

671. The revised TULRAA stipulates that services whose stoppage or closure could acutely endanger the life, health, physical safety and daily lives of the public are minimum services. Based on this provision, the specific work that should be carried out in minimum services is prescribed in the Presidential Decree. As for minimum services defined by law, individual workplaces are required to sign an agreement on minimum services to determine the minimum level of services to be maintained or provided, the specific work to be carried out, the necessary number of workers, etc. If labour and management fail to reach an agreement on minimum services, the Labour Relations Commission can decide the matter at the request of either or both of the parties. Based on the agreement or decision, the trade union should notify the employer of the members who will carry out the specific work required for minimum services during industrial action, and the employer should assign the workers to maintain or provide minimum services. Since this provision entered into force on 1 January 2008 and up to 24 April 2008, a total of 23 workplaces signed an agreement on minimum services. Several examples are provided below.

- Seoul Metropolitan Rapid Transit Corporation: Decision by the Seoul Regional Labour Relations Commission: It was decided that during a strike, at least 79.8 per cent of the level of transportation services provided before the strike should be maintained from Monday to Saturday (100 per cent during commuting hours) and at least 50 per cent on Sunday. Of the total 6,845 workers, at least 1,801 (28.18 per cent) are needed to maintain the minimum level of services on weekdays and 1,714 (25.04 per cent) on weekends.

- Northern Jeolla City Gas Co. Ltd: Labour and management signed an agreement to maintain 100 per cent of the workforce involved in controlling pressure regulators, operating the control centre, and managing safety (checking pipes, managing and attending excavation work). At least eight (7.33 per cent) out of the total 109 workers are needed to maintain minimum services during a strike.

- Korea National Oil Corporation: Labour and management signed an agreement to maintain 100 per cent of the workforce involved in operating the offshore platform, 63.1 per cent of the workforce involved in controlling the on-land gas fields, 22.7 per cent of the workforce involved in operating the control centre and 68.9 per cent of the workforce engaged in operating field facilities. At least 119 (9.86 per cent) out of the total 1,206 workers are needed to maintain minimum services.

- Hospitals, including Hando General Hospital: Hospitals usually determined the proportion of workers needed to maintain minimum services given the specific work prescribed in the Enforcement Decree of the TULRAA and the characteristics of each

hospital. They signed an agreement to maintain an average of 29.96 per cent of the total workforce in each hospital during a strike.

Relevant court decisions

672. Kwon Young-gil was prosecuted for violating the TULRAA on 15 December 1995. He was sentenced to ten months' imprisonment with two years of probation in the first instance court on 31 January 2001 and to a 15 million won fine in the second instance court on 11 January 2006. His appeal filed with the Supreme Court is now pending before the Court. Having steadily engaged in political activities, he was elected to the National Assembly in April 2008.

673. Kim Sang-geol, Oh Myeong-nam, etc, were dismissed by due process for violating the Public Officials Act. Against the disciplinary measure, they filed an appeal seeking a remedy, but the court dismissed the appeal. They filed a case requesting the withdrawal of the dismissal, but the court judged the disciplinary action legitimate. The Korean Government, which guarantees public officials' basic labour rights by law, handled the case according to the current law and had it judicially decided. Therefore, there is no possibility of considering once again the reinstatement of these persons. The text of the court decision will be submitted later.

Migrant workers
(The Government provides information relating to Case No. 2620 and which has been taken up therein)

KGEU

674. Given their status, which is so unique that they are banned from illegal collective action, and the nature of their job of providing public services, it is very important for public officials to engage in legitimate and rational union activities. However, although the KGEU could conduct union activities legitimately if it wanted to, because the Act on the Establishment and Operation of Public Officials' Trade Unions entered into force on 28 January 2006, it refused to register itself and engaged in illegal, violent and political activities far from the duties of public officials.

675. In response, the Korean Government tried to prevent illegal activities while at the same time strictly dealing with those who violate the laws according to due process, thus encouraging legitimate and rational union activities among public officials. Its legal and policy responses have been focused on protecting the right to organize for a majority of public officials.

676. As a result of these efforts, by April 2008, 199.613 or 68 per cent of public officials eligible to join a trade union joined a trade union of their own choosing and have engaged in union activities. In the Republic of Korea, there are now a total of 99 public officials' trade unions, including the Korean Federation of Government Employees (KFGE, registered on 4 September 2006 with a membership of 58,184), the Korea Democracy Government Employees Union (KDGEU, registered on 10 July 2007 with a membership of 50,542) and the Korean Government Employees' Union (KGEU, registered on 17 October 2007 with a membership of 42,490) carrying out union activities within the boundaries of the law. In particular, since its registration on 17 October 2007, the KGEU has delegated bargaining authority to its local chapters which have conducted collective bargaining with over 70 local governments. With no intervention or restriction by the Government, they are actively engaging in union activities and some of them have already concluded collective agreements.

Death of Kim Tae-Hwan

677. The death of Kim Tae-Hwan was an unexpected tragic accident that happened while dozens of Federation of Korean Trade Unions (FKTU) members were demonstrating in Chungju on 14 June 2005, demanding an increase in transportation fees. The Government feels very regretful for the accident and has done its best to settle the case fairly and smoothly. During the demonstration, Choi Byeong-yoon, a truck driver, was driving his vehicle toward the main gate of the Sajo Ready-mix Concrete Co Company, but dozens of union members blocked the truck, making it temporarily stop. Although the driver's and front passenger's seats were surrounded by about ten union members, the driver moved the truck forward, not carefully looking at the front and both sides. As the truck moved, the victim was knocked down by the front bumper. This led to his death. The police and court thoroughly investigated the accident using every legitimate evidence, such as photos of the accident scene, videos, witnesses, etc. Choi Byeong-yoon was found to have had no special relation with the victim, and punished by ten-month imprisonment on charges of violating the "Act on Special Cases of the Settlement of Traffic Accidents". After the accident took place, the Government had an independent agency with relevant authority to thoroughly investigate the facts and determine where responsibilities lie, and after a long period of talks among related parties, including the trade union, Sajo Ready-Mix Concrete Co., the Ministry of Labour and surviving family members, presided over by the Chungju City Government, the case was concluded by reaching an agreement not just on the union's demands but also on compensation for surviving family members and funeral expenses, etc.

Death of Ha Joong Geun

678. The case is now under investigation at the Pohang Branch of the Daegu District Public Prosecutor's Office. The Committee will be informed of related developments, if any.

Construction workers' unions

679. The current status of the court cases involving the construction workers' unions is as follows. The text of the related court decisions will be submitted.

- Daejeon/Chungcheong Construction Workers' Union:
  - 18 October 2003: prosecuted for violating the Act on Punishment of Violence, etc.;
  - 16 February 2004 sentenced to one year in prison with two years of probation by the first-instance court;
  - 15 September 2004 sentenced to ten months in prison with two years of probation by the second-instance court;

    25 May 2006 the case concluded in the third-instance court (dismissal of appeal).
- Cheonan/Asan Construction Workers' Union:
  - 1 November 2003 prosecuted for violating the Act on Punishment of Violence, etc.;
  - 27 August 2004 sentenced to one year in prison with two years of probation by the first-instance court;

– 14 December 2006 sentenced to one-and-a-half years in prison with two years of probation by the second-instance court;

– 3 September 2007 the case concluded in the third-instance court (dismissal of appeal).

■ Western Gyeonggi Construction Workers' Union:

– 11 August 2004 prosecuted for violating the Act on Punishment of Violence, etc.;

– 21 December 2005 sentenced to one year in prison with two years of probation by the first-instance court;

– 16 January 2007 sentenced to one and a half years in prison with two years of probation by the second-instance court;

3 September 2007 the case concluded in the third-instance court (dismissal of appeal).

■ Officials of Daegu Construction Workers' Union:

– 25 July 2006 prosecuted for violating the Act on Punishment of Violence, etc.;

– 17 November 2006 sentenced to three years in prison, or found not guilty, by the first-instance court;

– 5 April 2007 sentenced to three years in prison with five years of probation, or found not guilty, by the second-instance court;

– 6 September 2007 the verdict rendered by the third-instance court ("not guilty" verdict reversed and remanded);

– 14 January 2008 sentenced to eight months in prison with two years of probation by the second-instance court;

– 16 January 2008 an appeal filed with the Supreme Court (pending before the third-instance court).

680. In addition to this data, the Government provided additional information in a communication dated 30 May 2007 on construction workers. According to the Government:

> ... the National Human Rights Commission found that the rally of 16 July 2006 leading to the death of Ha-Jung Keun involved large numbers of demonstrators who had their faces covered and some of them exerted violence against isolated police forces. The report also says that it was a violent demonstration in which the demonstrators started to use bamboo bars, wooden bars, iron pipes, etc, less than one to two minutes after the police arrived on scene, and inflicted injuries on many policemen. The demonstration left 13 protesters and 55 policemen injured;

681. Since the financial crisis of 1998, financial support has been provided for regional construction unions to cover the costs of operating their job placement centres. A support programme has been operated under the control of the Government since 23 June 2003. Since 2006, the Government has supported training programmes by the unions through the employment insurance fund. In 2007, it began to entrust job-placement services for construction workers to construction unions selected through open competition.

682. The Ministry of Labour has dealt with reported cases of unpaid wages according to the Labour Standards Act, and has tried to remedy any violation of this right through the labour inspectorate and its special law enforcement powers; from 1 January to 31 December 2006, regional and district labour offices of the Ministry of Labour received complaints concerning overdue wages worth 1,029.7 billion won (277,000 persons) in total, of which 361.4 billion won worth of cases (129,000 persons) were settled by instructing employers to pay the overdue amount. A total of 615.9 billion won worth of cases (136,000 persons) were judicially treated as employers failed to comply with the instruction. The remaining cases are in the process of settlement. In addition, the Government paid 160.8 billion won in overdue payments to workers (45,000 persons) who had been working in bankrupt companies and provided free legal assistance for workers to clear up overdue wages of 211 billion won (45,000 persons). From 1 January to 31 December 2006, the Government supported the settlement of overdue payments of 733.2 billion won in total (219,000 persons). Through cooperation among ministries and with local governments, the Government is making a loan for living costs to workers with wages in arrears, providing information and free legal assistance, etc.

683. Since October 2001, the Government had been providing financial support for small construction sites to install safety facilities and temporary safety equipment. However, the support was found to bring little benefit for various reasons and was terminated in 2003. Now it is limited only to the manufacturing industry. Meanwhile, in order to discuss the current issues of concern for industrial accident prevention in the construction industry, a tripartite consultation body for the construction industry was organized in July 2005 and has operated since then. And since 2005, accident prevention consulting and related technical support has been provided to prevent accidents at small construction sites. In the Republic of Korea, statistical data on industrial accidents started to be compiled in 1964. Although it is possible to apply for compensation for occupational diseases, some companies in the construction industry concealed such cases because they were afraid of being disadvantageously treated during bidding for a government contract due to higher accident rates. To address this problem, in 2004, the Construction Safety Division was integrated into the Industrial Safety Team. Since the financial crisis of 1998, parts of the eight regulations on industrial safety and health have been repealed or relaxed. The Regulation Reform Team had demanded institutional improvements and the Ministry of Labour eventually came up with a proposal for a labour–management consultation body with the authority to deliberate and decide safety and health issues through tripartite agreement; the consultation body can take on the roles of the Industrial Safety and Health Committee or the Association of Construction Employers. Currently the Government is pushing for related legal revision.

684. With regard to the reasons for the arrest of construction union officials and recent developments in the relevant trials, the Government indicates that construction union members were arrested or put on trial because they committed acts of violence, destruction or extortion beyond the boundaries of legitimate union activities. The examination of these cases by the courts has either been concluded or court rulings are pending. What the Government cited in its reports is based on investigations of facts, the recognition and prosecution of crimes by the police and public prosecutors or the rulings given by the courts. Any argument over whether specific facts leading to such prosecution or court decisions are true or not or whether judgments are fair or not should be made by the parties concerned based on objective evidence during investigation or trial.

685. In the case of the Southern Chungcheong regional construction workers union, according to investigation results released by the responsible regional prosecutor's office on 6 July 2006, its president and officials extorted a total of 42.50 million won in the name of full-time union activity fees from 22 construction companies by threatening to report the companies' violation of the obligation to take safety measures. They were recognized as

committing the crime of blackmail and false accusation and are now in the first-instance court. If there are any new developments including new court rulings, the Government will provide the information as it is so that the international society can make an objective and air judgment based on such information.

"Minimum Wage Committee"

686. The Minimum Wage Committee in the Republic of Korea discusses and decides the minimum wage rate for the following year between April and June every year. At around 1.20 p.m. on 28 June 2005, the day before the statutory deadline for closing discussions on the minimum wage, 25 union members, discontented with the discussion process, broke into the room where the Minimum Wage Committee was holding the meeting. They occupied the place and staged an overnight sit-in protest, interrupting the meeting. As a result, the Committee had to proceed with the meeting on 29 June, the last day of the discussion period. With some union members continuing their sit-in in the corridor in front of the meeting room and over 300 union members holding a rally outside of the building, the Committee inevitably had to call the police to protect its facilities in case of emergency. The police forces just stood guard in the vicinity of the meeting room, having no influence on the meeting. The Committee could not help requesting protection from the police with grave concern that unions might make its normal operation impossible, by occupying facilities by force, or intruding in its premises. In 2007, more than 1,300 KCTU members attempted to enter the Committee's office without permission, provoking a clash with police forces, and destroyed properties, such as the main and back gates of the building where the Committee is located. The Korean Government regrets all these incidents, and expresses the hope that the Committee will make an objective assessment of the situation and urge unions to take a non-violent and constructive attitude to allow free and voluntary negotiations to take place.

Ratification of Conventions

687. According to the report of the high-level tripartite mission (GB.271/9, paragraph 159) cited in the Recommendation, "The Committee notes with interest the willingness expressed by the members of the President-Elect's transition team to ratify ILO Conventions Nos 87 and 98 in the near future". This differs from what is reported, i.e. that "The Committee reminds the Government of its commitment to ratify Conventions Nos 87 and 98 made to the ILO high-level tripartite mission" which needs modification.

688. In addition, it should be recalled that the Committee's function "is to secure and promote the right of association of workers and employers. It does not level charges at, or condemn, governments. In fulfilling its task, the Committee takes the utmost care, through the procedures it has developed over many years, to avoid dealing with matters which do not fall within its specific competence" [***Digest***, op. cit., Annex I, para. 13]. The Government would also like to add that the Committee's 'task is limited to examining the allegations submitted to it' [***Digest***, Annex l, para. 16].

Conclusion

Requesting the closing of the case

689. The case has been lingering on for a long time, generating many additional complaints and recommendations since its submission in December 1995. The Korean Government has made its utmost efforts to give objective responses based on the facts. Many of the issues discussed have already been concluded, some have lost their meaning and in some cases, there is no new evidence or arguments. When a conflict has occurred, some trade unions,

rather than trying to settle it through internal dialogue, have brought their complaints to the international community in anticipation of outside support. This has resulted in the Government wasting its time in responding to issues already settled at home, and adding to the CFA's already heavy workload. In this respect, the Korean Government eagerly hopes that the Committee on Freedom of Association will positively consider concluding the case as soon as possible by submitting a definite report not an interim one. Any new complaint that may be raised in the future, would need to be seen as a separate case and reviewed in a brief but profound manner.

690. Nevertheless, in case there are special circumstances that make it difficult to close the case, the Committee on Freedom of Association should clarify those circumstances and suggest possible future directions in a specific way. If there are some issues, such as the introduction of trade union pluralism, which cannot be concluded, the Committee on Freedom of Association should request the Korean Government to provide information only on those issues while closing the other issues. This would be a reasonable way to break the current impasse so it is eagerly hoped that the Committee on Freedom of Association will seriously consider it.

691. In the Republic of Korea, union activities have developed, bringing positive impacts on society as a whole. However, unfortunately, some unions have undertaken violent and politically charged activities and union density has continued to fall after reaching its peak of 19.8 per cent in 1989 (12 per cent in 1997-2001, 11 per cent in 2002–03, and 10 per cent in 2004–06). Voices urging self-reflection have been growing among people who want to see rational and peaceful union activities. Accordingly, the new administration, in place since February 2008, will make every effort to firmly establish industrial relations faithfully following laws and principles and pursuing constructive social dialogue through diverse channels. With regard to trade union pluralism, the implementation of which has been postponed, the Government will do its best to implement it as soon as possible.

692. In conclusion, the ILO Committee on Freedom of Association, it is hoped, will have a better understanding of the real situation of industrial relations in the Republic of Korea, which are undergoing changes, and make an accurate judgment based on objective facts rather than trade unions' unilateral arguments, thereby providing its support and cooperation in developing cooperative and productive industrial relations in the Republic of Korea.

693. In a communication dated 25 February 2009, the Government adds certain comments with regard to the allegations made by the KCTU on multiple limitations on collective action introduced by the TULRAA. According to the Government, emergency adjustment has been invoked only four times since the introduction of this measure in 1963; emergency adjustment is a rare exception applicable only in cases of national crisis. As for replacement workers, this measure is allowed in public services as a result of agreement at the Tripartite Representatives Meeting of 11 September 2006 and only under certain conditions, including limitations on the proportion of replacement workers to 50 per cent of all strike workers, the prohibition of using dispatched workers for replacement work and the fact that workers on strike cannot be dismissed so that their right to return to work after the end of industrial action is recognized. As for the new expanded list of public services, the Government justifies the addition of air transport because it is hard to find other means of transport for domestic emergency travel and international travel, as there are just two airlines in the Republic of Korea with a nationwide flight network. Thus, under the TULRAA, public services are limited to railroad, metropolitan subway, air transport, water, electricity and gas supply, oil refinery, hospitals, blood supply, telecommunications (including postal services) and the Bank of Korea. Within these areas, those services which are highly irreplaceable and whose suspension could acutely endanger the lives, health, physical safety and everyday lives of the public, are designated as minimum services that

need to be maintained during strikes. These services do not have to be maintained at a 100 per cent level and workers can engage in industrial action so long as they maintain such minimum services. Although the scope of minimum services is stipulated in the Enforcement Decree to the TULRAA, labour–management autonomy is respected by allowing the employer and workers to determine the level of operation to be maintained, work to be performed, etc. Since this system came into effect on 1 January 2008 until 31 December 2008, 113 workplaces had autonomously reached such an agreement and just 25 workplaces had relied on the decision of the Labour Relations Commission. The decision of the Seoul Regional Labour Relations Commission on the level at which the Seoul Metropolitan Rapid Transit Corporation should maintain operations indicated that at least 38.6 per cent of total union members on weekdays and 37.1 per cent on weekends should provide minimum services. Thus, 61.4 per cent of total union members on weekdays and 62.9 per cent on weekends could stage industrial action. The Busan Regional Labour Relations Commission's decision on the Donga University Hospital was not enforced as the management withdrew its request on 14 May 2008. The Government finally indicates that holding an individual union member responsible both under civil and criminal law for a failure to carry out minimum services is consistent with the principles of fairness, liability for damages and equal application of the law.

D. The Committee's conclusions

694. *The Committee recalls that it has been examining this case, which concerns both legislative and factual issues, since 1996. The Committee observes from its previous conclusions and the information before it that although significant progress has been achieved in terms of legislation, there is still room for progress towards the establishment of a stable and constructive industrial relations system in the country.*

Legislative issues

695. *The Committee recalls that the outstanding legislative issues concern, on the one hand, the Act on the Establishment and Operation of Public Officials' Trade Unions, which concerns the public sector only, and, on the other hand, the Trade Union and Labour Relations Amendment Act (TULRAA) and other legislation which is generally applicable.*

Public officials

696. *With regard to the Act on the Establishment and Operation of Public Officials' Trade Unions, the Committee notes that the issues previously raised concern the need to: (a) recognize the right to organize for all public servants at all grades without exception and regardless of their tasks or functions, including firefighters, prison guards, public service workers in education-related offices, local public service employees and labour inspectors; (b) limit any restrictions of the right to strike to public servants exercising authority in the name of the State and essential services in the strict sense of the term; (c) leave to public officials' trade unions and public employers to determine on their own whether trade union activities by full-time union officials should be treated as unpaid leave; (d) take into account the following in the framework of the application of the Act on the Establishment and Operation of Public Officials' Trade Unions: (i) that in the case of negotiations with trade unions of public servants who are not engaged in the administration of the State, the autonomy of the bargaining parties is fully guaranteed and the reservation of budgetary powers to the legislative authority does not have the effect of preventing compliance with collective agreements; more generally, as regards negotiations on matters for which budgetary restrictions pertain, to ensure that a significant role is given to collective bargaining and that agreements are negotiated and implemented in good faith; (ii) that the consequences of policy and management decisions*

as they relate to the conditions of employment of public employees are not excluded from negotiations with public employees' trade unions; and (iii) that public officials' trade unions have the possibility to express their views publicly on the wider economic and social policy questions which have a direct impact on their members' interests, noting though that strikes of a purely political nature do not fall within the protection of Conventions Nos 87 and 98.

697. *With regard to the right to organize of public officials, the Committee notes that according to the Government the exclusion from the right to organize of public officials at grade V or higher is justified by the fact that most of them hold a managerial position and their exclusion from the right to organize is allowed under Convention No. 151; certain public officials with hierarchical authority below grade 5 (grade 5 to 10) can also be excluded from the right to organize to ensure the independence of trade unions.*

698. *The Committee is bound to recall once again that public servants, like all other workers, without distinction whatsoever, have the right to establish and join organizations of their own choosing, without previous authorization, for the promotion and defence of their occupational interests [**Digest**, fifth edition, 2006, para. 219]. All public employees (with the sole possible exception of the armed forces and the police, by virtue of Article 9 of Convention No. 87), regardless of the grade, should, like workers in the private sector, be able to establish organizations of their own choosing to further and defend the interests of their members [**Digest**, op. cit., para. 220]. The exclusion in Convention No. 151 cannot be seen as restricting in any way, the right to organize, as guaranteed under Convention No. 87. Nevertheless, as concerns persons exercising senior managerial or policy-making responsibilities, the Committee is of the opinion that while these public servants may be barred from joining trade unions which represent other public servants, such restrictions should be strictly limited to this category of workers and they should, nevertheless, be entitled to establish their own organizations to defend their interests as workers. The Committee recalls that it is not necessarily incompatible with the requirements of Article 2 of Convention No. 87 to deny managerial or supervisory employees the right to belong to the same trade unions as other workers, on condition that two requirement are met: first, that such workers have the right to establish their own associations to defend their interests and, second, that the categories of such staff are not defined so broadly as to weaken the organizations of other workers in the enterprise or branch of activity by depriving them of a substantial proportion of their present or potential membership [**Digest**, op. cit., paras 253 and 247]. The Committee further recalls that the functions exercised by firefighters do not justify their exclusion from the right to organize and they, as well as prison staff should enjoy this right. Finally, the denial of the right to organize to workers in the labour inspectorate constitutes a violation of Article 2 of Convention No. 87 [**Digest**, op. cit., paras 231, 232 and 234]. The Committee therefore once again requests the Government to review the exclusions from the right to organize in the Act on the Establishment and Operation of Public Officials' Trade Unions as well as its Enforcement Decree so as to ensure that public servants at all grades, regardless of their tasks or functions, including firefighters, prison guards, those working in education-related offices, local public service employees and labour inspectors, have the right to form their own associations so as to defend their interests.*

699. *With regard to the right to strike, the Committee notes that according to the Government, all public officials exercise authority in the name of the State and therefore their right to collective action is inevitably restricted. The Committee recalls that its previous comments related to section 18 of the Act on the Establishment and Operation of Public Officials' Trade Unions which establishes a blanket prohibition of collective action by public officials in conjunction with penal sanctions and fines, even with regard to certain public sector workers who do not exercise authority in the name of the State including for instance, public officials in state public schools, such as drivers or sanitation supervisors,*

those working in education-related offices and employees of local authorities [346th Report, paras 750 and 772]. The Committee therefore once again requests the Government to ensure that the restrictions on the right to strike in the Act on the Establishment and Operation of Public Officials' Trade Unions may only be applicable in respect of public servants exercising authority in the name of the State and public servants who are involved in essential services in the strict sense of the term.

700. *Furthermore, with regard to the right to strike, the Committee takes note of the comments made by the KCTU with regard to minimum services to be ensured in case of "public services" under section 42 of the TULRAA as well as the Government's reply which will be examined below.*

701. *With regard to whether trade union activities by full-time union officials should be treated as unpaid leave, the Committee notes that according to the Government, the payment of wages to full-time union officials should rest with the union concerned so as to ensure the financial independence of trade unions. The Committee once again emphasizes that this issue should be up to the parties to determine and once again requests the Government to consider further measures aimed at allowing negotiation on the issue of whether trade union activity by full-time union officials should be treated as unpaid leave.*

702. *With regard to the issue of collective bargaining with public officials the Committee notes from the Government's report that the Act on the Establishment and Operation of Public Officials' Trade Unions not only recognized public officials' right to conclude collective agreements but also imposes an obligation on the Government's bargaining representative to make efforts to implement the collective agreements in good faith. It notes the Government's indication that it has engaged in good faith bargaining with public officials' trade unions in a total of 118 workplaces and 69 workplace collective agreements had been concluded as of April 2008. Central-level negotiations were concluded on 14 December 2007 with regard to the terms and conditions affecting all public officials, such as remuneration, retirement age, etc. The Government adds that it has implemented the agreements in good faith.*

703. *While taking due note of this information, the Committee notes that it does not address the issue of the legal provisions applicable to those public servants who are not engaged in the administration of the State. The Committee recalls that under section 10(1) of the Act on the Establishment and Operation of Public Officials' Trade Unions, provisions on matters stipulated by laws, by-laws or the budget or stipulated by authority delegated by laws or by-laws, shall not have binding effect when included in collective agreements, and once again emphasizes that those public employees and officials who are not acting in the capacity of agents of the state administration (for example, those working in public undertakings or autonomous public institutions) should be able to engage in free and voluntary negotiations with their employers; in that case, the bargaining autonomy of the parties should prevail and not be conditional upon the provisions of laws, by-laws or the budget. Most importantly, the reservation of budgetary powers to the legislative authority should not have the effect of preventing compliance with collective agreements entered into by, or on behalf of, that authority; the exercise of financial powers by the public authorities in a manner that prevents or limits compliance with collective agreements already entered into by public bodies is not consistent with the principle of free collective bargaining [**Digest**, op. cit., paras 1033 and 1034]. The Committee once again requests the Government to ensure that in the case of negotiations with trade unions of public servants who are not engaged in the administration of the State, the autonomy of the bargaining parties is fully guaranteed and the reservation of budgetary powers to the legislative authority does not have the effect of preventing compliance with collective agreements.*

704. *With regard to the exclusion from the scope of collective bargaining, by virtue of section 8, paragraph 1 of the Act on the Establishment and Operation of Public Officials' Trade Unions of "matters concerning policy decisions" of the State or local government and "matters concerning the management and operation of the [public] organization, such as exercising the right to appointment, but not directly related to working conditions", the Committee notes that according to the Government, matters concerning policy decisions or personnel appointments are excluded from those subject to collective bargaining because they constitute the Government's managerial prerogatives. The Committee once again recalls that, in a previous case on allegations concerning the refusal to bargain collectively on certain matters in the public sector, the Committee had recalled the view of the Fact-Finding and Conciliation Commission on Freedom of Association that "there are certain matters which clearly appertain primarily or essentially to the management and operation of government business; these can reasonably be regarded as outside the scope of negotiation". It is equally clear that certain other matters are primarily or essentially questions relating to conditions of employment and that such matters should not be regarded as falling outside the scope of collective bargaining conducted in an atmosphere of mutual good faith and trust [**Digest**, op. cit., para. 920]. In the absence of a clear definition of what constitutes "policy decisions of the State" and the "management and operation of government business", and in the light of the blanket prohibition of negotiations over these matters introduced in the Act on the Establishment and Operation of Public Officials' Trade Unions, the Committee once again requests the Government to ensure that, in so far as concerns the application of the Act to public servants who cannot be properly considered as engaged in the administration of the State, the consequences of policy and management decisions as they relate to the conditions of employment of public employees, are not excluded from negotiations with public employees' trade unions.*

705. *With regard to section 4 of the Act on the Establishment and Operation of Public Officials' Trade Unions which prohibits political activities by public officials' trade unions, the Committee notes that the Government does not provide any information. While duly noting from its previous examination of this provision that the status of public servants is such that certain purely political activity can be considered contrary to the code of conduct that is expected of these servants and that trade union organizations should not engage in political activities in an abusive manner and go beyond their true functions by promoting essentially political interests – the Committee once again requests the Government to ensure that public officials' trade unions have the possibility to express their views publicly on the wider economic and social policy questions which have a direct impact on their members' interests, noting though that strikes of a purely political nature do not fall within the protection of Conventions Nos 87 and 98.*

706. *The Committee requests to be kept informed in respect of all the above.*

Generally applicable legislation

707. *With regard to the TULRAA and other generally applicable legislation, the Committee recalls that the pending issues concern the need to: (i) legalize trade union pluralism at the enterprise level; (ii) resolve the issue of payment of wages to full-time union officers in a manner consistent with freedom of association principles; (iii) amend the emergency arbitration provisions of the TULRAA (sections 76–80) so that it can be imposed only be an independent to body which has the confidence of all parties concerned and only in cases in which strikes can be restricted in conformity with freedom of association principles; (iv) repeal the provisions prohibiting dismissed and unemployed workers from keeping their union membership and making non-union members ineligible to stand for trade union office (sections 2(4)(d) and 23(1) of the TULRAA) and (v) amend section 314 of the Criminal Code concerning obstruction of business to bring it into line with freedom of association principles.*

708. *The Committee had noted with interest during the previous examination of this case that draft amendments to the TULRAA would abolish compulsory arbitration for disputes in essential public services and introduce a requirement to maintain minimum services and use of replacement workers (not exceeding 50 per cent of striking workers) in the event of a strike in essential public services. It had also noted allegations according to which the new "public services" category would include what was formerly called "essential public services" (railroad services, inter-city railways, water, electricity, gas supply, oil refinery and supply services, hospital services, telecommunication services and the Bank of Korea) as well as: supply of heat and steam, harbour loading and unloading, railway, freight transport, airborne freight transport and social insurance providers; a minimum services obligation would be added to the expanded list of "public services" in case where the "normal life" of the public was acutely endangered and compulsory arbitration machinery would be introduced to resolve the crucial issue of the scope of the minimum service.*

709. *The Committee notes from the KCTU's new allegations that the amendment to the TULRAA was passed into law on 30 December 2006 so as to introduce several levels of limitations to the right to strike which in the end all but wipe out the potential effect of abolishing compulsory arbitration. These limitations are the possibility of emergency arbitration, minimum services and replacement workers. According to the KCTU, instead of guaranteeing negotiations over minimum services, the Government enumerates these services in the enforcement decree of the TULRAA in a way which negates negotiations over the issue. In a context where any agreement between workers and employers is nearly impossible, the Labour Relations Commission has the power to reach a decision on the scope of minimum services through compulsory arbitration. The KCTU alleges that already employers (e.g. the Seoul Metro, Korea Railways, Korea Power Plants and others) have preferred to avoid negotiations on determining the minimum service and apply to the Labour Relations Commission which has issued decisions establishing an excessively high minimum service, thus rendering any strike ineffective. For example, in the case of the Seoul Metropolitan Rapid Transit Corporation, the Labour Relations Commission determined on 31 January 2008 the minimum service as 100 per cent of operation during rush hour, 79.8 per cent during Saturdays and weekdays and 50 per cent on Sundays; also, jobs that must be maintained include almost all jobs except cleaning and ticketing. The KCTU further objects to the possibility of using replacement labour in these circumstances and specifies that the Labour Relations Commission has decided that 50 per cent is the minimum service for public services when replacement labour can be introduced and 100 per cent when such workers cannot be introduced (Busan Labour Relations Commission, 14 May 2008). As a result, according to the KCTU, trade unions are faced with a dilemma of either continuing an ineffective lawful strike or resorting to an illegal strike by refusing to provide the required minimum service. In other words, the new law forces upon trade unions a decision between giving up basic labour rights or proceeding with an illegal strike. Finally, the law introduces individual criminal responsibility and civil liability of the workers who refuse to provide the minimum service.*

710. *The Committee takes note of the Government's reply according to which, since 1 January 2008 when the amendment entered into force until 31 December 2008, a total of 113 workplaces had signed an agreement on minimum services and only 25 relied on the Labour Relations Commission's decisions. The decision of the Seoul Regional Labour Relations Commission on the level at which the Seoul Metropolitan Rapid Transport Corporation should maintain operations indicated that at least 38.6 per cent of total union members on weekdays and 37.1 per cent on weekends should provide minimum services. Thus, 61.4 per cent of total union members on weekdays and 62.9 per cent on weekends could stage industrial action.*

711. *The Committee recalls in the first place, that the transportation of passengers and commercial goods is a public service of primary importance where the requirement of a*

*minimum service in the event of a strike can be justified. Similarly, the Mint, banking services and the petroleum sector are services where a minimum negotiated service could be maintained in the event of a strike so as to ensure that the basic needs of the users of these services are satisfied [**Digest**, op. cit., paras 621 and 624]. The Committee also notes, however, that a minimum service should be confined to operations that are strictly necessary to avoid endangering the life or normal living conditions of the whole or part of the population. In this regard, the Committee notes that the parties communicate contradictory information as to the decisions of the Labour Relations Commission on the minimum level of service. With regard to the possibility of having recourse to replacement labour, the Committee recalls in general that, if a strike is legal, recourse to the use of labour drawn from outside the undertaking to replace the strikers for an indeterminate period entails a risk of derogation from the right to strike, which may affect the free exercise of trade union rights [**Digest**, op. cit., para. 633]. The Committee therefore requests the Government to ensure that, in issuing decisions determining the minimum service, the Labour Relations Commission takes due account of the principle according to which a minimum service should be confined to operations that are strictly necessary to avoid endangering the life or normal living conditions of the whole or part of the population and to continue to keep it informed of the specific instances in which minimum service requirements have been introduced, the level of minimum service provided and the procedure through which such minimum service was determined (negotiations or arbitration).*

712. *With regard to the possibility of imposing "emergency arbitration", with the possibility of hiring replacement labour, if a dispute "relates to" any public services, or if the dispute is large in scale, has a "special" character such that the Labour Minister thinks the dispute is "likely" to make the economy "worse" or disrupt "normal life" (sections 76–80, TULRAA), the Committee notes that according to the Government, such arbitration is in conformity with freedom of association principles according to which "what is meant by essential services in the strict sense of the term depends to a large extent on the particular circumstances prevailing in a country" [**Digest**, op. cit., para. 582]. Emergency arbitration is invoked very rarely, as an exception rather than the rule in the Republic of Korea, and was applied only in 1969, 1993 and 2005. The Government states that it will continue to apply emergency arbitration carefully, after weighing the risks to people's safety, so as to respect freedom of association principles; thus, the Government has no plan to revise the current system.*

713. *The Committee once again recalls 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 [**Digest**, op. cit., para. 568]. The Committee once again emphasizes that compulsory arbitration to end a collective labour dispute and a strike is 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, i.e. in the case of disputes in the public service involving public servants exercising authority in the name of the State or in essential services in the strict sense of the term, namely those services whose interruption would endanger the life, personal safety or health of the whole or part of the population [**Digest**, op. cit., para. 564]. Furthermore, responsibility for suspending a strike on the grounds of national security or public health should not lie with the Government, but with an independent body which has the confidence of all parties concerned [**Digest**, op. cit., para. 571]. The Committee therefore once again requests the Government to take all necessary measures to amend the emergency arbitration provisions in the TULRAA (sections 76–80) so as to ensure that such a measure can only be imposed by an independent body which has the confidence of all parties concerned and only in cases in which strikes can be restricted in conformity with freedom of association principles.*

714. *With regard to the issue of obstruction of business provisions in section 314 of the Penal Code, which as previously alleged by the complainants, have served systematically as a means to victimize trade unionists for exercising their right to strike, through prison sentences and heavy fines, the Committee notes with regret that once again, the Government's reply does not indicate any steps taken to review section 314 of the Penal Code so as to bring it into conformity with freedom of association principles, despite requests that this Committee has been making to this effect since 2000; on the contrary, the Government indicates that this provision is not intended to regulate industrial action itself, but to punish illegal action in case it causes damage by interfering with an employer's economic activity.*

715. *The Committee emphasizes that no one should be deprived of their freedom of be subject to penal sanctions for the mere fact of organizing or participating in a peaceful strike [**Digest**, op. cit., para. 672]. The Committee has found in another case concerning limitations on strikes based on interference with trade or commerce, 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 [**Digest**, op. cit., para. 592]. The same applies in this case where the law imposes criminal punishment and heavy fines for strikes on the ground that they limit economic activities.*

716. *Nevertheless, noting from the Government's reply that many strikes in the Republic of Korea involve illegal and violent means such as blocking access to the workplace, forceful occupation, destruction of facilities and physical abuse of policemen and managers, the Committee notes that penal sanctions should only be imposed if, in the framework of a strike, violence against persons and property or other serious violations of the ordinary criminal law are committed, and this, on the basis of the laws and regulations punishing such acts. In particular, the Committee recalls that the exercise of the right to strike should respect the freedom of work of non-strikers, as established by the legislation, as well as the right of the management to enter the premises of the enterprise. Taking part in picketing and firmly but peacefully inciting other workers to keep away from their workplace cannot be considered unlawful. The case is different, however, when picketing is accompanied by violence or coercion of non-strikers in an attempt to interfere with their freedom to work; such acts constitute criminal offences in many countries [**Digest**, op. cit., paras 651 and 652].*

717. *In light of the above, the Committee once again requests the Government to take measures so as to bring section 314 of the Penal Code (obstruction of business) fully in line with freedom of association principles.*

718. *The Committee notes with regard to steps to introduce trade union pluralism at the enterprise level, which has been postponed, for the second time, until 31 December 2009, that the Government will actively push for legislation concerning measures to establish a single bargaining channel so as not to postpone the enforcement date of the related provisions any further. The Tripartite Commission organized a group of experts from labour, management the Government and public interest groups, in order to share the results of discussions and research conducted so far (October 2007–March 2008). The Committee once again emphasizes that the free choice of workers to establish and join organizations is so fundamental to freedom of association as a whole that it cannot be compromised by delays [**Digest**, op. cit., para. 312]. The Committee once again requests the Government to take rapid steps to continue and undertake full consultations with all social partners with a view to the legalization of trade union pluralism at the enterprise*

level so as to ensure that the right of workers to establish and join the organization of their own choosing is recognized at all levels.

719. *With regard to the Committee's request for the Government to lift the prohibition of wage payment to full time union officials which was introduced in 1997 but has not yet entered into force (its implementation has been postponed twice and linked to the issue of recognition of trade union pluralism) the Committee notes that according to the Government, the prohibition of such payments will safeguard the independence of the trade union movement and rationalize the relationship between employers and trade unions, as it is contradictory to operate in opposition to employers and yet receive payments from them. The Committee recalls from the previous examination of this case that the question of wage payment to full-time union officers should not be subject to legislative interference and should be left to free and voluntary negotiations between the parties. It therefore requests the Government to expedite the resolution of this matter, in accordance with freedom of association principles so as to enable workers and employers to conduct free and voluntary negotiations in this regard.*

720. *With regard to the issue of allowing the unemployed to freely join a trade union and engage in its activity, the Committee notes from the Government's reply that even though the tripartite representatives decided in 2006 to exclude this issue from the legislative reform, in recent years, trade unions have been organized above the enterprise level, e.g. at the industry, sector or regional levels, and unemployed or dismissed workers were able to join some of them and engage in their activities. The Government adds that given all these elements, at present it has no specific plan to make institutional improvements in the near future. While noting this development with interest, the Committee once again notes that a provision depriving workers of the right to union membership is incompatible with the principles of freedom of association since it deprives the persons concerned of joining the organization of their choice. Such a provision entails a risk of acts of anti-union discrimination being carried out to the extent that the dismissal of trade union activists would prevent them from continuing their trade union activities within their organization [**Digest**, op. cit., para. 268]. It therefore once again requests the Government to repeal the provisions prohibiting dismissed and unemployed workers from keeping their union membership and making non-union members ineligible to stand for trade union office (sections 2(4)(d) and 23(1) of the TULRAA).*

721. *The Committee urges the Government, in the interests of establishing a constructive industrial relations climate in the country, to continue all efforts to find solutions to the remaining legislative matters noted above, in full consultation with all the social partners concerned, including those not presently represented on the Tripartite Commission. The Committee requests to be kept informed in respect of all the above.*

Factual issues

722. *The Committee recalls that the pending factual issues in this case concern: (i) the arrest and detention of Mr Kwon Young-kil, former president of the KCTU; (ii) the dismissal of leaders and members of the KAGEWC; (iii) the arrest and conviction of the KGEU President Kim Young-Gil and General Secretary Ahn Byeon-Soon; (iv) violent police intervention in KCTU and KGEU rallies; (v) interference by MOGAHA in the internal affairs of the KGEU through the initiation of a "New Wind Campaign" at the end of 2004; (vi) the criminal prosecution and imprisonment of officials of the Korean Federation of Construction Industry Trade Unions (KFCITU) and restrictions over collective agreements concerning subcontracted workers in the construction sector; (vii) the death of two trade unionists; (viii) the forced closure of 125 out of 251 KGEU offices nationwide and violent clashes between trade unionists and the police; (ix) and harassment of union representatives during minimum wage negotiations.*

723. *With regard to the sentencing of Kwon Young-kil, former president of the KCTU, to a fine of 15 million won on 11 January 2006, the Committee notes from the Government's report that an appeal is pending before the Supreme Court and that having steadily engaged in political activities, Kwon Young-kil was elected to the National Assembly in 2008. The Committee requests the Government to keep it informed of the progress of the appeal proceedings concerning Kwon Young-kil.*

724. *As regards the dismissals of eight public servants connected to the precursor of the KGEU, KAGEWC (the dismissals of Kim Sang-kul, Oh Myeong-nam, Koh Kwang-sik and Min Jum-ki were final, those of Kang Dong-jin and Kim Jong-yun were pending examination while Han Seok-woo, Kim Young-kil did not appear to have lodged an appeal) for having committed illegal activities (attempt to establish a trade union, holding of illegal outdoor assemblies, break-in at the offices of MOGAHA and consequent damage, illegal decision to go on a general strike and taking of annual leave and absences, without permission, so as to wage that strike) the Committee notes that, according to the Government, their cases were handled in accordance with the law in force and there is no possibility of considering their reinstatement. The Committee once again expresses its deep regret at the difficulties faced by these public servants, which appear to have been due to the absence of legislation ensuring their basic rights of freedom of association, in particular the right to form and join organizations of one's own choosing, respect for which should now be guaranteed by the entry into force of the Act on the Establishment and Operation of Public Officials' Trade Unions. The Committee also deeply regrets that the Government has provided copies of the relevant decisions only for two of these workers (Kim Sang-kul and Koh Kwang-sik), despite previous requests to this effect. The Committee therefore once again requests the Government to reconsider the dismissals of Kim Sang-kul, Oh Myeong-nam, Min Jum-ki and Koh Kwang-sik Han Seok-woo, Kim Young-kil, Kang Dong-jin and Kim Jong-yun in the light of the adoption of the new Act and to keep it informed of any developments in this respect.*

725. *The Committee recalls its previous recommendations concerning numerous arrests and detentions under obstruction of business charges to which the Government had not provided a reply. According to these allegations, pursuant to a strike staged in March 2006, which was stopped through compulsory arbitration, at least 401 members of the KRWU were arrested by riot police. Although the strike was peaceful, it was considered by the police to constitute in and of itself an "obstruction of business using threat of force". Moreover, 29 union leaders were arrested and detained on 6 April 2006 on obstruction of business charges for the above incident, including KRWU president Kim Young-hoon who remained in custody until 22 June 2006; later on, Lee Chul Yee, chairperson of irregular workers of the KRWU and Kim Jeong-min, Seoul provincial president, were arrested. The latter remained in jail at the time of the complainant's communication (1 September 2006). Furthermore, the employer KORAIL was preparing to lodge charges of "obstruction of business" and infraction of the TULRAA against 198 union officers, claiming damages of about US$13,500,000 (the union had been recently forced to pay US$2,440,000 for a strike staged in 2003). Furthermore, 26 officers of the KALFCU were prosecuted on obstruction of business charges by their employer, Korean Airlines, after the Government imposed emergency arbitration to end a strike by the union. According to the allegations, obstruction of business is systematically resorted to in an effort to victimize and intimidate trade unionists who decide to go on strike.*

726. *The Committee notes that according to the Government, Kim Jeong-min, President of the Seoul Regional Chapter of the KRWU was sentenced to ten months' imprisonment with two years' probation in the second instance court on 20 September 2006. The charges against 26 KALFCU officers were dropped due to insufficient evidence. With regard to new cases of workers arrested for obstruction of business, the Government indicates that Chung Gap-deuk and two other workers were prosecuted for obstruction of business on*

10 December 2007 and sentenced to two years' imprisonment with three years' probation on 8 January 2008.

727. *The Committee regrets to note that the Government fails to provide information on the specific grounds for the criminal prosecution of 198 KRWU officers and to attach relevant court decisions as previously requested. The Committee observes that although the large majority of KRWU members who were dismissed for their participation in the strike of March 2006 were reinstated following court rulings to this effect, Kim Jeong-min, President of the Seoul Regional Chapter of the KRWU, was convicted for obstruction of business and sentenced to ten months imprisonment with two years probation in the second instance court on 20 September 2007. The Committee notes however from that court decision, which was attached to the Government's report, that the court found the strike action in question to be relatively peaceful and that the parties subsequently reached an agreement. It also notes with regard to the new case of conviction of Chung Gap-deuk, President of a metal workers' union, and two other workers to two years imprisonment with three years' probation for obstruction of business on 8 January 2008, that according to the court decision, which was attached in the Government's report, no violence had been involved in their activities.*

728. *The Committee finally notes with regret that in reply to the allegations concerning the systematic resort to obstruction of business charges to intimidate trade unionists, the Government indicates that collective action falling outside the legal confines, exclusively consisting of acts seriously violating an employer's freedom to operate a business, is carefully assessed and becomes subject to obstruction of business charges. The Committee notes that this statement constitutes a departure from the Government's previous assurances that it is making efforts to minimize criminal punishment for obstruction of business by refraining from making arrests even in the case of an illegal strike if the strike does not entail any violence. It recalls that the authorities should not resort to arrests and imprisonment in connection with the organization of or participation in a peaceful strike; such measures entail serious risks of abuse and are a grave threat to freedom of association [**Digest**, op. cit., para. 671]. The Committee recalls from the previous examination of this case its statement that the criminalization of industrial relations is in no way conducive to harmonious and peaceful industrial relations [346th Report, para.774]. The Committee further recalls that, in previous examinations of this case, it had noted with interest the Government's previous general indication that it would establish a practice of investigation without detention for workers who violated current labour laws, unless they committed an act of violence or destruction – a statement considered to be of paramount importance, particularly in a context where certain basic trade union rights have yet to be recognized for certain categories of workers and where the notion of a legal strike has been seen as restricted to a context of voluntary bargaining between labour and management uniquely for maintaining and improving working conditions [see 331st Report, para. 348; 335th Report, para. 832].*

729. *In the light of the above, the Committee must once again express its deep concern that section 314 of the Penal Code concerning obstruction of business, as drafted and applied over the years, has given rise to the punishment of a variety of acts relating to collective action, even without any implication of violence, with significant prison terms and fines. The Committee once again urges the Government to consider all possible measures, in consultation with the social partners concerned, so as to revert to a general practice of investigation without detention of workers and of refraining from making arrests, even in the case of an illegal strike, if the latter does not entail any violence. The Committee requests to be kept informed in this regard, including by providing copies of court judgements on any new cases of workers arrested for obstruction of business under the terms of the present section 314 of the Penal Code.*

730. *The Committee recalls that during the previous examination of this case it had noted allegations of numerous suspensions, transfers and disciplinary measures against workers staging strikes which had been interrupted by compulsory or emergency arbitration (2,680 KRWU members suspended by the Korean Railroad Corporation and undergoing disciplinary procedures causing a climate of intimidation prejudicial to trade union activity; KALFCU members transferred to standby by Korean Airlines causing harm to this young union). The Committee notes that according to the Government, of the 2,823 workers relieved of duties following a strike by the KRWU on 1 March 2006, 2,754 filed a request seeking remedy with the Regional Labour Relations Commission which ruled in favour of 1,498 but against 1,256. A total of 2,730 filed an appeal with the National Labour Relations Commission. Out of them 2,540 won their case but 189 were turned down because of the deadline. The workers who won the case were all reinstated. Regarding disciplinary measures such as suspension, against KALFCU members in 2005, these were taken against 26 union members according to the company's regulations. The case was closed as no suit was brought against these measures. However, Choi Seong-jin, the only dismissed union member, filed a suit seeking to invalidate the dismissal which is now before the court of appeal. The Committee requests the Government to keep it informed of the outcome of the appeal filed by Choi Seong-jin against his dismissal for having participated in a strike staged by KALFCU in 2005.*

731. *The Committee recalls that its previous recommendations concerned widespread acts of interference with the activities of the KGEU based on directives issued by the MOGAHA. The Committee had requested the Government to immediately cease all acts of interference against the KGEU, in particular the forced closure of its offices nationwide, the discontinuance of the check-off facility, the disallowance of collective bargaining, the pressure on KGEU members to resign from the union as well as administrative and financial sanctions against local governments which failed to comply with the Government's directives. It further called upon the Government to abandon the MOGAHA directives and to take all possible measures with a view to achieving conciliation between the Government (in particular MOGAHA) and the KGEU so that the latter might continue to exist and ultimately to register within the framework of the legislation which should be in line with freedom of association principles.*

732. *The Committee notes from the Government's report that by April 2008, since the enforcement of the Act on the Establishment and Functioning of Public Officials carried out on the basis of the MOGAHA directives, 199,613 or 68 per cent of public officials eligible to join a trade union joined a trade union of their own choosing and have engaged in trade union activities. There are now 99 public officials' trade unions, including the Korean Federation of Government Employees (KFGE, registered on 4 September 2006 with a membership of 58,184), the Korea Democracy Government Employee Union (KDGEU registered on 10 July 2007 with a membership of 50,542) and the Korean Government Employees Union (KGEU registered on 17 October 2007 with a membership of 42,490), which are registered legitimately and are carrying out union activities within the legal boundaries. In particular, since its registration on 17 October 2007, the KGEU has delegated bargaining authority to its local chapters across the nation. These local chapters have conducted collective bargaining with over 70 local governments. With no intervention or restriction by the Government, they are actively engaging in union activities and some of them have already concluded collective agreements.*

733. *While noting with interest that three trade unions of public servants had been registered until April 2008, including the KGEU, the Committee regrets the manner in which the KGEU's previous refusal to register under the Act on the Establishment and Functioning of Public Servants' Trade Unions so as to avoid expelling members who did not qualify for trade union membership under the Act has been handled. The Committee deeply regrets in*

particular the extensive acts of interference and the forceful closing down of 125 KGEU offices which were sealed off, in some cases even welded with iron plates or bars.

734. *With regard to the Committee's previous request for information on the imprisonment of the president of the Migrants' Trade Union (MTU), Anwar Hossain, the Committee notes that the Government provides information which is also furnished in the framework of Case No. 2620 which focuses on migrant workers. The Committee will further examine this information in that framework.*

735. *With regard to the Committee's previous request for an independent investigation into the death of Kim Tae Hwan, president of the FKTU Chungju regional chapter, who was run over by a cement truck on 14 June 2005 while on the picket line in front of the Sajo Remicon cement factory, the Committee notes that although the Government expresses its regret at the accident, it makes a general reference to an investigation by an independent government agency which was concluded through an agreement on compensation. Recalling that the death of Kim Tae Hwan took place in the context of an industrial dispute, the Committee requests the Government to provide a copy of the relevant investigation report.*

736. *With regard to the request for information on the outcome of the investigation into the death of Ha Jeung Koon, member of the Pohang local union of the KFCITU in August 2006, the Committee notes that according to the Government, this case is still under investigation at the Daegu District Public Prosecutor's Office and the Committee will be informed of developments, if any. The Committee deeply regrets the delay in investigating the circumstances surrounding the death of Ha Jeung Koon especially as the complainant's (BWI) allegations and the Government's reply demonstrate that there are differing views on the events which led to the death of this trade unionist and it is important in such circumstances to shed full light into the matter. It once again recalls 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 [**Digest**, op. cit., para. 49]. The Committee urges the Government to take all necessary measures to ensure that the investigation under way concerning the death of Ha Jeung Koon is concluded without further delay so as to determine where responsibilities lie, allowing for the guilty parties to be punished and the repetition of similar events to be prevented. The Committee requests to be kept informed in this respect.*

737. *With regard to the allegations by the IFBWW (now BWI) and the Government's reply concerning the criminal prosecution and imprisonment of members and officials of the regional branches of the Korea Federation of Construction Industry Trade Unions (KFCITU) and restrictions over collective agreements with subcontracted workers in the construction sector, the Committee recalls that during its previous examination it (i) noted that the Government's reply and the complainant's allegations represented divergent views of the facts and that it did not have at its disposal the text of the relevant court judgements so as to have full knowledge of the evidence; (ii) requested the Government to transmit all additional information, including relevant court judgements, and to keep the Committee informed of the outcome of the appeal in this case; (iii) invited the complainant to transmit any further information it considered appropriate in response to the information provided by the Government; (iv) requested the Government to undertake further efforts for the promotion of free and voluntary collective bargaining over terms and conditions of employment in the construction sector covering, in particular, the vulnerable "daily" workers; in particular, the Committee requested the Government to provide*

support to construction sector employers and trade unions with a view to building negotiating capacity.

738. *The Committee notes that the BWI provides detailed information aimed at countering the information previously provided by the Government. According to the BWI, the Government distorted the facts and made unfounded allegations against the KFCITU. The prosecutions against the trade union officers in question were aimed at obstructing the activities of regional construction unions, in particular strikes, and not at addressing criminal activity as indicated by the Government; the whole process was based on the premise that trade union activities were in themselves illegal "extortion" and "coercion" as illustrated in the language used in the Government's report, e.g. instead of saying that the employer refused to conclude a collective agreement, indicating that the employer refused "money payments"; the investigation itself was carried out by departments charged with investigating and prosecuting organized crime which shows the mind frame applied to the case. Moreover, the investigation and prosecution were tainted with numerous irregularities aimed at fabricating false charges against the trade union officials in question. The BWI provides details on prosecution statements and charges which had to be abandoned during the trials as they were unsubstantiated and were not confirmed by prosecution witnesses (e.g. that the union threatened site managers and forced them into concluding collective agreements; that union officials' wages were used for personal purposes; that the union had no affiliated members in the region; that the union committed violent acts and that it was inactive after the conclusion of a collective agreement). According to the BWI, several site managers indicated at the trial either that their actual statements were different from what was being presented by the prosecution or that they had felt compelled to sign prepared statements under pressure from the police; several witnesses for the prosecution were not even working at the construction sites during the relevant period while one organizer identified by the police as a suspect was not active as an organizer at the construction site during the time frame of the allegations and the court had to revoke his arrest warrant The BWI further indicates the following:*

(i) With regard to the Government's statement that union officials who were not employed by any company demanded collective agreements that contained payments of wages for trade union officials, the BWI indicates that due to the short-term contracts of construction workers, the latter are organized into regional level industrial unions, and have been legally recognized by the government in such form. There is no regulation in the labour law that requires one to be employed in a specific worksite in order to be a union official. Court rulings have also found that payment of wages for union officials do not presuppose employment relations and can be decided through collective agreement, and that the question of who becomes a paid union official is up to the union to decide. Also, the collective agreements in question refer to a variety of issues like "safety education, employer-employee consultations, employment insurance, pension deduction schemes", but the Government singles out the wage payments, intentionally omitting the other elements of the agreements and thereby distorting the efforts of the construction union.

(ii) With regard to the Government's statement that the union did not respond to requests to furnish the union member list and demanded payments under the collective agreement although it did not have any members on site, threatening to file complaints if the company refused, the BWI indicates that presenting the list of members is not a precondition for the conclusion of a collective agreement and that the refusal to produce a list of members does not run counter to any legal provision. This refusal is due to the need to protect members from anti-union discrimination as in the construction sector layoffs due to union membership are common. Furthermore, most of the provisions of a collective agreement do not apply only to members but to the entire staff as they reflect basic labour rights guaranteed to all

workers by law; low levels of compliance with basic rights in the construction industry, have led to collective agreements functioning as a vehicle for ensuring adherence with the law. The Government's report distorts this reality and presents the construction union as a group of common thieves.

(iii) With regard to the Government's statement that the sole objective of the construction union officials was to receive money from employers and not the conclusion of a collective agreement, the BWI indicates that this statement is not supported by any evidence. According to trial records many construction site managers testified during the investigation and trial that when they offered money to the union in exchange for not entering into a collective agreement, they met with fierce protests and refusals.

(iv) With regard to the Government's statement that union officials ceased to appear at construction sites after collective agreements were concluded and the money was sent, the BWI indicates that this is a serious misrepresentation of the fact. According to trial records, construction site managers testified that after the conclusion of the collective agreement, activities such as "regular worker-employer consultations on problems at the work site, prevention of industrial accidents, monthly safety education" took place. The activities of the Daejon regional construction union have been selected as a model-case of industrial accident prevention. The Kyonggi Subu union has, through direct vote by its members and collective bargaining, obtained two days off a month. The Kyonggido union has formed a total of 60 industrial safety and health committees at its construction sites from 2002 to 2006, and 300 workers have been elected as members to these committees which meet every one to three months to discuss and implement projects for industrial accident prevention. This union has also raised wages for its members, and has been active in improving their working conditions. Regional unions in general have been active at the construction sites, in areas ranging from installing bathrooms and checking safety measures, to managing employment insurance for members. All the above activities have been reported in the press.

(v) With regard to the Government's statement that sit-ins took place at building sites where payments were refused, the BWI indicates that this is a misrepresentation of trade union activities by equating refusal to make money payments to refusal to implement the provisions of a collective agreement. The sit-ins were due to a failure of the employers to implement the contents of a collective agreement which aimed to ensure adherence to labour laws.

(vi) With regard to the Government's statement that those companies that refused payments would face false complaints regarding safety helmets for which the union has been punished on libel charges, the BWI indicates that in sites where a collective agreement was concluded there was a willingness to work together with the union to address safety and health issues, and therefore the union reacted to violations of the law by first requesting redress at the company level and then filing a complaint if the request was not met; however, when the company refuses to negotiate a collective agreement, this is tantamount to not recognizing the union; requests for changes go unanswered, and therefore the only option is to file a complaint. The Government's report does not describe the problems on the ground (lack of basic protective equipment such a safety helmets and boots, high levels of industrial accidents) and has given the impression that the unionists were filing complaints for their own irresponsible acts. Also, the Ministry of Labour, based on fabricated documents from employers, has recklessly issued no-fault decisions to companies that have faced complaints on OSH violations. This has resulted in an abnormally high number of industrial accidents due to the absence of basic safety measures: 3,000 workers die from industrial accidents a year in the Republic of Korea, while only ten employers have been arrested. The Ministry needs to present proof that the unions have filed

false complaints, since the union has not been found guilty of libel charges. The Choongnam union still faces this charge but the trial is underway. Even in this case the Ministry of Labour confirmed that the industrial safety law had been violated.

(vii) With regard to the Government's statement that wages were received by union officials in their personal accounts and used for personal purposes, the BWI indicates that this constitutes an insult to the activists who have engaged in organizing and collective bargaining over the years, receiving only US$500–1,000 a month in order to improve working conditions at construction sites and measures will be taken to counter such insults (Note: The minimum wage is approximately US$3.8 per hour). The issue of the use of wages has already been cleared by the domestic courts. Wiring wages for union officials to personal accounts was due to the fact that site managers would refuse to send the money to the union account. Regardless of the account, the wages were managed by the union and this has been confirmed in court decisions. The Ministry of Labour needs to provide exact proof of the assertion that "about half of the wages were used for personal purposes, unrelated to union activities, and the other half was shared among union officials and used at their discretion, not for the union".

739. *The Committee also notes that according to the BWI, the Daegu High Court found on appeal that Cho Ki Hyun, former President of the Daegu/Kyungbuk regional construction union and three other union members were not guilty of extortion or blackmail and bribery and that furthermore, it is legitimate to report illegal actions by the principal contractors, like occupational safety and health violations, if these endanger the workers; the making of such reports falls within the scope of ordinary trade union activities and does not constitute coercion or extortion even if it takes place during the collective bargaining process. The Court also confirmed the first instance decision that the principal contractor should be recognized as a party to negotiations because it controls the issues of compensation, safety and health industrial accident insurance, pension contributions etc. at the worksite, and that full-time union officials do not have to be employees of the contractor and may receive wages as trade union officials if this is agreed between the parties. The BWI adds however, that trials are ongoing with regard to the Kyunggi Subu and Chunan regional construction unions. In respect of the latter, the BWI indicates that although the Committee's recommendations were submitted to the courts, and the collective agreements and payment of wages for union officials were recognized as lawful, the officials have still been found guilty of extortion.*

740. *Furthermore, the BWI indicates that the Government has continued to arrest trade union officials of Kyonggi, Chungnam and Daegu/Kyungbuk regional construction unions, arresting in total 18 trade unionists; several union officers from the Daegu/Kyungbuk, Kyonggi and Chungnam construction unions were undergoing trials. As a result of these attacks on the trade unions, their activities have been seriously impaired.*

741. *The Committee notes that according to the Government, the current status of the court cases involving construction workers' unions is as follows:*

– *The members and officials of the Daegu Construction Workers' Union who were initially found not guilty by the first and second instance courts (the Committee understands that they were found not guilty of the charges of extortion while they were convicted for obstruction of business to three years' imprisonment), had their not guilty verdict reversed by the third-instance court. Their case was remanded to the second instance court which convicted them to eight months' imprisonment with two years of probation. Their case is pending before the third-instance court.*

– *The members and officials of the Daejeon/Chungcheong Construction Workers' Union were sentenced at the final instance to ten months' imprisonment with two years of probation.*

– *The members and officials of the Cheonan/Asan Construction Workers' Union were sentenced at the final instance to one-and-a-half years in prison with two years of probation.*

– *The members and officials of the Western Gyeonggi Construction Workers' Union were sentenced to one-and-a-half years in prison with two years of probation at the final instance.*

742. *The Committee notes that the Government attaches to its report the court decisions concerning the construction trade unions in Daejeon/Chungcheong, Cheonan/Asan, Western Gyeonggi and Daegu. The Committee notes from these court decisions that all the trade union officers in question have been convicted of extortion, blackmail and related crimes, because they put pressure on employers/contractors to conclude collective agreements by threatening to denounce to the authorities occupational safety and health violations at the worksite; the collective agreements in question contained clauses on the payment of trade union wages over which there is no legal obligation to agree. The Courts accepted that these acts could be part of trade union activities, that they were carried out in the framework of efforts to conclude collective agreements, that there was probably no criminal motivation and that the extortion was not "habitual". The courts also accepted that the payment of trade union wages was not carried out in seeking the individual interest of the officials, but rather, in the interests of the trade union. The amounts paid ranged from US$200 to US$1,000. In the case of the Daegu Construction Workers' Union for instance, the court of first instance convicted the defendants for being paid about US$200,000 from 37 companies, which according to the annex to the case, corresponded to payments of about US$200–700 under collective agreements (the minimum wage in the Republic of Korea is approxrimately US$3.8 per hour). The Court found this to constitute a "severe" crime. Even though the court of second instance reversed this decision, ruling that these activities were ordinary trade union activities and did not constitute extortion, the court of third instance ruled that the second instance court had misunderstood the concept of legitimate trade union activities and reverted to the decision of the first instance court. Thus, all the trade union officials in question were sentenced to prison sentences ranging from six months to three years with periods of probation of up to four years. The Committee notes that according to the Government, their case is pending at the final instance.*

743. *In these conditions, the Committee reiterates its deep concern noted in its previous examination of this case that the exercise by the KFCITU of legitimate trade union activities in the defence of construction site workers, including through collective bargaining, has been perceived as criminal activity and given rise to the institution of a massive investigation and police intervention. Again the Committee considers that it is a legitimate trade union activity to request that OSH practices at the workplace be included in a collective agreement, and if not, the matter will be reported to the competent authorities. As regards to the payment of money by the main contractor as "activity payment" to full-time unionists under the collective agreement, the Committee had observed that this payment was found by the courts to be carried out for organizational purposes and not for the personal use of the accused trade union officials. The Committee remains deeply concerned that such payment should be considered to be a criminal act. The Committee had observed the acts carried out by the KFCITU officials, with the financial support of the IFBWW, appeared to be regular union activities in conformity with basic notions of freedom of association and in the pursuit of the legitimate trade union objective of ensuring the representation and defence of the occupational interests of a*

particularly vulnerable category of workers in the building industry. These activities had met with considerable success (signature of collective agreements, reduction of occupational accidents, increase in trade union membership, etc.), before the intervention of the police and the prosecution prevented it from having any further effect [see 340th Report, paras 774–777]. The Committee also recalls from Cases Nos 2602 and 2620 concerning the Republic of Korea, that various additional categories of vulnerable workers, i.e. migrants and subcontracted workers, also face obstacles in their efforts to organize and engage in collective bargaining.

744. *The Committee emphasizes once again that the detention of trade union leaders or members for reasons connected with their activities in defence of the interests of workers constitutes a serious interference with civil liberties in general and with trade union rights in particular [**Digest**, op. cit., para. 64]. The arrest of trade unionists may create an atmosphere of intimidation and fear prejudicial to the normal development of trade union activities [**Digest**, op. cit., para. 67]. This intimidating effect is likely to be even stronger in the case of precarious, and therefore particularly vulnerable, workers who had just recently exercised their right to organize and bargain collectively. The Committee recalls that while persons engaged in trade union activities or holding trade union office cannot claim immunity in respect of the ordinary criminal law, trade union activities should not in themselves be used by the public authorities as a pretext for the arbitrary arrest or detention of trade unionists [**Digest**, op. cit., para. 72].*

745. *The Committee requests the Government to take all necessary measures for the effective recognition of the right to organize of vulnerable "daily" workers in the construction sector, notably by refraining from any further acts of interference in the activities of KCFITU affiliates representing such workers, to keep it informed of the outcome of proceedings pending at the final instance with regard to the Daegu Construction Workers' Union and to review the convictions of the members and officials on grounds of extortion, blackmail and related crimes, for what appears to be ordinary trade union activities. The Committee requests to be kept informed of developments in this respect.*

746. *Noting moreover that the Government has provided no substantive information in reply to the Committee's previous request for measures to promote collective bargaining between construction sector employers and trade unions, in particular with regard to the terms and conditions of employment of vulnerable "daily" workers, the Committee once again requests the Government to undertake further efforts for the promotion of free and voluntary collective bargaining over terms and conditions of employment in the construction sector covering, in particular, the vulnerable "daily" workers. In particular, the Committee requests the Government to provide support to construction sector employers and trade unions with a view to building negotiating capacity and reminds the Government that it may avail itself of the technical assistance of the Office in this regard if it so wishes. The Committee requests to be kept informed of developments in this respect.*

747. *With regard to the Committee's previous request for details on the circumstances which gave rise to the presence of the police force in close proximity to the room where minimum wage negotiations were taking place in June 2005, the Committee notes that according to the Government, at around 1.20 p.m. on 28 June 2005, the day before the statutory deadline for closing discussions on the minimum wage, 25 union members, discontented with the discussion process, broke into the room where the Minimum Wage Committee was holding the meeting. They occupied the place and staged an overnight sit-in protest. As a result, the Minimum Wage Committee had to proceed with the meeting on 29 June, the last day of the discussion period. With some union members continuing their sit-in in the corridor in front of the meeting room and over 300 union members holding a rally outside of the building, the Minimum Wage Committee inevitably had to call the police to protect its facilities in case of emergency. The police forces just stood guard in the vicinity of the*

meeting room, having no influence on the meeting. The Committee takes note of this information and recalls that acts of disruption are inconsistent with and do not engender confidence in an orderly system of industrial relations.

748. *With regard to the Committee's previous statement reminding the Government of its commitment to ratify Conventions Nos 87 and 98 made to the ILO High-Level Tripartite Mission which visited the country in 1998 (see document GB.271/9), the Committee notes the Government's indication that paragraph 159 of document GB.271/9 reads: "[t]he Committee [on Freedom of Association] notes with interest the willingness expressed by the members of the President-elect's transition team to ratify ILO Conventions Nos 87 and 98 in the near future"; according to the Government, the formulation made by the Committee in its last examination of this case does not correspond and therefore needs to be modified. The Government further adds that the issue is beyond the Committee's competence according to paragraphs 13 and 16 of the Procedure for the examination of complaints alleging violations of freedom of association [**Digest**, op. cit., Annex I, paras 13 and 16]. The Committee recalls that the function of the International Labour Organization in regard to freedom of association and the protection of the individual is to contribute to the effectiveness of the general principles of freedom of association, as one of the primary safeguards of peace and social justice [**Digest**, op. cit., para. 1]. It was within this spirit that the Committee recalled the Government's indication of its willingness to ratify Conventions Nos 87 and 98 in the near future which it made to the ILO High-level Tripartite Mission in 1998 and requests the Government to keep it informed of any developments in this respect.*

The Committee's recommendations

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

(a) With regard to the Act on the Establishment and Operation of Public Officials' Trade Unions and its Enforcement Decree the Committee requests the Government to give consideration to further measures aimed at ensuring that the rights of public employees are fully guaranteed by:

(i) ensuring that public servants at all grades, regardless of their tasks or functions, including firefighters, prison guards, those working in education-related offices, local public service employees and labour inspectors, have the right to form their own associations to defend their interests;

(ii) ensuring that any restrictions of the right to strike may only be applicable in respect of public servants exercising authority in the name of the State and essential services in the strict sense of the term; and

(iii) allowing negotiation on the issue of whether trade union activity by full-time union officials should be treated as unpaid leave.

The Committee requests to be kept informed of any measures taken or contemplated in this respect.

(b) The Committee requests the Government to ensure that the following principles are respected in the framework of the application of the Act on the Establishment and Operation of Public Officials' Trade Unions:

(i) that in the case of negotiations with trade unions of public servants who are not engaged in the administration of the State, the autonomy of the bargaining parties is fully guaranteed and the reservation of budgetary powers to the legislative authority does not have the effect of preventing compliance with collective agreements; more generally, as regards negotiations on matters for which budgetary restrictions pertain, to ensure that a significant role is given to collective bargaining and that agreements are negotiated and implemented in good faith;

(ii) that the consequences of policy and management decisions as they relate to the conditions of employment of public employees are not excluded from negotiations with public employees' trade unions; and

(iii) that public officials' trade unions have the possibility to express their views publicly on the wider economic and social policy questions which have a direct impact on their members' interests, noting though that strikes of a purely political nature do not fall within the protection of Conventions Nos 87 and 98.

The Committee requests to be kept informed in this respect.

(c) As regards the other legislative aspects of this case, the Committee urges the Government:

(i) to take rapid steps to continue and undertake full consultations with all social partners concerned with a view to the legalization of trade union pluralism at the enterprise level, so as to ensure that the right of workers to establish and join the organization of their own choosing is recognized at all levels;

(ii) to expedite the resolution of the payment of wages by employers to full-time union officials so that this matter is not subject to legislative interference, thus enabling workers and employers to conduct free and voluntary negotiations in this regard;

(iii) to ensure that, in issuing decisions determining the minimum service, the Labour Relations Commission takes due account of the principle according to which a minimum service should be confined to operations that are strictly necessary to avoid endangering the life or normal living conditions of the whole or part of the population and to continue to keep it informed of the specific instances in which minimum service requirements have been introduced, the level of minimum service provided and the procedure through which such minimum service was determined (negotiations or arbitration).

(iv) to amend the emergency arbitration provisions of the TULRAA (sections 76–80) so that emergency arbitration can only be imposed by an independent body which has the confidence of all parties concerned and only in cases in which strikes can be restricted in conformity with freedom of association principles;

(v) to repeal the provisions prohibiting dismissed and unemployed workers from keeping their union membership and making non-union members ineligible to stand for trade union office (sections 2(4)(d) and 23(1) of the TULRAA); and

(vi) to bring section 314 of the Penal Code (obstruction of business) in line with freedom of association principles.

The Committee requests to be kept informed of the progress made in respect of all of the abovementioned matters.

(d) The Committee requests the Government to keep it informed of the progress of the appeal proceedings in respect of Kwon Young-kil.

(e) The Committee once again requests the Government to reconsider the dismissals of Kim Sang-kul, Oh Myeong-nam, Min Jum-ki and Koh Kwang-sik Han Seok-woo, Kim Young-kil, Kang Dong-jin and Kim Jong-yun in the light of the subsequent adoption of the Act on the Establishment and Operation of Public Officials' Trade Unions. The Committee requests to be kept informed in this respect.

(f) With regard to section 314 of the Penal Code on obstruction of business, the Committee once again urges the Government to consider all possible measures, in consultation with the social partners concerned, so as to revert to a general practice of investigation without detention of workers and of refraining from making arrests, even in the case of an illegal strike, if the latter does not entail any violence. The Committee requests to be kept informed in this regard, including by providing copies of court judgements on any new cases of workers arrested for obstruction of business under the terms of the present section 314 of the Penal Code.

(g) The Committee requests the Government to keep it informed of the outcome of the appeal filed by Choi Seong-jin against his dismissal for having participated in a strike staged by KALFCU in 2005.

(h) Recalling that the death of Kim Tae Hwan, President of the FKTU Chungju regional chapter, took place in the context of an industrial dispute, the Committee requests the Government to provide a copy of the relevant investigation report.

(i) The Committee urges the Government to take all necessary measures to ensure that the investigation under way concerning the death of Ha Jeung Koon, member of the Pohang local union of the KFCITU, is concluded without further delay so as to determine where responsibilities lie, allowing for the guilty parties to be punished and the repetition of similar events to be prevented. The Committee requests to be kept informed in this respect.

(j) The Committee requests the Government to take all necessary measures for the effective recognition of the right to organize of vulnerable "daily" workers in the construction sector, notably by refraining from any further acts of interference in the activities of KCFITU affiliates representing such workers, to keep it informed of the outcome of proceedings pending at the

final instance with regard to the Daegu Construction Workers Union, and to review the convictions of the members and officials on grounds of extortion, blackmail and related crimes, for what appears to be ordinary trade union activities. The Committee requests to be kept informed of developments in this respect.

(k) The Committee once again requests the Government to undertake further efforts for the promotion of free and voluntary collective bargaining over terms and conditions of employment in the construction sector covering, in particular, the vulnerable "daily" workers. In particular, the Committee requests the Government to provide support to construction sector employers and trade unions with a view to building negotiating capacity and reminds the Government that it may avail itself of the technical assistance of the Office in this regard if it so wishes. The Committee requests to be kept informed of developments in this respect.

(l) The Committee recalls the Government's indication of its willingness to ratify Conventions Nos 87 and 98, in the near future, which it made to the ILO High-level Tripartite Mission in 1998 and which was reported to the Governing Body in March 1998 (see document GB.271/9) and requests the Government to keep it informed of developments in this respect.

(m) The Committee calls the Governing Body's attention to this serious and urgent case.

CASE NO. 2620

INTERIM REPORT

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

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

750. The complaint is contained in communications from the Korean Confederation of Trade Unions (KCTU) dated 18 December 2007 and 8 May 2008. In a communication dated 9 May 2008, the International Trade Union Confederation (ITUC) associated itself with this case.

751. The Government replied in a communication dated 10 November 2008.

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

A. The complainants' allegations

753. In a communication dated 18 December 2007, the complainant KCTU alleges that the Government: (i) refused to acknowledge the legal status of the Migrants Trade Union (MTU), despite a High Court ruling which held in February 2007 that the rights of migrant workers to establish and join labour unions, regardless of their residence status, are protected under the national law, including the Constitution; and (ii) carried out a targeted crackdown against the President, Vice-President and General Secretary of the MTU who were arrested and deported.

754. With regard to the first issue, the complainant indicates that the MTU was founded on 24 April 2005, and sent notification of its establishment to the Seoul Regional Labour Office on 3 May 2005, with its rules and regulations attached, as required by section 10(1) of the Trade Union and Labour Relations Adjustment Act (TULRAA). On 9 May, the Seoul Labour Office requested supplementary documents, including: (a) "the name of the workplaces and their representatives and the name of all union members and the number of union members at each workplace (in accordance with section 10(1) of the TULRAA and section 4(2) of the Enforcement Regulations"; and (b) "a register of union members (including first and last name, date of birth, nationality, foreigner registration number or passport number) in order to establish whether each worker has the right of employment". Although the MTU submitted various other documents requested, it refused to provide the abovementioned information on the grounds that there was no legal basis to require this material and that the requirements themselves were in violation of the principle of equal treatment of foreign workers protected in the Constitution, the TULRAA and international law. Following this, on 3 June 2005, the Seoul Regional Labour Office rejected the MTU's notification of union establishment on the basis that it had not submitted the requested information and that "because the officers of the union are foreigners without legal right of residence and employment under the Constitution and the union members in question can be assumed to be illegal residents, the Seoul Gyeonggi-Incheon Migrants' Trade Union is constituted by illegally employed foreigners who do not have the right to join labour unions and thus cannot be viewed to be a trade union under the TULRAA".

755. On 14 June 2005, the MTU filed an administrative suit against the Seoul Regional Labour Office, claiming that the rejection of its application for union status was unfounded and constituted illegal discrimination against foreign workers. Although, on 7 February 2006, the case was decided in favour of the defendant (Government), on appeal the Seoul High Court decided on 1 February 2007 that irregular migrant workers had the right to freedom of association under the national law. The main points of this decision are: (i) the rejection of the application for trade union status by the MTU because of the refusal to submit the names of workplaces and their representatives as well as the names of all union members and their number in each workplace, is devoid of a legal basis and therefore constitutes a violation of the Constitution; and (ii) irregular migrant workers are recognized as workers under the Constitution and the TULRAA and, therefore, are the subjects of legally protected basic labour rights; thus, the denial of irregular migrant workers' basic labour

rights is a violation of the Constitution and the TULRAA which protect the rights of foreigners, outlaw discrimination and grant basic labour rights to workers. The Ministry of Labour appealed against this decision which is now pending before the Supreme Court.

756. According to the complainant, the arguments of the Government are twofold: (i) as a union with members working at more than one workplace, the MTU's establishment can violate section 5(1) of the TULRAA which temporarily prohibits more than one trade union at the same enterprise in certain circumstances; and (ii) irregular migrant workers, because they are not lawfully employable under the Immigration Control Act, do not have the legal status which would allow them to strive for the improvement of wages and working conditions, which is based on the premise of a legal labour relationship, and cannot be seen as workers with the right to form a trade union.

757. The complainant indicates that the High Court refuted both these arguments on the following grounds: (i) the purpose of supplemental section 5(1) of the TULRAA is to guard against confusion arising from the establishment of new unions in companies where they had been prohibited in the past and this, for a limited period of time and under certain conditions; this section does not apply to unions established above the company level, i.e. regional industrial or other unions with workers in more than one workplace, even though these unions may have chapters in companies in which a company level trade union already exists; section 4(2) of the TULRAA Enforcement Regulations, which calls for the name of the workplaces and their representatives, the names of all union members and the number of union members at each workplace to be indicated when a union is constituted at more than one workplace, does not pertain to unions established above the company level; (ii) foreigners already engaged in labour relationships, even if they do not have legal residence status, are still recognized as workers under the relevant national law including the Constitution, the Labour Standards Act and the TULRAA and are protected against discrimination with regard to their fundamental rights including the three basic labour rights; and (iii) while the Immigration Control Act regulates the employment of foreigners with the objective of prohibiting the employment of foreigners without residence status, these workers are nevertheless vested with the right to establish an organization in order to improve labour conditions.

758. The complainant emphasizes that, as acknowledged by the Seoul High Court, article 11(1) of the Constitution reads, "All citizens are equal before the law. No one shall be discriminated against in any area of political, economic, social or cultural life based on gender, religion or social status." Despite the use of the word "citizen", this clause has been found by the Constitutional Court to mean that the basic rights of foreigners in a similar position to citizens are equally constitutionally protected, with limitations only in the area of political participation (Constitutional Court Decision 93 Ma 120 of 29 December 1994 and 99 Ma 494 of 29 November 2001). Moreover, article 33(1) of the Constitution defines a worker as "one who lives off his/her wages/salary or other similar forms of income, regardless of the type of work" and states that "workers have the right to independent organization, collective bargaining and collective actions for the improvement of their working conditions". This clause recognizes that workers have the need and the right to form organizations and negotiate collectively to achieve material equality with employers, and that beyond recognizing this right, the Government has the responsibility to establish a legal system for creating the conditions in which this right can be exercised. According to the Constitution, these rights can be limited only in the case where foreigners (and native workers) are employed as public servants or in the national defence (article 33(2) and (3)) or only as appropriate for the "sake of the protection of public security, order or common interest" and in this case to the least extent possible (article 37(2)). Section 5 of the TULRAA also provides that "all workers have the right to freely form or join labour unions" and section 9 provides that "union members may not be

discriminated against on the basis of race, religion, gender, political affiliation or social status under any circumstances".

759. The complainant further indicates that MTU President Kajiman Khapung, Vice President Raj Kumar Gurung (Raju) and General Secretary Abul Basher M Moniruzzaman (Masum) were arrested in a targeted crackdown in the morning of 27 November 2007 between 8.30 a.m. and 9.30 a.m. The complainant alleges that, despite statements from the Immigration Authority and the Ministry of Justice, the men were arrested in the course of a regular immigration raid, there is no doubt that these arrests were planned in advance and constituted repression aimed at stopping the rightful union activities of the MTU: all the arrests were carried out at roughly the same time in front of each man's home or workplace and by an abnormally large number (up to 15) of immigration officers who immediately presented detention documents with the names of the trade union leaders and transferred them to a detention centre three hours' away from the capital by car instead of the usual detention centre near Seoul; the detentions coincided with the intensification of a crackdown against irregular migrant workers (who amount to 230,000, more than half the total migrant workers in South Korea) which had been criticized by the MTU, and plans for a revision of the immigration law so as to reduce migrant workers' rights, which was opposed by the MTU. The complainants add that these arrests are not the only ones targeted against the MTU. Soon after the trade union's establishment in 2005, its first President, Anwar, was arrested in a similar targeted crackdown on 7 May 2005 in the middle of the night. Despite the National Human Rights' Commission affirmation of the anti-human rights nature of his arrest, which included verbal and physical abuse, it was only after nearly a year of detention that President Anwar was granted a temporary stay of detention for health reasons. Further, since the arrest of MTU President Kajiman Khapung, Vice-President Raj Kumar Gurung (Raju) and General Secretary Abul Basher M Moniruzzaman (Masum) on 27 November 2007, some 20 MTU members and officers had been arrested.

760. Finally, the complainant refers to the deportation of MTU President Kajiman, Vice-President Raju and General Secretary Masum. The complainant alleges in particular that despite a commitment that the three men would not be deported while an investigation was under way by the National Human Rights Commission, on 11 December 2007, the three men were woken up in the middle of the night and put in separate vans, escorted by several guards. Twenty minutes later they were taken off the vans and through a small side door, down a hill, through a hole cut by one of their guards in a newly made wire wall and into other cars with more guards waiting for them. Each man was taken to Incheon International Airport separately, accompanied by Ministry of Justice officials, who made reports on the movements of the group on their cellular phones every five minutes. At the airport, they were made to board flights to their native countries of Nepal and Bangladesh. Upon arriving in Dhaka, General Secretary Masum was met by police officers who questioned him for over an hour and told him to return for additional questioning by the prosecutor on 18 December 2007. In addition, the MTU has been informed that the Ministry of Justice plans to pass documents about the General Secretary to the Bangladeshi authorities before this questioning. The complainant adds that the middle of the night deportation was carried out in a secretive and illegal manner, contrary to the promises given. The men were even prevented from contacting family and friends in both South Korea and their home countries.

761. The complainant finally indicates that these facts take place against the background of generalized discrimination against migrant workers, both regular and irregular, and a system geared to create a low-wage labour force that is easily exploitable, a condition desired on the part of the Government and employers. In particular, the employment permit system "binds" migrant workers to their employers and restricts their freedom to change employer (this is possible up to three times), severely restricts the legal residence period,

which is only three years, and raises language and cultural barriers due to lack of translation and education services. The complainant also indicates that the above constitutes a violation of Conventions Nos 87 and 143, the International Convention on the Protection of the Rights of Migrants and their Families and the 1998 Declaration on the Fundamental Principles and Rights at Work. It also refers to cases examined by the Committee on Freedom of Association on the freedom of association rights of migrant workers (Cases Nos 2121 and 2227).

762. In a communication dated 8 May 2008, the complainant provides additional information according to which after the targeted crackdown of 27 November 2007, the MTU, the KCTU and supporters from the labour movement and civil society carried out a 99-day sit-in protest calling for an end to the oppression against migrant workers who organize while rebuilding the MTU; on 6 April 2008, the MTU elected a new leadership, with Toran Limbu as President, and moved forward to fight to protect migrant workers' rights. The new conservative Government, however, strengthened the overall policy of repression against migrant workers and specifically against the MTU, even going so far as to make statements to the effect that union organizing of undocumented migrant workers, such as the MTU, will not be tolerated. In this context, the newly elected MTU President Torna Limbu and Vice-President Abdus Sabur were arrested in the night of 2 May 2008 by ten or 15 hidden immigration officers outside their workplace or home, respectively. Torna Limbu's arrest reportedly involved physical violence and he was refused the use of his cellular phone. While being transferred in a van, President Limbu heard the officers communicate consistently with others stationed near the house of Vice-President Sabur. The vehicles carrying the two trade union leaders met in the street and stopped for a short while. According to the complainant, these acts of repression constitute additional violations of the fundamental labour rights of migrant workers.

B. The Government's reply

763. In a communication dated 10 November 2008, the Government indicates that, as a result of economic and social changes, the Republic of Korea has evolved from a country of emigration to a country of immigration. As a result, it has had to consider the protection of domestic workers, on the one hand, and of foreign workers' human rights on the other. In doing so, it has introduced and implemented various systems, including the current Employment Permit System. The complaint refers to a case which is currently before the Supreme Court, an independent national jurisdiction whose procedures offer appropriate guarantees of impartiality. According to the special procedures for the examination of complaints, "when a case is being examined by an independent national jurisdiction whose procedures offer appropriate guarantees, and the Committee considers that the decision to be taken could provide additional information, it will suspend its examination of the case for a reasonable time to await this decision, provided that the delay thus encountered does not risk prejudicing the party whose rights have allegedly been infringed." [*Digest of decisions and principles of the Freedom of Association Committee*, Annex I, para. 29]. Given the above, the Government requests the Committee to suspend its consideration of the case until after the Supreme Court gives its final ruling.

764. With regard to the substance of the complaint, the Government indicates that on 3 May 2005, a group of 91 foreigners submitted a notification of establishment of a trade union to the Seoul Regional Labour Office of the Ministry of Labour. In conformity with the provisions of the Trade Union and Labour Relations Adjustment Act (TULRAA), the Seoul Regional Labour Office requested on 9 May 2005 the following complementary information: (i) names and addresses of the three union officials and two auditors that were missing in the report; (ii) (a) names of workplaces the union members belong to, number of union members and name of the union head, and (b) a list of union members to see if each member qualifies for employment in the Republic of Korea; and (iii) other related

documents, including minutes of the general assemblies. However, of the complementary information requested, the union only submitted the documents described in (i) and (iii) and failed to provide those described in (ii), arguing that the requested information was not required for a notification of establishment of a trade union under the TULRAA.

765. On 3 June 2005, the competent authorities rejected the union's report on its establishment not only because it had failed to submit all the complementary information requested, but also because it was not deemed legitimate under the TULRAA since its members were mainly foreigners who had no right to stay in the Republic of Korea under the Immigration Control Act. On 14 June 2005, the union filed a case against the administrative authorities, requesting the withdrawal of the rejection. On 7 February 2006, the Seoul Administrative Court ruled against the plaintiff on the following basis: (i) the TULRAA temporarily prohibited the establishment of multiple unions until 31 December 2006 (this period was later extended to 31 December 2009) and section 3(4) of the enforcement regulations of the TULRAA requires a trade union to provide the names of workplaces in which its members are employed when reporting its establishment; (ii) the reporting organization mainly consisted of illegal foreigners; so it is legal to ask for a list of union members, which is necessary to decide if the plaintiff meets the requirements for a legitimate trade union by looking at whether the members are workers eligible to establish a trade union; and (iii) since illegal residents are strictly banned from employment under the Immigration Control Act, they are not considered to have the legal rights to seek to improve and maintain their working conditions and to improve their status, as such rights are given on the assumption that legitimate employment relations will continue; therefore, it is hard to consider illegal foreign residents as workers eligible to establish a trade union.

766. On 21 March 2006, the plaintiff filed an appeal with the Seoul High Court. On 1 February 2007, the Court found in favour of the plaintiff, on the following grounds: (i) the ban on trade union pluralism under the TULRAA is limited to multiple unions established by workers engaged in work of the same kind in the same workplace; so a notification of establishment of a trade union should not be rejected just because of its failure to provide complementary documents not required by law; (ii) even illegal foreign residents should be considered as workers allowed to set up a trade union as long as they actually provide labour services and live on wages, salaries or other equivalent incomes paid for their service; (iii) the restrictions on the employment of illegal residents under the Immigration Control Act are not intended to prohibit foreign workers not eligible for employment from forming a workers' organization to improve their working conditions on an equal footing with their employer. So it is against the law to request a list of union members with no legal ground for the purpose of checking if they hold a residency status. The Government appealed against this decision and the case is pending before the Supreme Court.

767. With regard to the legitimacy of the request for complementary information by the Seoul Regional Labour Office, the Government indicates that this was necessary in order to enable the authorities to check whether a newly established union is a multiple union or not and adds that the Supreme Court said in a ruling that the establishment of a new trade union at a level above the enterprise level, can still be prohibited if such a union has a chapter which already operates as an independent trade union and is capable of independently concluding its collective bargaining and agreement without having to obtain such mandate from the upper-level organization (section 5 of the Addenda to the TULRAA and 4(2) of the Enforcement Regulations of the TULRAA). Furthermore, on the basis of section 2(4) TULRAA, and as recognized in Ruling 93DO855 of the Supreme Court (1996), when receiving a notification of establishment of a trade union, the authorities should look into the existence of an employment relationship between union members and employers or the independence of the trade union; this process is intended to give a trade union legal advantages, such as special immunities, tax exemption, etc., and ensure its normal function. Such a requirement is reflected, according to the Government in

paragraph 275 of the *Digest* which provides for "formalities in … legislation as appeared appropriate to ensure the normal function of occupational organizations".

768. The Government adds that the fundamental rights recognized under the Constitution can be divided into human rights and citizens' rights. Human rights, such as human dignity and value, the right to pursue happiness, physical freedom, privacy, etc., are recognized as fundamental rights for all people, regardless of whether they are illegal residents or not. However, such fundamental rights as the right to election, the right of access to public service, etc., should be considered as rights that allow a country to govern and sustain itself rather than universal human rights, hence these rights are not necessarily recognized for foreigners. The right to engage in union activities may share some characteristics with the right to liberty, which is a human right, yet it has more of the characteristics of citizens' rights or social fundamental rights in that the state actively intervenes in industrial relations and stipulates workers' rights necessary for their lives and existence in order to resolve the malaises of capitalism. Therefore, what status foreigners should be given, in particular, illegal residents, in relation to their employment in the Republic of Korea, is a matter decided by law and policy after taking into account the sovereign country's economic situation, employment situation, relations with other countries and international circumstances. It is not something directly guaranteed under the Constitution.

769. The Government adds that section 18(1) of the Immigration Control Act provides that a residence permit is a prerequisite for the employment of foreigners in the Republic of Korea. The labour rights of these foreigners are recognized under the law, e.g., the benefits of national health insurance and industrial accident compensation insurance, etc., under the Act on the Employment, etc. of Foreign Workers. Like other countries' governments, the Korean Government has no obligation to necessarily endow illegal residents with all labour rights. And given the intent of the relevant provisions of the Immigration Control Act (forced deportation of illegal foreigners, criminal punishment for hiring illegal foreigners), recognizing the right to establish a trade union for illegal residents would create a contradictory situation in which the Government deports foreign workers by force and criminally punishes employers who hire them under the Immigration Control Act while recognizing a trade union of illegal residents and guaranteeing their right to collective bargaining and collective action for the future at the same time. This is "likely to cause a serious threat to public safety and public order" as referred to in the *Digest*. Therefore, the relevant provisions of the Immigration Control Act can be relied upon to restrict illegal foreigners' right to establish a trade union. This is necessary in order to efficiently address instability in the domestic labour market, ensure the efficient management of the labour force and maintain working conditions not only for native Korean workers but also for legitimate foreign workers.

770. The Government adds that as foreigners illegally staying in the Republic of Korea are all strictly banned from employment under the Immigration Control Act, they are not in a legal position to seek to maintain and improve working conditions and their status on the assumption that their employment relations will continue. This has been confirmed in a Supreme Court ruling which found that employment relations with any foreigner not eligible for re-employment should be terminated (Ruling 94NU12067 of 15 September 1995). The Government gives protection of fundamental human rights even to illegal foreigners if they have already established an employment relationship; for example, they can receive overdue wages for services rendered or be compensated for occupational accidents. However, this protection is intended for services already provided and is different from giving them the right to establish a trade union, the right to collective bargaining and the right to collective action, assuming that their employment relationships will continue. In addition, since the organization of a trade union by irregular workers does not guarantee that they will be given a status allowing their legitimate stay in the Republic of Korea, the Immigration Control Office, once notified of their illegal stay will take

measures such as deportation according to the law. Thus, it is completely out of the question for illegal residents to conclude a collective agreement through collective bargaining, assuming that their employment relationship will continue, and under such collective agreement, maintain and improve their working conditions, which is the ultimate goal of the establishment of a trade union.

771. The Government indicates with regard to the rejection of the notification of establishment of the MTU, that upon examination of this report, it was found that the President and auditor of the trade union were foreigners and that its by-laws stipulated that the purpose of its establishment was "to oppose crackdown on and deportation of migrant workers and fight for the legalization of migrant workers", etc. Concerning Anwar Hossain in particular, the Government indicates that he had entered the Republic of Korea on a tourist visa on 24 May 1996 and had remained illegally in the country since 25 August 1996, when his visa expired. On 14 May 2005, he was caught up in a crackdown on illegal residents and as an illegal foreigner subject to forced deportation was held in custody. However, he was temporarily released from custody on the ground of treating his illness and attending legal proceedings. His release was conditional on his compliance with the ban on violation of the Immigration Control Act. From then, the release period was extended six times until 31 July 2007. However, during the temporary release period he argued that he had organized a trade union of foreigners and submitted a report on its establishment saying that he had been elected as President. During his stay in the Republic of Korea, he along with social activist groups was engaged mainly in instigating or participating in rallies against sending troops to Iraq, the import of agricultural produce, or crackdown on and deportation of illegal residents. On 26 July 2007, he voluntarily departed from the Republic of Korea.

772. As a result of the above, the authorities rejected the notification of establishment of the trade union for the following reasons: the trade union was composed mainly of illegal residents; the purpose of its establishment stated in its by-laws was beyond the legitimate purposes prescribed under the TULRAA; they disrupted the immigration control order of a sovereign country by opposing crackdown on and deportation of illegal residents and fighting for their legalization; they refused the request for the submission of complementary materials. The Government emphasizes that the administrative authorities have no obligation to issue a report certificate and endow a legal privilege to an organization which has as its head an offender, illegally staying in the Republic of Korea in violation of the Immigration Control Act, has established by-laws against the law and order of a sovereign country, will obviously be unable to accomplish the prescribed goals of a trade union, and has refused the request for the submission of complementary documents. The Government makes comparisons with the situation prevailing in other OECD countries and argues that there are no illegal residents' unions because the authorities strictly control the status of residence and the trade union activities of foreign workers are, to some extent, restricted.

773. With regard to the arrest and deportation of illegal residents, the Government indicates that in order to protect native Koreans and establish immigration control order, the relevant government agencies have jointly conducted crackdowns on illegal residents every year since 2004. Messrs Kajiman Khapung, Raju Kumar Gurung and Abul Basher Moniruzzaman (Masum), had been illegally staying in the Republic of Korea for 15 years and nine months, seven years and seven months and 11 years and three months respectively in violation of the Immigration Control Act, by the time they were caught up in a crackdown. Raju Kumar Gurung in particular, had been deported in 1998 but re-entered the country in 2000 on a forged passport. Although they were illegal residents, they along with some civil activist groups, regularly held rallies dozens of times in front of the Immigration Control Office, demanding the legalization of illegal residents and the introduction of a work permit system. They were mainly involved in activities ridiculing

the exercise of public power and disrupting immigration control law and order, rather than in reasonable labour movements. They even protested against the Korean Government's policies, such as the Republic of Korea/US FTA and sending troops to Iraq, and made empty threats by telling crackdown agents to arrest them if they could.

774. The Government rejects the complainant's allegation that the Government was working on plans to revise the Immigration Control Act to reduce the rights of migrant workers when it arrested the abovementioned illegal residents as, according to the Government, the revision bill was intended solely to clarify the legal grounds for cracking down on illegal residents.

775. The Government adds that Messrs Kajuman Khapung, Raju Kumar Gurung, and Abul Basher Moniruzzaman (Masum) were caught up in a joint crackdown carried out by government agencies aimed at reducing the number of illegal residents. The use of their mobile phones was restricted for security reasons and to ensure that other illegal residents and their employers were not informed of the crackdown. However, the illegal residents were allowed to make phone calls from the detention centre and their mobile phones were returned when they were deported. The joint crackdown team did not target only the individuals in question or illegal residents in general, but also engaged at around the same time, in a massive crackdown on drug use and gambling, unlicenced driving, violence, patrolling areas where foreigners are concentrated or crime-ridden areas. The Government, especially the Ministry of Justice, the Police and the Ministry of Labour, have been conducting such sweeping joint crackdowns once or twice a year since 2004. As a result, it has found tens of thousands of illegal residents and forced them to depart from the Republic of Korea. With the number of illegal residents steadily increasing, the Government is continuously strengthening such crackdowns.

776. The Government clarifies that the illegal residents arrested were taken along with many others to the Cheongju detention centre instead of the nearest detention centre because there was not enough space available in the latter centre. On the morning of 13 December 2007, they were taken from the Cheongju detention centre to Incheon International Airport and then deported to their own countries, including Nepal and Bangladesh. There had been no promise to the National Human Rights Commission not to deport those illegal residents, but rather pending complaints with both this Commission and the Ministry of Justice. However, since it usually takes a long time for the National Human Rights Commission to make its recommendations, any delay in the forced deportation would make the detention of the three individuals long term, which would lead to a human rights infringement. Moreover, the Government has no obligation to wait for the Commission's recommendations on individuals whose illegal stay is an obvious fact. On 12 December 2007, the Ministry of Justice decided to dismiss the appeal filed with the Ministry and on the same day, notified the National Human Rights Commission of its intention and gave written notice of its decision to the illegal residents and their lawyers.

777. The Government emphasizes that the illegal residents who had been illegally staying in the Republic of Korea for ten years or longer had obviously breached the Immigration Control Act by entering the Republic of Korea on a false passport or working illegally. And for such violations, deportation orders had already been issued and the Government had arrested them following legitimate procedures. Furthermore, the consulates and diplomatic missions of their own countries in the Republic of Korea agreed to the forced deportation and cooperated in issuing the necessary passports. Therefore, the Korean Government's action was a legitimate immigration control measure taken according to a sovereign country's law, and has nothing to do with the illegal residents' organization of a trade union.

778. On 13 December 2007, the illegal residents were woken up in the morning and put onto a bus to be escorted to Incheon International Airport in time for the morning flights. But about 30 demonstrators, already informed of the escort plan, blocked the front gate. For fear of missing the flights, the bus got out of the centre through the back gate.

779. With regard to the arrests of Torna Limbu and Abdus Sabur on 2 May 2008, the Government indicates that they were arrested during a crackdown on illegal residents. By the time of their arrest, they had been illegally staying in the Republic of Korea for 16 years and four months and nine years and two months respectively, in violation of the Immigration Control Act. According to the current crackdown guidelines, a crackdown agent, when arresting an illegal resident, should check his/her ID and then show the arrest warrant. In most cases, this legal procedure is observed. However, in case of an emergency, such as when an illegal resident runs away or resists an arrest, it is inevitable to physically put him/her under control first and then check his/her ID and show the arrest warrant. Limbus strongly resisted and tried to run away while other people around him obstructed his arrest. That is why the crackdown agents used physical force during his arrest.

780. The Government adds that arresting illegal residents and deporting them to their home countries is an authority with which a sovereign country is naturally endowed, and is unrelated to the involvement of these individuals in trade union activities. Their status as union officials does not mean that they are granted a legal status of residence and their violation of the Immigration Control Act was obvious. Therefore, the arrest and deportation were legitimate measures.

781. Finally, with regard to the general condition of migrant workers in the Republic of Korea, the Government indicates that the Employment Permit System is aimed to ensure that foreign workers continue to work in the workplace that obtained permission for their employment to avoid disturbances in the labour market; nevertheless, concerned about their human rights, the Korean Government allows foreign workers to change workplaces for a maximum of four times. Taking into account the ILO opinions, the Government is now in the process of inserting the phrase "where labour contract is deemed hard to maintain because of violations of labour laws, such as overdue wages" in the relevant provision so as to further guarantee foreign workers' freedom to move to other workplaces and engage in job-seeking activities if the reason for doing so is not attributable to them. In practice, since the introduction of the Employment Permit System, a total of 73,379 foreign workers have been permitted to move to other workplaces. Finally, various legal and institutional devices have been put in place to eliminate discrimination against foreign workers and protect their rights and interests (legal protection against discrimination, language support, etc.) The Government notes that in recent years, especially among advanced countries, there has been a tendency to strengthen crackdowns on illegal residents to protect the country's own people.

782. In conclusion, the Government indicates that with greater labour mobility resulting from globalization, it is well aware of the need to pay more attention to and come up with measures to improve working conditions for foreign workers and protect their human rights. And in spite of its relatively short history of importing foreign workers, the Republic of Korea has made various efforts to improve the management of foreign workers and protect their human rights, including the introduction of the Employment Permit System. The Government states that it will continue to make its utmost efforts to protect the rights and interests of foreign workers and to guarantee their legitimate establishment of a trade union and involvement in trade union activities. The Government expects the Committee's continuous understanding and cooperation in this regard.

C. The Committee's conclusions

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

784. *The Committee notes the Government's request for a suspension of the examination of this case, while waiting for the Supreme Court to render its decision. The Committee recalls that although the use of internal legal procedures, whatever the outcome, is undoubtedly a factor to be taken into consideration, it has always considered that, in view of its responsibilities, its competence to examine allegations is not subject to the exhaustion of national procedures [**Digest**, Annex I, para. 30]. Moreover, the Committee notes that the issue has been pending before the Supreme Court for more than two years and that during that time, several leaders of the MTU have been arrested and deported. In addition, the Supreme Court decision proceedings concern only the issue of the registration of the MTU, and not the other allegations raised in the complaint. The Committee will therefore proceed with its examination of the case with the aim of providing additional elements for the consideration of the relevant authorities in relation to the international principles of freedom of association.*

785. *The Committee notes that the facts of this case as emerging from the complainants' allegations and the Government's reply are the following: on 3 May 2005, the MTU sent a notification of its establishment to the Seoul Regional Labour Office. On 3 June 2005, the Seoul Regional Labour Office rejected the notification essentially on the following grounds: (i) the union failed to produce documents to prove that its establishment does not violate the provisions of the TULRAA upholding trade union monopoly at the enterprise level; and (ii) the union was composed mainly of illegally employed foreigners "who do not have the right to join labour unions" and its officers are foreigners without legal right of residence and employment. On 14 June 2005, the MTU filed an administrative suit against the Seoul Regional Labour Office which was rejected by the Courts essentially on the grounds that: (i) the union was under an obligation to produce documents proving that the provisions of the TULRAA on trade union monopoly are not violated; and (ii) since illegal residents are strictly banned from employment under the Immigration Control Act, they are not vested with the legal right to seek to improve and maintain their working conditions and to improve their status; such rights are given on the assumption that legitimate employment relations will continue; thus, illegal migrant workers are not eligible to establish a trade union. The MTU appealed against this decision and the Seoul High Court decided on 1 February 2007 in favour of the union on the following grounds: (i) there was no need to produce documents to ensure application of the provisions of the TULRAA upholding trade union monopoly, since these provisions apply in specific circumstances at the enterprise level while the MTU was established above that level; (ii) irregular migrant workers qualify as workers under the Constitution and the TULRAA and therefore, they are vested with legally protected basic labour rights; they are workers allowed to set up trade unions as long as they actually provide labour services and live on wages, salaries or other equivalent income paid for their service; and (iii) the restrictions on the employment of illegal migrant workers under the Immigration Control Act are not intended to prohibit foreign workers from forming a workers' organization to improve their working conditions. As a result, the High Court found that it is against the law to request a list of union members with the only purpose of checking whether they hold legal residence status. The Government appealed against this decision and the case is pending*

before the Supreme Court. In the meantime, several leaders of the MTU have been arrested in successive crackdown operations and in certain cases, deported.

786. *The Committee notes that the first issue to be examined is whether migrant workers, even in irregular situations, are entitled to freedom of association and collective bargaining rights. The Committee observes that according to the complainants, the High Court acknowledged in its decision of 1 February 2007, that all workers, including irregular migrant workers, are vested with these rights by virtue of articles 11(1) and 33(1) of the Constitution which guarantee to all workers without discrimination the right to independent organization, collective bargaining and collective action, and sections 5 and 9 of the TULRAA which provide that all workers have the right to freely form or join labour unions and that they should not be subject to discrimination.*

787. *The Committee notes the Government's arguments that irregular migrant workers are not entitled to freedom of association and collective bargaining rights; their right to establish a trade union depends on their residence status and the existence of a lawful employment relationship which is not possible in their case. The Government considers that the fundamental rights recognized under the Constitution can be divided into human rights and citizens' rights with only the former pertaining to migrant workers and excluding the right of freedom of association and collective bargaining. According to the Government, freedom of association for migrant workers is not directly guaranteed under the Constitution and the issue should be decided after taking into account the sovereign country's economic and employment situation, the need to protect its own nationals, relations with other countries and international circumstances. Moreover, recognizing the right to establish a trade union for illegal foreigners would create a contradictory situation in which the Government deports irregular foreign workers by force and criminally punishes employers who hire them under the Immigration Control Act, while at the same time recognizes a trade union of illegal foreigners and guarantees them the right to collective bargaining and collective action for the future. Foreigners illegally staying in the Republic of Korea are all strictly banned from employment under the Immigration Control Act and therefore are not in a position to seek to maintain and improve working conditions and their status on the assumption that their employment relations will continue.*

788. *The Committee recalls in this regard the general principle according to which all workers, without distinction whatsoever, including without discrimination in regard to occupation, should have the right to establish and join organizations of their own choosing [**Digest**, op. cit., para. 216]. The Committee further recalls that when examining legislation that denied the right to organize to migrant workers in an irregular situation – a situation maintained de facto in this case – it has emphasized that all workers, with the sole exception of the armed forces and the police, are covered by Convention No. 87, and it therefore requested the Government to take the terms of Article 2 of Convention No. 87 into account in the legislation in question [**Digest**, op. cit. para. 214]. The Committee also recalls the resolution concerning a fair deal for migrant workers in a global economy adopted by the ILO Conference at its 92nd Session (2004) according to which "[a]ll migrant workers also benefit from the protection offered by the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998). In addition, the eight core ILO Conventions regarding freedom of association and the right to bargain collectively, non-discrimination in employment and occupation, the prohibition of forced labour and the elimination of child labour, cover all migrant workers, regardless of status" [para. 12].*

789. *As regards the refusal of the authorities to acknowledge the establishment of the MTU and grant it trade union status, the Committee notes that this aspect of the case is pending before the Supreme Court and requests the Government to communicate this judgement as soon as it is rendered so that the Committee may examine this aspect of the case in full knowledge of the facts. The Committee intends to examine this issue in any event at its November 2009 meeting.*

790. *As regards the arrest and deportation of the MTU leaders, the Committee notes that according to the complainants, these acts were planned in advance and constituted repression to stop the rightful activities of the MTU; moreover, the deportation of MTU President Kajiman Khapung, Vice President Raju Kumar Gurung and General Secretary Abul Basher Maniruzzaman (Masum) took place in the middle of the night and in a secretive and illegal manner on 11 December 2007 while appeals were pending to the National Human Rights Commission and despite a commitment on behalf of the Government not to deport the trade union leaders while the investigation of the National Human Rights Commission was under way.*

791. *The Committee notes that according to the Government, arresting illegal residents and deporting them to their home countries is an authority with which a sovereign country is naturally endowed, and is unrelated to the involvement of these individuals in trade union activities. Their status as union officials does not mean that they are granted a legal status of residence and their violation of the Immigration Control Act was obvious. According to the Government, there had been no promise to the National Human Rights Commission but rather pending complaints with both this Commission and the Ministry of Justice against the deportation of the MTU leaders. However, it usually takes a long time for the National Human Rights Commission to make recommendations and any delay in the forced deportation would prolong the detention of the three individuals and would lead to a human rights infringement. The Government was not under an obligation to await for the Commission's recommendations since the illegal stay of the individuals was an obvious fact. The deportation took place on 13 December 2007 (and not on 11 December as alleged by the complainants) after a decision on 12 December 2007 to dismiss the appeal filed to the Ministry of Justice which was notified to the National Human Rights Commission and the illegal residents and their lawyers.*

792. *The Committee cannot fail to observe that the President of the MTU along with other officials, have been arrested shortly after their election to trade union office and despite the fact that they had been in the country for many years. The MTU's second President Kajiman Khapung was arrested four months after the departure of Anwar Hossain, on 27 November 2007, along with Vice President Raju Kumar Gurung and General Secretary Abul Basher Maniruzzaman (Masum) after having spent 15 years and nine months, seven years and seven months and 11 years and three months respectively, in the Republic of Korea. They were subsequently deported to their home countries. The MTU's third President Torna Limbu was arrested on 2 May 2008 along with Vice President Abdus Sabur less than a month after their election to the leadership of the MTU and after having spent 16 years and four months and nine years and two months, respectively, in the Republic of Korea. They were subsequently deported. With regard to the MTU's first President Mr Anwar Hossain, the Committee also observes that it may have been precisely Mr Anwar Hossain's activities in founding a trade union for migrant workers that gave rise to his arrest given that, until that time, he had been working in the country for almost ten years without any apparent incident. Indeed, he was arrested on 14 May 2005, 11 days after notifying the creation of the MTU with him as President to the Seoul Regional Labour Office.*

793. *The Committee recalls that the detention of trade unionists for reasons connected with their activities in defence of the interests of workers constitutes a serious interference with civil liberties in general and with trade union rights in particular [**Digest**, op. cit., para. 64]. The arrest of trade unionists may create an atmosphere of intimidation and fear prejudicial to the normal development of trade union activities [**Digest**, op. cit. para. 67]. Moreover, measures of deportation of trade union leaders while legal appeals are pending may involve a risk of serious interference with trade union activities. In this regard, the Committee expresses concern at the allegations according to which General Secretary Masum faced further interrogation upon arrival to his home country of Bangladesh. While the Committee is not in a position to opine as to their legal right to reside in the country, nor is it within the Committee's mandate to examine a country's immigration policy unrelated to freedom of association, the Committee can only once again express its deep concern at the coincidental timing of these actions with the trade union activities of these long-standing workers.*

794. *The Committee requests the Government to avoid in the future measures which involve a risk of serious interference with trade union activities such as the arrest and deportation of trade union leaders shortly after their election to trade union office and while legal appeals are pending.*

The Committee's recommendations

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

(a) As regards the refusal of the authorities to acknowledge the establishment of the MTU and grant it trade union status, the Committee notes that this aspect of the case is pending before the Supreme Court and requests the Government to communicate this judgement as soon as it is rendered so that the Committee may examine this aspect of the case in full knowledge of the facts. The Committee intends to examine this issue in any event at its November 2009 meeting.

(b) The Committee requests the Government to avoid in the future measures which involve a risk of serious interference with trade union activities such as the arrest and deportation of trade union leaders shortly after their election to trade union office and while legal appeals are pending.

CASE NO. 2518

INTERIM REPORT

Complaint against the Government of Costa Rica presented by
— the Industrial Trade Union of Agricultural Workers, Cattle Ranchers and Other Workers of Heredia (SITAGAH)
— the Plantation Workers Trade Union (SITRAP)
— the Chiriqui Workers Trade Union (SITRACHIRI) and
— the Coordinating Organization of Banana Workers Trade Unions of Costa Rica (COSIBA CR)

Allegations: The complainant organizations allege the slowness and ineffectiveness of administrative and judicial procedures in cases involving anti-union practices, the impossibility of exercising the right to strike given that most strikes are declared illegal by the judicial authority, discrimination in favour of permanent workers' committees to the detriment of trade unions and numerous acts of anti-union discrimination in enterprises in the banana sector

796. The Committee last examined the substance of this case at its November 2007 meeting and on that occasion submitted an interim report to the Governing Body for approval [see 348th Report, paras 440–510, approved by the Governing Body at its 300th Session].

797. The Government sent its observations in communications dated 20 February and 29 September 2008.

798. 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. Previous examination of the case

799. At its November 2007 meeting [see 348th Report, para. 510], the Committee made the following recommendations:

(a) recalling that the Committee of Experts on the Application of Conventions and Recommendations (CEACR) has, for several years, referred to the slowness and ineffectiveness of administrative and judicial procedures in cases of anti-union practices, the Committee, like the CEACR, urges that the various bills currently in progress in relation to the issues on which the Government provides information, will be adopted in the very near future and that they will be in full conformity with the principles of freedom of association;

(b) in regard to alleged discrimination in favour of the permanent workers' committees to the detriment of the trade unions, the Committee requests the Government to send its observations without delay;

(c) in regard to the Chiquita Cobal enterprise, the Committee requests the Government to inform it: (1) whether trade union officials Mr Teodoro Martínez Martínez, Mr Amado Díaz Guevara, member of the Committee on the Implementation of the Regional Agreement between the IUF/COLSIBA and Chiquita, Mr Juan Francisco Reyes and Mr Ricardo Peck Montiel have initiated judicial proceedings concerning their dismissals and, if so, of the status of these proceedings; (2) of the grounds for the dismissal of Mr Reinaldo López González and the reasons why the court ruling ordering his reinstatement was not executed, and to send it a copy of the agreement that is to be signed by the enterprise and the worker; and (3) of the grounds for the dismissal of Mr Manuel Murillo de la Rosa and the status of the court proceedings concerning his dismissal;

(d) in regard to the Chiquita-Chiriquí Land Company, the Committee requests the Government to inform it whether, in the process of the negotiations which the company says it has conducted with the trade union, it was decided to reinstate the dismissed trade unionists and members and, if not, to inform it of the grounds for the dismissals and whether judicial proceedings have been initiated in this regard;

(e) in regard to the Desarrollo Agroindustrial de Frutales SA enterprise, the Committee: (1) urges the Government to take all steps at its disposal so as to promote collective bargaining between the employers and their organizations on the one hand, and the organizations of workers on the other, in order to regulate the conditions of work in the enterprises concerned; and (2) requests the Government to send its observations concerning the alleged anti-union dismissal of Mr Jorge Luis Rojas Naranjo and to indicate whether the conciliation referred to in the case of Mr Germán Enoc Méndez's dismissal involved his reinstatement;

(f) in regard to the Santa María del Monte SA agricultural enterprise, the Committee requests the Government: (1) to send its observations concerning the allegations that workers of the enterprise were detained by the migration police; and (2) to inform it of the total number of workers dismissed at the same time as the trade unionists referred to by the complainant organizations, broken down into unionized and non-unionized workers, to keep it informed of the judicial proceedings under way referred to in the information sent by the enterprise, and to inform it if there were any trade union members among the workers rehired by the enterprise;

(g) in regard to the allegations concerning the Cariari and Teresa plantations owned by Banacol, the Committee requests the Government to send its observations without delay;

(h) the Committee requests the Government to take the necessary steps to ensure that an independent inquiry is carried out in the banana sector concerning the allegations that blacklists are being kept, and to keep it informed in this regard.

B. The Government's reply

800. In its communications dated 20 February and 29 September 2008, the Government refers to the recommendations made by the Committee when it last examined the case. As regards recommendation (a), the Government states that it takes note of the views of the Committee concerning the case in question, in particular with regard to concern about the slowness and ineffectiveness of administrative and judicial procedures in cases of anti-union practices and the urgent need to adopt the various bills currently in progress in relation to those issues. The Government hopes that all of these issues will be resolved and that the relevant bills will be adopted in the near future. The Government has shown an interest in strengthening all the necessary measures in accordance with the principles of freedom of association, including the promotion of responsive and swift legal and administrative procedures in cases involving anti-union practices. According to the Government, this is evidenced by letter No. DMT-0173-08, of 19 February 2008, in which the Ministry of Labour and Social Security requests the Ministry of the Presidency, among other things, to promote a group of bills that will contribute to strengthening the procedures in question (including the approval of the Bill to reform labour procedures).

801. The Government adds that the Ministry of Labour and Social Security sent a copy of the report of the Committee on Freedom of Association on 19 February 2008 to Mr Luis Paulino Mora Mora, President of the Supreme Court of Justice (in letter No. DMT-0161-2008), Mr José Pablo Carvajal Cambronero, Executive Director of the High Labour Council (in letter No. DMT-0164-2008) and Mr Alexander Mora Mora, Chairperson of the Permanent Committee for Legal Affairs of the Legislative Assembly (in letter No. DMT-0163-2008), so as to inform them of the recommendations and elicit their views in that regard. The Government undertakes to inform the Committee in the near future of the opinions submitted by the abovementioned authorities.

802. The President of the Second Chamber of the Supreme Court of Justice responded to the observations concerning the slowness and ineffectiveness of administrative and judicial procedures in cases of anti-union practices, in letter No. SP-269-08 of 27 May 2008. In this letter, the President expresses his agreement with some of the points made regarding the Bill to reform labour procedures, which is being processed under legislative procedure

No. 15990 and is currently before the Plenary of the Legislative Assembly for discussion and approval. The President states that the abovementioned Bill is intended to simplify labour procedures by reducing the number of courts and appeals involved and introducing oral proceedings. In addition, procedures for the settlement of economic and social disputes are being amended in order to make them more practical and effective, and rules are being drawn up to regulate dispute settlement in the public sector.

803. Moreover, the President states that the Supreme Court of Justice is doing its utmost to help ensure that the Bill becomes law, given that it would provide the courts with a swift and effective means of settling legal, economic and social labour disputes. The Supreme Court of Justice recognizes that certain legal procedures have been slow.

804. In relation to the Bill to reform labour procedures (legislative procedure No. 15990), the Government adds that the High Labour Council has reactivated a special study and analysis committee with tripartite participation. The committee's objective is to reach consensus on certain points of the Bill and transmit the results of the study to the members of Parliament, with a view to smoothing the way for approval of the Bill in the near future, especially given that the main actors have already concluded important agreements regarding this issue. An important contribution to the work of the abovementioned special committee of the High Labour Council has been the report submitted by the ILO Subregional Office to the Ministry of Labour and Social Security in August 2008. This report is the result of technical assistance requested by the abovementioned official in order to ensure that the Bill is in full conformity with the provisions of ILO Conventions Nos 87 and 98, as stated in letter No. DMT-1131-2007 of 23 July 2007.

805. The expert report will be transmitted, not only to the special committee of the High Labour Council, but also to the special subcommittee established on 27 May 2008 within the Committee for Legal Affairs of the Legislative Assembly to study the Bill to reform labour procedures and issue an opinion on it. Given the considerable joint effort undertaken by the executive and judicial branches, together with the main social partners (guided by ILO technical assistance) the Government of Costa Rica, acting in a responsible manner and determined to resolve the situation, hopes that the Bill will become law in the near future, once it has been analysed and studied by the Plenary of the Legislative Assembly.

806. In addition to contributing to the promotion of the Bill, which will streamline legal procedures, the judiciary has also taken steps to increase its human resources, and to strengthen the functioning of courts through improved computerized links with external bodies to speed up legal procedures in labour cases (connecting it to the Civil Registry, the Public Registry, the Office of the Attorney-General, etc.) and to purchase digital recording equipment to be used during oral hearings, among other things. Furthermore, small claims labour courts have been established in various regions of the country in order to handle cases more swiftly, especially since the rules governing these courts provide for oral proceedings. The judiciary has thus considerably reduced the average duration of labour cases and the caseload.

807. The Government adds that, in order to strengthen the judicial system further, in March 2008, the Supreme Court of Justice approved the establishment of the Conciliation Centre of the Judiciary, which promotes flexible, informal and effective judicial mechanisms. Conciliation – either in the labour courts or in other judicial bodies – is offered as an additional means of fulfilling the constitutional mandate of providing swift and full justice. This is an ideal tool for a preventive approach, allowing judges to deal with disputes which, by their nature, can only be resolved through a court ruling.

808. The Government adds that the Ministry of Labour and Social Security is also interested in strengthening alternative means of dispute resolution by the administrative authority, given

that efforts in this direction help reduce the number of cases brought before the labour courts, thereby relieving court congestion and saving judicial resources.

809. Furthermore, the judiciary is continuing to implement the "Programme to combat delays in legal proceedings", which seeks to balance the caseload among the different judicial bodies in order to provide a more timely service to users. This is done by providing congested courts with supernumerary judges appointed by the Office of the Chief Justice. In 2007, the Programme provided assistance to 48 courts, including misdemeanour, maintenance, family and labour courts. In the same year, a total of 5,181 cases were handled under the Programme, with 4,667 judgements and decisions handed down and around 614 cases rejected.

810. As to recommendation (b) on the issue of alleged discrimination in favour of the permanent workers' committees to the detriment of the trade unions, the Government states that this issue was examined by the ILO high-level technical assistance mission which visited Costa Rica in October 2006. During its visit, the mission took note of the formal request by the Ministry of Labour and Social Security for ILO assistance in conducting an independent inquiry into the issue. To carry out this task, the ILO appointed Adrián Goldín, Professor of Labour Law at the University of San Andrés (Argentina) in February 2007. The Government of Costa Rica, acting through the Ministry of Labour and Social Security, cooperated fully, providing all the logistical and technical support requested by Mr Goldín. In May 2008, the Government of Costa Rica received a copy of the study carried out by the independent expert appointed by the CEACR, to which it had agreed during the visit of the ILO high-level mission to the country. In this regard, the Government reiterates that, even if it might be claimed that there are a wide variety of factors conducive to the existence of more direct settlements than collective agreements, as noted by the CEACR, the fact is that both institutions have a basis in law and are freely chosen by the sectors involved.

811. However, owing to its constitutional status and its important role in maintaining social peace, collective bargaining is given special protection, both in Costa Rican positive law and in national practice. This can be seen not only in the labour law status granted to it by the Constitution and in the regulatory framework governing collective agreements, but also in the content of an administrative directive of 4 May 1991 on the "correct procedure for handling direct settlements submitted after a request has already been made for collective bargaining". The National Inspection Directorate must act in accordance with these provisions whenever a direct settlement is submitted to it in order to be deposited. In such cases, before the settlement can be deposited, the General Labour Inspectorate must ascertain that there is not already a trade union recognized for purposes of negotiating a collective agreement present in the enterprise concerned and that it has not already initiated the bargaining procedure, in accordance with section 56 of the Labour Code.

812. Should it be found that a trade union recognized for bargaining purposes already exists in the enterprise, the General Labour Inspectorate shall reject the direct settlement immediately, without assessing its content, so as not to undermine the negotiation of the collective agreement (as such agreements have a higher legal ranking). However, it is true that the independent expert refers to circumstances which would appear to contradict the commitment under Article 4 of Convention No. 98, regarding the promotion of the full development and utilization of machinery for voluntary negotiation. Thus, given that the report in question has only recently been received, and taking into account the recommendation of the Committee of Experts addressed to the Government concerning the need to submit the document and its conclusions for tripartite analysis, the Ministry of Labour and Social Security has sent a complete copy of the study to each of the members of the High Labour Council with a view to correcting the imbalance between the number of collective agreements and direct settlements.

813. The Government emphasizes that it continues to hope that a satisfactory solution will be found through genuine social dialogue, involving all the social actors concerned, without prejudice to any technical assistance that the ILO may be able to offer in this matter, in order to ensure that permanent committees and direct settlements do not have an anti-union impact in practice (as pointed out by the independent expert in his report). The issue is a complex one, and the Government hopes that, in the near future, it will be able to put forward a consolidated proposal that offers a satisfactory solution to the situation referred to by the independent expert.

814. As to recommendations (c), (d), (f) and (g), the Government states that it has sent a copy of the 348th Report of the Committee on Freedom of Association to representatives of all of the enterprises mentioned: the Chiquita Cobal enterprise, Chiquita-Chiriquí Land Company, Agrícola Santa María del Monte SA and Banacol (with regard to the Cariari and Teresa plantations), and transmits the observations of the enterprises in question. As to recommendations (c) and (d), the Government transmits information provided by the Chiquita Cobal enterprise and Chiquita-Chiriquí Land Company, reiterating that provided when this case was examined in November 2007. As to recommendation (f) regarding the Agrícola Santa María del Monte SA enterprise, the Government sends a communication from the enterprise stating that, in 2005, a decision was taken to dismiss 124 estate workers, with full payment of entitlements, in order to reduce the workforce to 86 in accordance with the needs of the estate. Most of those 86 workers were non-unionized. Among the 86 new workers hired, only one worker, Fabio Amador Martínez, a union member, was rehired. As to the workers detained by the immigration authorities, the enterprise denies any involvement with the matter, which concerns undocumented workers.

815. As to recommendation (g) regarding the Cariari and Teresa plantations (owned by Banacol), the Government transmits Banacol's reply to the effect that it recognized the Plantation Workers Trade Union (SITRAP) as soon as it learned that there were members of SITRAP among its workers, and that it gave express instructions to its managers on the Cariari and Teresa plantations in that regard. The enterprise denies that SITRAP members have been persecuted, affirming, on the contrary, that "The exercise of disciplinary authority (warnings, reprimands, etc.) by the employer does not constitute grounds for complaints of anti-union persecution".

816. The enterprise has provided the following statement regarding the workers concerned:

– Mr Isidro Sánchez Obando's replanting work was discontinued because it was no longer necessary. Once all the plants allotted for each plot have been planted, this work is no longer carried out. This was the case at four plantations, including the one on which he was employed, and hence he could not be assigned the same task, as it had been discontinued. This type of work is known as *mantenimiento de resiembra* (ongoing replanting), and is carried out to cope with a temporary shortage of banana plants, which was overcome, and as *de mata lenta* (slow plant) work, which involves tending plants that are growing at a slower rate than normal;

– Mr Hermes Cubillo Gómez was paid the wage difference owed to him, as noted in the minutes of the meeting between the enterprise and SITRAP that was held at the Ministry of Labour offices in San José on 24 August 2008. On 3 September 2003 (long before he joined the trade union) this worker had received a written reprimand for physically and verbally assaulting Mr Mora Mora Gerardo, while he was doing his job. This constituted grounds for dismissal, but the enterprise only issued a reprimand (section 81(a) of the Labour Code). On 24 May 2005, he was again issued with a warnings for leaving his post. On 1 and 24 April 2006, he was given written warnings for having abandoned his post. These acts constitute grounds for dismissal under

sections 72(a) and 81(y) of the Labour Code, but the enterprise did not dismiss the worker. How can anyone allege trade union persecution in the case of a worker who could have been dismissed for serious misconduct but who merely received reprimands or suspensions instead of being dismissed;

– Mr Oscar Hernández did not perform his task of pruning plants correctly and his productivity was low as a result. Consequently, he was assigned another task. Such reassignments are often carried out on estates in the case of labourers, who are recruited to carry out all the usual agricultural tasks that are commensurate with their strength, abilities, state or condition and are of the same nature as the core business, activity or industry in which the employer is engaged, in accordance with section 20 of the Labour Code. This worker received a reprimand on 28 April 2006 for failing to carry out his duties correctly;

– as to Mr Angel Sánchez Coronado, the coordinators of the trade union and the enterprise agreed to review the tasks assigned to him and his wages.

817. As to the withdrawal from trade union membership by members of SITRAP, the enterprise states that a number of SITRAP members decided to leave the trade union of their own accord. They requested Mr Carlos Luis Sánchez Marín, a member of the permanent committee of estate workers, who was going to attend a meeting on the programming of courses on solidarism at the Escuela Social Juan XXIII in Siquirres, to give them a lift in a vehicle provided for the use of the solidarist association. Once in Siquirres, the former trade unionists asked Mr Sánchez, as a member of the permanent committee, to accompany them to the SITRAP offices, which he did. This was portrayed as employer interference in withdrawal from trade union membership. The enterprise cannot be held responsible for the actions of third parties (such as solidarist associations, members of the permanent committee or other workers or middle management) unless it is shown that they were acting with its consent. There is no proof that the enterprise gave its consent with regard to any of the incidents mentioned in the complaints, or that it imposed disciplinary penalties that were not grounded in the authority of the employer.

818. As to recommendation (e), the Government states that the Desarrollo Agroindustrial de Frutales SA enterprise informed it, in letter No. S.OB. 036-08, of 22 January 2008, that, in the labour court proceedings initiated by the workers Jorge Luis Rojas Navarro and Germán Enoc Méndez Aguirre (heard by the Labour Court of the Second Circuit of San José) the parties reached a conciliation agreement, and the cases were shelved as a result. The representative of the enterprise provided certified copies of the court rulings stating that the complaint had been withdrawn and ordering that the case be shelved (both these rulings were handed down by the Labour Court of the Second Circuit of San José). The legal representative of the respondent enterprise also provided a copy of the document in which he accepted the withdrawal of the complaint and requested that the proceedings be closed.

819. As to recommendation (h), the Government states that, convinced of the need to implement in national practice institutions enabling workers to exercise their rights at work fully, and in the light of the Committee's recommendation, it considers it prudent to submit a formal request for ILO technical assistance, so that the ILO's interdisciplinary teams and/or advisers can carry out the "independent inquiry" suggested by the Committee, in order to address the allegations concerning the keeping of blacklists in the banana sector and protect the fundamental rights and guarantees of all the workers in that sector.

C. The Committee's conclusions

820. *At its November 2008 meeting, the Committee examined allegations regarding the slowness and ineffectiveness of administrative and judicial procedures in cases involving anti-union practices, the impossibility of exercising the right to strike given that most strikes are declared illegal by the judicial authority, discrimination in favour of permanent workers' committees to the detriment of trade unions and numerous acts of anti-union discrimination in enterprises in the banana sector, and on that occasion made recommendations [see 348th Report, para. 510].*

821. *As to recommendation (a), in which the Committee urged the Government to adopt in the very near future the various bills currently in progress in relation to the slowness and ineffectiveness of administrative and judicial procedures in cases of anti-union practices, on which the Government provided information, and stressed that they should be in full conformity with the principles of freedom of association, the Committee notes that the Government states that: (1) in letter No. DMT-0173-08, of 19 February 2008, the Ministry of Labour and Social Security requested the Ministry of the Presidency to promote a group of bills that would contribute to strengthening the procedures in question (including the approval of the Bill to reform labour procedures); (2) it sent copies of the Committee's report to the President of the Supreme Court of Justice, the Executive Director of the High Labour Council and the Chairperson of the Permanent Committee for Legal Affairs of the Legislative Assembly, to inform them of the recommendations and elicit their views in that regard; (3) the President of the Second Chamber of the Supreme Court of Justice stated that he agreed with some of the points made regarding the Bill to reform labour procedures, which is currently before the Plenary of the Legislative Assembly for discussion and approval, and that the Supreme Court of Justice was doing its utmost to help ensure that the Bill became law, given that it would provide the courts with a swift and effective solution to legal, economic and social labour disputes;(4) as regards the Bill to reform labour procedures, the High Labour Council has reactivated a special study and analysis committee with tripartite participation. The aim of this committee is to reach consensus on certain points of the Bill and transmit the results of the study to the members of Parliament, with a view to smoothing the way for approval of the Bill in the near future; (5) the judiciary has also taken steps to increase its human resources, and to strengthen the functioning of courts, thereby considerably reducing the average duration of labour cases; and (6) the Ministry of Labour and Social Security is also interested in strengthening alternative means of dispute resolution by the administrative authority, given that efforts in this direction help reduce the number of cases brought before the courts. Under these circumstances, the Committee appreciates the fact that the Government has submitted this issue to the competent authorities and to a tripartite body, and expects that the bills in question will be adopted in the near future.*

822. *As to recommendation (b), in which the Committee requested the Government to send its observations without delay regarding alleged discrimination in favour of the permanent workers' committees to the detriment of the trade unions, the Committee notes that the Government states that: (1) this issue was examined by the ILO high-level technical assistance mission which visited Costa Rica in October 2006; (2) during the visit, the mission took note of the formal request by the Ministry of Labour and Social Security for ILO assistance in conducting an independent inquiry into the issue; (3) to carry out that task, the ILO appointed Adrián Goldín, Professor of Labour Law at the University of San Andrés (Argentina) in February 2007. The Government of Costa Rica cooperated fully, providing all the logistical and technical support requested by Mr Goldín, and received his report in May 2008; (4) even if it might be claimed that there are a wide variety of factors conducive to the existence of more direct settlements than collective agreements, it is true that both institutions have a basis in law and are freely chosen by the sectors involved; however, owing to its constitutional status and its important role in maintaining social*

peace, collective bargaining is given special protection; (5) should it be found that a trade union recognized for bargaining purposes already exists in the enterprise, the General Labour Inspectorate shall reject the direct settlement immediately, without assessing its content, so as not to undermine the collective bargaining process; (6) it is true that the independent expert refers to circumstances which would appear to contradict the commitment under Article 4 of Convention No. 98. Accordingly, and taking into account the recommendation of the Committee of Experts on the Application of Conventions and Recommendations, the Ministry of Labour and Social Security has sent a complete copy of the study to each of the members of the High Labour Council; and (7) the Government continues to hope that a satisfactory solution will be found through genuine social dialogue, involving all the social actors concerned, in order to ensure that permanent committees and direct settlements do not have an anti-union impact in practice. In this regard, the Committee appreciates the fact that the Government has submitted this issue to the competent authorities and to a tripartite body, and expects that the measures planned by the Government will enable appropriate solutions to be found to the problem of collective agreements with non-unionized workers.

823. *As to recommendations (c) and (d), in which the Committee requested the Government to transmit its observations regarding allegations concerning the Chiquita Cobal enterprise and the Chiquita-Chiriquí Land Company, the Committee notes that the Government has sent information that had already been provided by the enterprises when the case was examined in November 2007. Under these circumstances, the Committee regrets that the Government has not sent the requested observations, reiterates the recommendations it made when last examining the case and expects that, together with any information the enterprises might wish to transmit, the Government will send the requested observations in due course.*

824. *As to recommendation (f) regarding the enterprise Agrícola Santa María del Monte SA, in which the Committee requested the Government: (1) to send its observations concerning the allegations that workers of the enterprise were detained by the migration police; and (2) to inform it of the total number of workers dismissed at the same time as the trade unionists referred to by the complainant organizations, broken down into unionized and non-unionized workers, to keep it informed of the judicial proceedings under way referred to in the information sent by the enterprise, and to inform it if there were any trade union members among the workers rehired by the enterprise, the Committee notes that the Government has transmitted a report from the enterprise indicating that: (a) the enterprise has nothing to do with the undocumented workers detained in March 2005 by the immigration authorities, and (b) in 2005, the enterprise decided to dismiss 124 estate workers, including a few unionized workers, with full payment of entitlements, and 86 workers were later hired, of whom one was a union member. In this regard, the Committee notes that the dismissed workers do not seem to have lodged a complaint with the national authorities, and trusts that, in future, when staff cuts are being planned, the trade union organizations concerned will be fully consulted.*

825. *As to recommendation (e) regarding the enterprise Desarrollo Agroindustrial de Frutales SA, the Committee: (1) urged the Government to take all steps at its disposal so as to promote collective bargaining between the employers and their organizations on the one hand, and the organizations of workers on the other, in order to regulate the conditions of work in the enterprise concerned; and (2) requested the Government to send its observations concerning the alleged anti-union dismissal of Mr Jorge Luis Rojas Naranjo and to indicate whether the conciliation referred to in the case of Mr Germán Enoc Méndez Aguirre's dismissal involved his reinstatement. In this regard, the Committee notes that the Government states that the enterprise reported that, in the labour court proceedings initiated by the workers Mr Jorge Luis Rojas Naranjo and Mr Germán Enoc Méndez Aguirre, the parties reached a conciliation agreement, and the cases were shelved*

as a result. Under these circumstances, in the absence of information from the Government regarding the allegations concerning collective bargaining, the Committee urges the Government to take all steps at its disposal so as to promote collective bargaining between the employers and their organizations on the one hand, and the organizations of workers on the other, in order to regulate the conditions of work in the enterprise Desarrollo Agroindustrial de Frutales SA, and to keep it informed in this respect.

826. *As to recommendation (g), regarding allegations of anti-union persecution of the workers Isidro Sánchez Obando (allegedly transferred to other duties), Angel Sánchez Coronado, Hermes Cubillo Gómez and Oscar Hernández of the Cariari and Teresa plantations (owned by Banacol), who decided to become members of SITRAP, as well as pressure brought to bear by the enterprise to force workers to leave the trade union, the Committee observes that the Government transmits a report from the enterprise which states that: (1) it recognized SITRAP as soon as it learned that there were members of the union among its workers; (2) members of SITRAP are not persecuted; (3) Mr Sánchez Obando was transferred to other duties because the tasks he had previously been assigned had been discontinued; Mr Hermes Cubillo Gómez was paid the wage difference owed him and reprimanded for verbal and physical assault (long before he joined the trade union); Mr Oscar Hernández was transferred to another task because he was not carrying out his duties in a satisfactory manner and received a warning in that regard; and (4) as to the cases of withdrawal from SITRAP membership, a number of workers decided to leave the trade union of their own accord and requested a member of the permanent workers' committee of the plantation, Mr Carlos Ruiz Sánchez Marín, to accompany them to the SITRAP offices. The enterprise states that it cannot be held responsible for the actions of third parties unless it is shown that they were acting with its consent. The Committee takes note of this information furnished by the enterprise and regrets the absence of any information from the Government respecting this matter.*

827. *As to recommendation (h), in which the Committee requested the Government to take the necessary steps to ensure that an independent inquiry is carried out in the banana sector concerning the allegations that blacklists are being kept, and to keep it informed in this regard, the Committee notes that the Government has requested ILO technical assistance, so that the ILO's interdisciplinary teams and/or advisers can carry out the independent inquiry, in order to address the allegations concerning the keeping of blacklists in the banana sector and protect the fundamental rights and guarantees of the workers in that sector. In this regard, the Committee understands that the Government is prepared to accept a mission sent by the Subregional Office so that an independent inquiry can be carried out into the allegations concerning the keeping of blacklists in the banana sector, and hopes that this assistance will be provided as soon as possible.*

The Committee's recommendations

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

(a) The Committee expects that the various bills currently in progress in relation to the slowness and ineffectiveness of administrative and judicial procedures in cases of anti-union practices, on which the Government provides information, will be adopted in the very near future and that they will be in full conformity with the principles of freedom of association.

(b) As to the alleged discrimination in favour of the permanent workers' committees to the detriment of the trade unions, while noting that the Government has submitted this issue to a tripartite body and that it intends to adopt measures regarding the report made by an independent investigator in this respect, the Committee expects that appropriate solutions will be found to the problem of collective agreements with non-unionized workers referred to when the case was last examined.

(c) In the absence of information from the Government regarding certain allegations, the Committee expects that, together with any information the enterprises might wish to transmit, the Government will send its observations in due course regarding the following recommendations made in November 2007, which are reproduced below:

- ***in regard to the Chiquita Cobal enterprise, the Committee requests the Government to inform it: (1) whether trade union officials Mr Teodoro Martínez Martínez, Mr Amado Díaz Guevara, member of the Committee on the Implementation of the Regional Agreement between the IUF/COLSIBA and Chiquita, Mr Juan Francisco Reyes and Mr Ricardo Peck Montiel have initiated judicial proceedings concerning their dismissals and, if so, of the status of these proceedings; (2) of the grounds for the dismissal of Mr Reinaldo López González and the reasons why the court ruling ordering his reinstatement was not executed, and to send it a copy of the agreement that is to be signed by the enterprise and the worker; and (3) of the grounds for the dismissal of Mr Manuel Murillo de la Rosa and the status of the court proceedings concerning his dismissal;***

- ***in regard to the Chiquita-Chiriquí Land Company, the Committee requests the Government to inform it whether, in the process of the negotiations which the company says it has conducted with the trade union, it was decided to reinstate the dismissed trade unionists and members and, if not, to inform it of the grounds for the dismissals and whether judicial proceedings have been initiated in this regard.***

(d) The Committee urges the Government, as previously requested, to take all steps at its disposal so as to promote collective bargaining between the employers and their organizations on the one hand, and the organizations of workers on the other, in order to regulate the conditions of work in the enterprise Desarrollo Agroindustrial de Frutales SA and to keep it informed in this respect.

(e) The Committee understands that the Government is prepared to accept a mission sent by the Subregional Office so that an independent inquiry can be carried out into the allegations concerning the keeping of blacklists in the banana sector, and hopes that the necessary measures will be taken to provide this assistance as soon as possible.

CASE NO. 2557

INTERIM REPORT

Complaint against the Government of El Salvador presented by
— the Trade Union Confederation of El Salvador Workers (CSTS)
— the Trade Union Federation of Food, Beverage, Hotel, Restaurant and Agro-Industry Workers of El Salvador (FESTSSABHRA) and
— the Sweets and Pastries Industrial Trade Union (SIDPA)

Allegations: Fraudulent dissolution of a trade union with financial offers from the employer and dismissal of a large number of union members

829. The Committee examined this case at its March 2008 meeting and presented an interim report to the Governing Body [see 349th Report, paras 756–781, approved by the Governing Body at its 301st Session (March 2008)].

830. At its November 2008 meeting, the Committee noted that despite the time that had elapsed since the presentation of the complaint and since the most recent examination of the case, the information requested from the Government had still not been received. The Committee drew the Government's attention to the fact that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body, it might present a report on the substance of the case if the requested observations or information had not been received in due time. The Committee accordingly requested the Government to transmit the information requested as a matter of urgency.

831. To date no such information has been received from the Government.

832. 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. Previous examination of the case

833. In its March 2008 meeting, the Committee made the following recommendations on questions still pending [see 349th Report, para. 781]:

(a) The Committee emphasizes the seriousness of the allegations made in the present case with regard to the dissolution of a trade union and anti-union dismissals.

(b) The Committee regrets that, even though the present case contains serious allegations of anti-union dismissals of a large number of trade union members (16), as well as allegations of acts of interference in union affairs by the employer in the form of financial offers, the Government has not undertaken an in-depth investigation of these matters. The Committee urges the Government to carry out an investigation without delay, to keep it informed in this regard and – if the allegations are proven – to take the necessary measures to reinstate the trade union members in their posts with back pay, as well as to take the measures and impose the sanctions provided for in the law so as to remedy such acts.

(c) In close connection with the dissolution of the SIDPA trade union, the Committee requests the Government to send the report of the Human Rights Ombudsperson on the

present case as soon as the Ombudsperson reaches a decision, and also to send any decisions taken as a result of the criminal complaint filed at the Attorney-General's Office by a union member for alleged falsification of documents and facts by the former General Secretary who instigated the allegedly fraudulent dissolution of the union.

B. The Committee's conclusions

834. *The Committee regrets that, despite the time that has elapsed, the Government has not sent the information requested, despite being invited on a number of occasions, including by means of an urgent appeal, to present its comments and observations on the case.*

835. *Under these circumstances and in accordance with the applicable procedural rules [see 127th Report, para. 17, approved by the Governing Body at its 184th Session], the Committee feels obliged to present a report on the case without the information it had hoped to receive from the Government.*

836. *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.*

837. *The Committee notes with regret the Government's failure to cooperate with the procedure, and, given the seriousness of the allegations, regrets that the Government has not responded to the urgent appeal made at its November meeting. Consequently, the Committee urges the Government to send without delay the information requested and to be more cooperative in the future.*

838. *The Committee notes that in the present complaint, according to the allegations, three trade union leaders of the Sweets and Pastries Industrial Trade Union (SIDPA), following the acceptance by two of them of a financial offer by the President of the Productos Alimenticios Diana SA de CV enterprise, instigated a fraudulent "voluntary" procedure to dissolve the trade union behind the backs of the other union officers and members; the procedure was initiated, supposedly with the support of a general meeting held on 13 January 2007, with 28 signatures on the relevant document, although ten of these signatures are forged and one of the signatories is resident in the United States. In other words, the condition stipulated by the trade union's own statutes, of having the agreement of two-thirds of the union's membership for the union to be dissolved, was not met (the complainants indicate that the union has 43 registered members at the Productos Alimenticios Diana SA enterprise alone); in contravention of the trade union's statutes, the general meeting was not announced eight days in advance in the press and was not agreed by the union's executive body. The Committee notes that according to the allegations, the Second Labour Judge on 15 February 2007 approved the dissolution of the union (although labour proceedings generally take months or even years), and between 12 and 15 March 2007, the company dismissed two union leaders and eight other union members and offered financial compensation in order to avert proceedings or complaints. Lastly, on 7 May 2007, the company dismissed a trade union leader, two former officials and three other members.*

839. *In the absence of the information requested from the Government at its March 2008 meeting, the Committee wishes to recall the conclusions it formulated on that occasion [see 349th Report, paras 777–780].*

– *The Committee notes the Government's statements, particularly to the effect that: (1) the judiciary requested the Ministry of Labour and Social Security to revoke the registration of the SIDPA trade union, and on 2 March 2007 this request was complied with by the Ministry, which deemed the union dissolved, revoked the registration of the union and its executive committee and, in accordance with the law, appointed the Liquidation Board, whose proceedings were completed on 25 July 2007 and approved by the Ministry of Labour; (2) the court ruling ordering the dissolution of the union can be appealed against and dismissed workers can have recourse to the courts or – something they did not actually do – request the Directorate-General of Labour Inspection for legal protection of the breached labour rights; (3) a member of the trade union filed a criminal complaint against one of the instigators of the dissolution of the union (its general secretary at the time) for alleged falsification of documents and facts; and (4) as regards the complaint submitted to the Human Rights Ombudsperson by the General Secretary of the Productos Alimenticios Diana SA de CV branch of SIDPA on account of the dissolution of the union and the dismissals, the Ministry of Labour sent a document in which it essentially reiterates points (1) and (2) above, emphasizing that it (the Ministry of Labour) had merely complied with the court ruling.*

– *The Committee observes that the Government has not replied to the complainant organizations' claims that on 21 December 2006 two SIDPA officials (including the General Secretary of the union's enterprise branch) informed the Ministry of Labour in writing of the violations committed by two former leaders in dissolving the union in collusion with the enterprise and requested that no documentation on behalf of the union should be made available to those persons who had been replaced at the general meeting of 16 December 2006 and were being expelled from the union. Nevertheless, the Ministry supplied various records and documents to those persons.*

– *The Committee regrets that, even though the present case contains serious allegations of anti-union dismissals of a large number of trade union members (16), as well as allegations of acts of interference in union affairs by the employer in the form of financial offers, the Government has not undertaken an in-depth investigation of these matters. The Committee urges the Government to carry out an investigation without delay, to keep it informed in this regard and – if the allegations are proven – to take the necessary measures to reinstate the trade union members without delay in their posts with back pay, as well as to take the measures and impose the sanctions provided for in the law so as to remedy such acts.*

– *The Committee also requests the Government to send the report of the Human Rights Ombudsperson on the present case as soon as the Ombudsperson reaches a decision, and also to send any decisions taken as a result of the criminal complaint filed at the Attorney-General's Office by a union member for alleged falsification of documents and facts by the former General Secretary who instigated the allegedly fraudulent dissolution of the union.*

840. *The Committee once again reiterates these conclusions, and expects that the Government will take steps to send the requested information. The Committee recalls in general terms that no one should be dismissed or subjected to anti-union discrimination because of legitimate trade union membership or activities, and that the authorities must ensure adequate protection against interference by employers in union affairs [see, for example,* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth edition, 2006, paras 770 and 771]. The Committee requests the Government to ensure that these principles are respected.*

The Committee's recommendations

841. ***In the light of its foregoing interim conclusions, the Committee invites the Government to approve the following recommendations:***

(a) The Committee emphasizes the seriousness of the allegations in this case, concerning the dissolution of a trade union and anti-union dismissals, and regrets the Government's failure to cooperate with the procedure by not sending the information requested, despite the urgent appeal sent in November 2008; the Committee expects that the Government will be more cooperative in future.

(b) The Committee regrets that, even though the present case contains serious allegations of anti-union dismissals of a large number of trade union members (16), as well as allegations of acts of interference in union affairs by the employer in the form of financial offers, the Government has not undertaken an in-depth investigation of these matters. The Committee urges the Government to carry out an investigation without delay, to keep it informed in this regard and – if the allegations are proven – to take the necessary measures to reinstate without delay the trade union members in their posts with back pay, as well as to take the measures and impose the sanctions provided for in law so as to remedy such acts.

(c) In close connection with the dissolution of the SIDPA trade union, the Committee urges the Government to send the report of the Human Rights Ombudsperson on the present case as soon as the Ombudsperson reaches a decision, and also to send any decisions taken as a result of the criminal complaint filed at the Attorney-General's Office by a union member for alleged falsification of documents and facts by the former General Secretary who instigated the allegedly fraudulent dissolution of the union.

(d) The Committee recalls in general that no one should be dismissed or be subjected to anti-union discrimination because of trade union membership or activities, and the authorities must ensure that adequate protection is provided against acts of interference by employers in trade union affairs. The Committee requests the Government to ensure that these principles are respected.

(e) The Committee requests the Government to send the information requested, and expects that it will do so without delay, and that it will obtain information from the enterprise concerned by the questions under examination through the national employers' organization.

CASE NO. 2615

DEFINITIVE REPORT

Complaint against the Government of El Salvador presented by the Trade Union of Workers in the Tourism, Hotel and Allied Industries (STITHS)

Allegations: Violation of the collective agreement clause on regrading and wage adjustment; submission of a collective agreement signed by the parties in the Salvadorian Tourism Institute (ISTU) for approval by the authorities (the ministry concerned and the Ministry of Finance); dissolution of the ISTU and future inapplicability of the collective agreement

842. The complaint is contained in a communication from the Trade Union of Workers in the Tourism, Hotel and Allied Industries (STITHS) dated 31 October 2007. That organization sent additional information in a communication dated 19 May 2008.

843. At its November 2008 meeting, the Committee observed that, despite the time which had elapsed since the submission of the complaint, it had not received the observations of the Government. The Committee 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 might present a report on the substance of the case at its next meeting, even if all the Government's observations had not been received in due time, and requested the Government to transmit its observations as a matter of urgency [see 351st Report, para. 9]. To date, no observations have been received from the Government.

844. 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 complainant's allegations

845. In its communication dated 31 October 2007, the STITHS states that it was established on 24 March 1998, obtained legal personality on 19 May 2000 and concluded a collective agreement with the Salvadorian Tourism Institute (ISTU).

846. According to the complainant, the ISTU violated the collective agreement in force and refused to take the necessary legal steps to register a new collective agreement.

847. Specifically, in 2006, the trade union presented a proposal to the ISTU intended to give effect to the clause reproduced verbatim below:

> *Regrading or wage adjustment*
>
> The ISTU undertakes to carry out a study on the regrading of certain posts or wage adjustment, in a commission consisting of two representatives each of the ISTU and the trade union. This will be done in accordance with sections 123, 124 and 125 of the Labour Code.
>
> The results of the commission's study will be communicated promptly to the office of the President of the ISTU and the ISTU will take the necessary steps as soon as possible to complete the legal formalities.

848. For several weeks, the ISTU management ignored the proposal for a study on the regrading of certain posts or wage adjustment by the commission referred to in the clause.

849. On 30 July 2007, in the presence of representatives of the different recreation parks, a representative of the ISTU made a commitment to carry out the wage adjustment within

45 days at the latest from 30 July 2007, with retroactive effect from the month of April. This agreement was consigned in record No. 12 dated 28 March 2007 (sent as an attachment).

850. Instead of implementing and honouring the agreement, the ISTU authorities again failed to abide by their signed undertaking and on 7 September 2007, the managing director of the ISTU wrote to the Ministry of Finance cancelling the request for a wage adjustment and regrading which he had submitted under the terms of the abovementioned agreement (the letter from the ISTU authorities cancelling the request is sent as an attachment).

851. The complainant trade union further alleges that on 3 January 2007, it wrote to the Ministry of Labour and Social Welfare requesting a revision of the collective agreement in force. On 22 January 2007, the Ministry notified the parties (the STITHS and the ISTU) of its assent and on 23 January, the managing director of the ISTU convened the STITHS bargaining committee. The committee agreed on the dates and times of its meetings to revise the draft collective agreement presented by the STITHS, consisting of 89 clauses, at the direct negotiation stage. The bargaining process lasted 29 weeks. On 30 July 2007 only three of the 89 clauses had not yet been approved: clause 62 ("Workers' birthdays"), clause 67 ("Wage scale") and clause 89 ("Effect and term of the agreement"). Since none of the three clauses had been approved, despite the more than reasonable time allowed by the trade union (47 days, until 30 July 2007) for their approval, and given that partial agreement had been reached, with 86 clauses having been approved and only three remaining pending, the STITHS, in accordance with the Labour Code, informed the ISTU of its intention to declare the direct negotiation stage closed and move on to the stage of administrative conciliation before the Director-General for Labour. The Ministry of Labour was informed of this on 8 August 2007.

852. On 10 August 2007, the Directorate-General for Labour issued a decision initiating the conciliation stage and summoned the STITHS and the ISTU. During the conciliation stage, both parties declared the collective bargaining process concluded on 19 September 2007 and signed and approved the negotiated collective agreement in its entirety.

853. In El Salvador, when a collective agreement is signed with an autonomous official institution such as the ISTU, in order to be valid it must first be approved by the ministry concerned (in this case the Ministry of Tourism), after the Ministry of Finance has given its opinion. The relevant section provides as follows:

> Section 287. To be valid, a collective agreement signed with an autonomous official institution shall first be approved by the ministry concerned, after the Ministry of Finance has given its opinion.
>
> The official autonomous institution which has concluded the collective agreement shall forward it to the Comptroller of the Republic.

854. In this case, the ISTU, without justification, delayed sending the collective agreement that had been negotiated to the two ministries mentioned above, which meant that the agreement could not be registered in the Ministry of Labour, thus preventing it from entering into force and denying the trade union members coverage by the agreement. The trade union requested administrative conciliation. The employer did not appear on the appointed date (8 October 2007). The next day, a conciliation hearing was held in the presence of the STITHS and the ISTU, which had issued a special power of attorney. At the hearing, the ISTU's agent stated that: (1) he had only been granted limited power of attorney, for the sole purpose of appearing at the hearing; (2) on 5 October 2007, the President of the ISTU had submitted the collective agreement to the managing board of the ISTU for consideration; (3) the board was currently studying and discussing all the clauses of the collective agreement, and therefore no date could be fixed for sending the negotiated

agreement to the Ministry of Tourism, neither could the decision of the managing board be determined.

855. The trade union states further that the bargaining committee was set up by the ISTU in January 2007, and concluded its work in September of the same year with the signature of the president of the ISTU, declaring the bargaining process closed and approving the collective agreement. It therefore considered that the line of conduct that had been adopted had held up the process, given that the period allowed for negotiation and revision had elapsed and the time had come to register the agreement.

856. The complainant trade union sees this as a case of sluggishness, negligence, bad faith and unjustified refusal to act.

857. In its communication dated 19 May 2007, the complainant trade union highlights the Government's general stance of not responding to complaints, and states that the executive branch has threatened the existence of the trade union by planning to dissolve the ISTU and set up a Family Recreation Institute (IRF). According to the complainant, the executive branch has used different forms of pressure and deception to get the workers of the ISTU to accept its dissolution. On the other hand, under pressure from the workers, on 13 March 2008, during the inauguration of Los Chorros Aquatic Park, the President of the ISTU informed the media that none of the ISTU employees would be dismissed when the IRF was established and the ISTU dissolved, as the workers would become employees of the new institution. This means that the ISTU employees would be transferred to the new institution without any guarantee of employment stability, without benefits and without a collective agreement, since the agreement in force in the ISTU provides as follows:

> Clause 1. The present collective labour agreement is concluded with the Salvadorian Tourism Institute, an autonomous institution in public law, with its headquarters in the city of San Salvador, and the Trade Union of Workers in the Tourism, Hotel and Allied Industries (STITHS), ISTU section, a legally established body with legal personality and with its headquarters in San Salvador.

858. Thus, once the ISTU is dissolved, the collective agreement will no longer apply, and the workers will lose all their benefits under the agreement, including employment stability, which is provided for in clause 13 of the agreement. It will also affect the new collective agreement revised in 2007, which is still being held up by the Salvadorian Government itself. The fact that the Government has not sent its reply on the case presented to the Committee on Freedom of Association is in itself a reflection of the current Government's lack of willingness to comply with national law and ILO Conventions.

859. The complainant encloses with its communication the following statement issued by the ISTU, dated 22 August 2007:

> The Minister of Tourism, Mr José Rubén Rochi, and the President of the ISTU, Mr Arturo Hirlemann, presented a draft decree to the Legislative Assembly establishing the new Family Recreation Institute (IRF), which will be given the task of managing our country's recreation parks, with the aim of improving the quality of life of Salvadorian families.
>
> The main purpose of the IRF will be to ensure that relaxation and recreation areas are available to all Salvadorians, to promote full personal development, strengthen family integration and enable children, young people and adults to spend their leisure time in healthy and wholesome pursuits, encouraging their cultural development and the conservation of our natural resources. The establishment of the new Institute will promote and implement the national family recreation plan and policy throughout the country, by gathering all the recreation infrastructures and areas currently dispersed across different state institutions under a single institution.

Under the draft law, persons working in the ISTU will be entitled to retirement compensation equivalent to one-and-a-half times the wage in respect of each year of service or each fraction of over six months of service, up to a maximum of 25 years' service with the ISTU. This does not affect their statutory pension entitlements, and they may thus either continue paying their pension contributions under the law or draw a pension if they have already met the statutory requirements.

The ISTU currently employs 310 persons, of whom around 45 per cent have more than 22 years of service in the Institute, 60 per cent are aged over 48 and 20 per cent meet the age and length of service requirements to apply for retirement.

In the 46 years of its existence, the ISTU has achieved its primary objective by providing "outdoor family recreation" through its parks: Sihuatehuacán, Atecozol, Altos de la Cueva, Cerro Verde, Walter Thilo Deininger Park, Apulo, Toma de Quezaltepeque, Amapulapa, Agua Fría, Balboa Park and Puerta del Diablo, Apastepeque, Ichanmichen, Costa del Sol and Los Chorros, under its policy of making a social contribution to the Salvadorian population.

The establishment of this new institution will benefit all Salvadorians seeking a place for recreation and healthy entertainment.

B. The Committee's conclusions

860. *The Committee regrets that, despite the time that has elapsed, the Government has not provided the information requested, although it has on a number of occasions, including through an urgent appeal, been invited to present its comments and observations on the case.*

861. *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 bound to present a report on this case without the benefit of the observations it had hoped to receive from the Government.*

862. *The Committee recalls that the purpose of the whole procedure set up in the International Labour Organization for the examination of allegations of violations of freedom of association is to promote respect for trade union rights in law and in fact. The Committee is convinced that, if the procedure protects governments against unreasonable accusations, governments on their side should recognize the importance of formulating detailed replies to the allegations brought against them, so as to allow the Committee to undertake an objective examination.*

863. *The Committee observes that in this case the complainant trade union alleges violation of clause 36 of the collective agreement in force in the Salvadorian Tourism Institute (ISTU) concerning regrading or wage adjustment, despite the fact that the representatives of that Institute had promised, on 30 July 2007, to carry out the wage adjustment within 45 days (a copy of the record was sent by the trade union). On the contrary, according to the trade union, on 7 September 2007, the Director-General of the Institute wrote to the Ministry of Finance cancelling the request for a wage adjustment which he had submitted some days previously (a copy of the letter was sent by the trade union).*

864. *The Committee notes the latest allegations of the complainant trade union concerning the dissolution of the ISTU and the establishment of the Family Recreation Institute (IRF) (announced by the enterprise on 22 August 2007), which means that the collective agreement in force, including the clause on employment stability, will no longer be applied in the new institution.*

865. *The Committee observes that it is clear from the statement issued by the ISTU that the dissolution of that Institute and the establishment of the IRF is provided for in a draft decree, from which it concludes that the decision and the manner of its implementation*

were not discussed in consultation with the complainant trade union. In this regard, the Committee regrets this lack of consultation on a matter that is vital to the trade union and to the workers' interests. It also regrets the failure to observe the agreement reached between the trade union and the ISTU on the implementation of clause 36 of the collective agreement in force.

866. *The Committee emphasizes the principle that mutual respect for the commitment undertaken in collective agreements is an important element of the right to bargain collectively and should be upheld in order to establish labour relations on stable and firm ground, and that failure to implement a collective agreement, even on a temporary basis, violates the right to bargain collectively, as well as the principle of bargaining in good faith [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 2006, paras 940 and 943]. The Committee also recalls that the closing of an enterprise should not in itself result in the extinction of the obligations resulting from the collective agreement, in particular as regards compensation in the case of dismissal [see* ***Digest****, op. cit., para. 1059].*

867. *The Committee requests the Government to guarantee respect for these principles. The Committee requests the Government to ensure that all of the clauses of the collective agreement concluded with the ISTU relating to statutory benefits are applied in the case of the ISTU employees who lose their jobs.*

868. *As regards the second allegation, that the collective agreement concluded between the ISTU and the trade union was submitted, pursuant to section 287 of the Labour Code, for approval by the Ministry of Tourism (to which the autonomous official institution ISTU belongs), after the Ministry of Finance gave its opinion, the Committee recalls the principle that:*

> The requirement of previous approval by a government authority to make an agreement valid might discourage the use of voluntary collective bargaining between employers and workers for the settlement of conditions of employment. Even though a refusal by the authorities to give their approval may sometimes be the subject of an appeal to the courts, the system of previous administrative authorization in itself is contrary to the whole system of voluntary negotiation.

869. *The Committee has also considered that the exercise of financial powers by the public authorities in a manner that prevents or limits compliance with collective agreements already entered into by public bodies is not consistent with the principles of free collective bargaining [see* ***Digest****, op. cit., paras 1015 and 1034]. However, there is nothing to prevent the budgetary authorities from issuing reports either before or during the bargaining process. In these circumstances, the Committee considers that section 287 of the Labour Code violates Article 4 of Convention No. 98, which lays down the principle of free and voluntary negotiation between the parties, and requests the Government to take steps to bring the legislation into conformity with Convention No. 98. The Committee recalls that in the case of salary negotiations in the public service, in so far as the income of public enterprises and bodies depends on state budgets, it would not be objectionable – after wide discussion and consultation between the concerned employers' and employees' organizations in a system having the confidence of the parties – for wage ceilings to be fixed in state budgetary laws, and neither would it be a matter for criticism that the Ministry of Finance prepare a report prior to the commencement of collective bargaining with a view to ensuring respect of such ceilings (see* ***Digest****, op.cit., para. 1036).*

870. *The Committee also regrets the fact that in this case the new collective agreement concluded between the parties after long and intense negotiations could not enter into force as it was not approved by the Ministry of Tourism, which itself has to seek an opinion*

from the Ministry of Finance. The Committee observes, however, that the entire matter of this collective agreement has become moot with the decision to dissolve the ISTU.

871. *The Committee draws the legislative aspects of this case to the attention of the Committee of Experts on the Application of Conventions and Recommendations.*

The Committee's recommendations

872. ***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 guarantee respect of the principles referred to in the conclusions as regards observance of collective agreements and consultation with trade unions on matters affecting the workers' interests. The Committee requests the Government to ensure that all of the clauses of the collective agreement relating to statutory benefits are applied to the ISTU employees who lose their jobs as a result of the dissolution.

(b) The Committee requests the Government to take steps to amend section 287 of the Labour Code so that collective agreements that have been concluded and signed by the parties in an autonomous official institution do not have to be submitted for approval by the Ministry of Tourism, which itself has to seek the opinion of the Ministry of Finance; in this regard, the Committee regrets the fact that the collective agreement negotiated by the complainant trade union and the ISTU could not be applied for that reason.

(c) 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. 2629

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

Complaint against the Government of El Salvador presented by the organizations affiliated to the Permanent Bureau for Labour Justice (MPJL) supported by the World Federation of Trade Unions (WFTU)

Allegation: Refusal to grant legal personality to the Union of Salvadorian Judiciary Employees

873. The complaint is set out in a communication dated 5 March 2008 presented by the trade union organizations affiliated to the Permanent Bureau for Labour Justice (MPJL), an umbrella organization for a number of different confederations, federations and trade unions in El Salvador which support the complaint. The World Federation of Trade Unions (Americas Region) supported the complaint in a communication dated 10 March 2008. The

MPJL organizations presented new allegations in a communication dated 10 June 2008. The Government sent its observations in a communication dated 18 June 2008.

874. 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 complainant organizations' allegations

875. In its communication dated 5 March 2008, the trade union organizations affiliated to the MPJL allege that on 1 November 2007, the Ministry of Labour and Social Security (MINTRAB) in an official decision refused to grant legal personality to the SINEJUS. The decision in question states that "the application for legal personality made by the new union called the Union of Salvadorian Judiciary Employees (SINEJUS) is rejected", which violates the right of judiciary employees to organize.

876. According to the complainant organizations, on 3 September 2007, three judiciary employees agreed to call a constituent meeting for the purpose of establishing the SINEJUS, inviting all judiciary employees wishing to do so to attend; this was after El Salvador had ratified Convention No. 87. The date for the meeting was set for 6 September 2007, in room B-4 on the fourth floor of union premises in San Salvador, and at the general meeting the union was formally established, a provisional executive was elected and the union's statutes were adopted.

877. On 7 September 2007, one week after the constituent meeting, MINTRAB was asked to grant legal personality and thus formal legal recognition to the union as having been legally constituted, and the application was accompanied by the documents required by law, namely, the official announcement of the constituent meeting, the notarial act confirming the constitution of the union, the list of constituent members, and two copies of the approved statutes. MINTRAB received the application, which remained pending and subject to final approval.

878. The complainant organizations add that as the request by the SINEJUS was being examined by MINTRAB, the Constitutional Affairs Chamber of the Supreme Court on 16 October 2007 ruled that the expression "without distinction whatsoever" in Article 2 of Convention No. 87 (in connection with the right of workers to establish organizations) is unconstitutional, a ruling announced publicly on 30 October 2007.

879. Two days after the public announcement, MINTRAB decided not to grant legal personality to the SINEJUS on the grounds that public service employees do not have the right to organize, according to the ruling of four judges of the Constitutional Affairs Chamber. According to point III of the ministerial decision, based on section 10 of the Constitutional Procedures Act, "the definitive ruling shall not be subject to appeal and shall be in general terms binding on state bodies, officials and authorities, and all persons natural or legal".

880. The SINEJUS applied for legal personality 40 days before the ruling of unconstitutionality referred to previously. A ruling of unconstitutionality has effect *ex nunc* ("henceforth"), that is to say, concerns future acts only, in order to maintain the principle of legal certainty that applies in Salvadorian law.

881. The denial of legal personality to the SINEJUS not only violates the right to unionize but also exposes the absence of good faith on the part of the State in its failure to meet its international obligations. This attitude defies the principle of international law that *pacta sunt servanda*, that is to say, all international agreements must be complied with and domestic law may not be invoked to justify non-compliance with a treaty; it is a breach of international law and an affront to the good faith on which relations between States must be based as regards the full and effective observance of the international instruments which they adopt.

882. The complainant organizations recall that the ILO's Freedom of Association Committee has on a number of occasions recognized that the denial of the right of public employees to organize is a serious violation of freedom of association.

883. El Salvador, according to the complainant organizations, has shown manifest bad faith in respect of compliance with its international obligations, despite being urged by the ILO for a number of years to make the necessary amendments to its legislation.

884. It should be recalled that in 2005, the Salvadorian Government gave an undertaking to the countries of the European Union (EU) to ratify this Convention in the context of negotiations to extend tariff preferences in trade between El Salvador and the EU. To that end, on 12 April 2005, the President set up the National Commission for Labour Modernization (CONAMOL), whose mandate includes examining Conventions Nos 87 and 98 with a view to indicating ways of facilitating ratification.

885. Subsequently, on 25 October 2005, CONAMOL recommended reforming the Constitution of the Republic and announced that in April 2006, it would present a number of proposals to the Legislative Assembly with a view to facilitating ratification of both Conventions.

886. In April, 2006, however, the Executive did not present any proposal for reforming the Constitution, nor indeed were any statements made on this by CONAMOL or other competent officials, with the exception of the Minister of Economic Affairs who, during the penultimate working day of the previous session of the legislature, attempted to shift responsibility for financial losses that might be incurred by some companies from the Executive to the legislative authority. In El Salvador, constitutional amendments require the agreement of both chambers of the legislature, one of which approves and the other formally ratifies any amendments. The assembly changes every three years.

887. Under these circumstances, according to the complainant organizations, the Government deliberately delayed the constitutional reform process. On 24 August 2006, the Conventions were ratified as a result of pressure mainly from foreign companies operating in the country. One year after this, however, came the Supreme Court ruling that the phrase "without distinction whatsoever" in Article 2 of Convention No. 87 is unconstitutional.

888. In its communication of 10 June 2008, the complainant organizations reiterate their complaint and communicate the text of the Supreme Court ruling in question.

889. The complainant organizations also supply a copy of the report by the Office of the Human Rights Ombudsman severely critical of the Supreme Court's interpretation in the ruling in question. In their view, that interpretation was outdated, and they point out that one of the judges dissented.

B. The Government's reply

890. In its communication of 18 June 2008, the Government states with regard to the allegation concerning the denial of legal personality to the SINEJUS that the General Labour Directorate, in a decision dated 1 November 2007, rejected the application for legal personality on the following grounds:

(a) The Constitutional Affairs Chamber of the Supreme Court ruled at 10.50 a.m. on 16 October 2007 that "it is hereby decided in general and binding terms that the expression 'without distinction whatsoever' in Article 2 of the ILO's Freedom of Association and Protection of the Right to Organise Convention is unconstitutional because it contravenes article 47(1) of the Constitution, inasmuch as the wording of the Convention in question extends the right of freedom of association to public employees who are not covered by the constitutional definition of those who enjoy that right".

(b) Section 10 of the Constitutional Procedures Act stipulates that "the definitive ruling shall not be subject to appeal and shall be in general terms binding on state bodies, officials and authorities, and all persons natural or legal".

891. The Government adds that the MINTRAB is obliged to respect the Supreme Court ruling, which prevents it from granting legal personality to organizations of public employees. Article 235 of the Constitution states that "All civilian or military officials shall before taking up their duties swear an oath of loyalty to the Republic and undertake to abide by the Constitution, that text taking precedence over any laws, decrees, orders or official decisions that are inconsistent with its provisions; and shall undertake to discharge faithfully the duties of their office, assuming liability for any contravention in accordance with the laws"; this provision must be read in conjunction with section 10 of the Constitutional Procedure Act referred to above.

892. Notwithstanding the above, the ruling of the Constitutional Affairs Chamber of the Supreme Court may be superseded in the event of ratification of the proposed amendment to article 47 of the Constitution recognizing freedom of association for public servants. It should be noted that the outgoing Legislative Assembly in 2006 approved the amendment, and it is expected that the incoming Legislative Assembly in 2009 will formally ratify it in accordance with the established legal procedure.

893. At the same time, the Government states that according to the complainant trade unions, the application for legal personality was made 40 days before the ruling of unconstitutionality, and they are therefore exempted from the effects of that ruling, which can in no case be retroactive. In the Government's view, there is no legal basis here for claiming an "acquired right". The MINTRAB has effectively done no more than apply the ruling of the Constitutional Affairs Chamber in accordance with article 235 of the Constitution and section 10 of the Constitutional Procedures Act.

C. The Committee's conclusions

894. *The Committee notes that in the present case, the trade union organizations allege refusal to grant legal personality to the SINEJUS by a decision of the Ministry of Labour, despite the fact that the legal requirements had been met.*

895. *The Committee notes the Government's statements to the effect that the General Labour Directorate in a decision dated 1 November 2007 rejected the application of the SINEJUS for legal personality on the grounds that: (1) the Constitutional Affairs Chamber of the Supreme Court on 16 October 2007 ruled that under the terms of the Constitution, public*

servants are not covered by the definition of those who enjoy the right of freedom of association, and declared unconstitutional the expression "without distinction whatsoever" in Article 2 of ILO Convention No. 87 ("Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorization"); (2) according to the Constitution and the Constitutional Procedures Act, the MINTRAB is bound to respect the Supreme Court ruling and is prevented from granting legal personality to an organization of public employees; and (3) the outgoing Legislative Assembly in 2006 approved the reform of article 47 of the Constitution recognizing freedom of association for public employees; it is expected that the incoming Legislative Assembly of 2009 will formally ratify it and implement the constitutional reform in question, in accordance with the established legal procedure.

896. *While taking note of the Government's arguments, the Committee recalls that the principles of freedom of association allow exclusion from the right to organize – a fundamental right – only in the case of the armed forces and police. Consequently, all other workers, including judiciary employees, must be allowed freely to establish representative organizations of their own choosing. Under these circumstances, the Committee considers that refusal to grant legal personality to the SINEJUS is a violation of freedom of association, particularly in view of the fact that El Salvador has ratified Convention No. 87.*

897. *The Committee expects that the current Legislative Assembly will shortly ratify the reform to article 47 of the Constitution agreed by the previous Legislative Assembly, in order to allow the right to organize to all judiciary employees, and deeply regrets that the process has been delayed. The Committee requests the Government to keep it informed in this regard, and to take all the necessary steps to ensure that, in accordance with Convention No. 87, the constitutional reform may allow exceptions to the right to organize only in the case of the armed forces and police. The Committee expects that the SINEJUS will soon obtain legal personality, and that in the meantime it will be able to carry out its representation activities until the constitutional issues have been resolved.*

The Committee's recommendations

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

(a) Considering that the refusal to grant legal personality to the SINEJUS constitutes a violation of freedom of association, the Committee expects that the SINEJUS will obtain legal personality soon and that, in the meantime, it will be able to carry out its representation activities until the constitutional issues have been resolved.

(b) The Committee expects that the current Legislative Assembly will soon ratify the reform to article 47 of the Constitution agreed by the previous Legislative Assembly, in order to ensure that all judiciary employees enjoy the right of freedom of association. The Committee requests the Government to keep it informed in this regard and to take all the necessary steps to ensure that, in accordance with Convention No. 87, the constitutional reform may allow exclusions from the right to organize only in the case of the armed forces and police.

CASE NO. 2630

INTERIM REPORT

Complaint against the Government of El Salvador presented by
— the Trade Union of Workers of the Confitería Americana SA de CV Enterprise (STECASACV)
supported by
— the Trade Union Confederation of Workers of El Salvador (CSTS) and
— the Trade Union Federation of Food, Beverage, Hotel, Restaurant and Agro-Industry Workers of El Salvador (FESTSSABHRA)

Allegations: Request by the Confitería Americana SA de CV Enterprise to dissolve and cancel the registration of the complainant trade union; promotion of another trade union organization by the enterprise and pressure on the members of the complainant trade union to withdraw their membership

899. The complaint is contained in a communication by the Trade Union of Workers of the Confitería Americana SA de CV Enterprise (STECASACV) dated 3 March 2008 and is supported by the Trade Union Confederation of Workers of El Salvador (CSTS) and the Trade Union Federation of Food, Beverage, Hotel, Restaurant and Agro-Industry Workers of El Salvador (FESTSSABHRA), which also signed the complaint. The STECASACV sent additional information in a communication dated 26 June 2008.

900. At its November 2008 session, the Committee observed that, despite the time which had elapsed since the submission of the complaint, it had not received the observations that the Government had been requested to provide. The Committee issued an urgent appeal to the Government drawing its attention to the fact that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body, it might present a report on the substance of the case at its next meeting, if the requested observations had not been received in full and in due time. Accordingly, it urged the Government to send its observations as a matter of urgency [see 351st Report, para. 9]. Since then, the Committee has not received any observations from the Government concerning this case.

901. 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 complainant's allegations

902. In its communications dated 3 March and 26 June 2008, the STECASACV claims that it was established on 19 April 1986 and that in May 2006 it had 180 members (90 per cent of the staff of the enterprise, of which 75 per cent were women). Its membership has now fallen to only eight.

903. According to the complainant trade union, at the beginning of March 2006, the enterprise Confitería Americana SA de CV submitted to the General Labour Directorate of the Ministry of Labour and Social Security a request to reduce the conditions contained in clauses 19, 25, 30, 44, 45, 50, 51, 52, 57 and 59 of the collective labour agreement in force; since then, a series of measures have been taken by the employer's representatives, which include coercing members to leave the union and join an alternative organization, which was granted by the Ministry of Labour and Social Security legal status in record time and union accreditation for the collective labour agreement that the complainant trade union had signed with the enterprise. On 26 September 2007, the enterprise requested the judicial authorities to dissolve the complainant trade union and cancel its registration, on the grounds that it did not have the minimum number of members required under the Labour Code.

904. The complainant trade union explains the context of the abovementioned measures and indicates that, following the request by the enterprise to reduce the conditions contained in ten clauses of an economic nature of the collective labour agreement in force, the complainant trade union requested the intervention of the General Labour Inspector. The first inspection was conducted on 6 April 2006, during which the union's complaint, highlighting the coercive measures applied by the employer against the workers, was brought to the attention of the employer's representatives. The intervention of the General Labour Inspectorate was requested again and a further inspection was conducted on 29 May 2006, revealing an infraction of the Labour Code. A follow-up inspection was scheduled to ensure that the infraction had been remedied and was conducted on 20 June 2006, when it was found that no remedial action had been taken; the necessary reports were then drawn up, leading to the imposition of a sanction provided for by law (a fine).

905. The complainant trade union adds that, in an act of reprisal for the steps taken to impose sanctions, the enterprise intensified its coercive measures to the extent of threatening with dismissal those who did not leave the complainant trade union; the first withdrawal of membership took place on 24 June and a mass withdrawal was set in motion on 26 June 2006. As an indication of the extent to which the workers were induced, the complainant organization attached as an annex the first notice of withdrawal and 32 others, dated 26 June 2006. These demonstrate two things: first, the same format was used and submitted for each worker; and second, the forms were all filled in by the same person, as the same handwriting is used. Nevertheless, they were accepted by the Ministry of Labour and Social Welfare, which did not even notice that the name of the complainant trade union (which was the subject of the withdrawal notices) had been misspelt, rendering the forms invalid. The union approached various bodies (the Ministry of Labour and Social Welfare, the Office of the Human Rights Ombudsperson and the Labour Committee of the Legislative Assembly) without achieving any results.

906. According to the complainant trade union, in order to achieve its objectives, the enterprise went on to establish with the workers (who in a systematic and subtle way managed to leave the complainant organization) a trade union association known as the Trade Union of Workers of the Confitería Americana SA de CV Enterprise (ASTECASACV). In record time, the Ministry of Labour and Social Welfare granted legal status to this association by a decision of 21 February 2007 and granted the newly established association union accreditation for the collective labour agreement that had been signed by the complainant trade union.

907. In these circumstances, the complainant trade union, mindful of the aims of the enterprise to reduce the conditions contained in the clauses of an economic nature that were favourable to workers, appealed on 15 March 2007 to the Administrative Disputes Chamber of the Supreme Court of Justice, challenging the legality of the abovementioned

decision. To date, this matter has not been settled (such cases take three to four years in El Salvador).

908. In October 2007, the enterprise filed a judicial application to the First Labour Court of the San Salvador legal district to dissolve and cancel the registration of the trade union. A court ruling was issued dismissing the application, as the judge hearing the case deemed that, on the date the application had been filed, less than one year had passed since the union's membership had been below the minimum required by the Labour Code in order to be able to exist legally. According to the complainant trade union, the employer's representatives will in the future be able to resubmit the application to dissolve and cancel the registration of the trade union. Finally, the complainants transmitted the inspection reports relevant to this case.

B. The Committee's conclusions

909. *The Committee regrets that, despite the time that has elapsed, the Government has not provided its observations as requested, even though it has been invited on several occasions, including by means of an urgent appeal, to present its observations on the case.*

910. *In 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 bound 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.*

911. *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, both in law and in practice. The Committee is 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.*

912. *The Committee notes that, in the present case, the complainant trade union basically alleges that, in the light of its objection to the request by the Confitería Americana SA de CV enterprise to reduce the conditions contained in ten clauses of the collective agreement, the enterprise: (1) coerced the members of the union to leave the union and join an alternative organization, which was granted by the Ministry of Labour and Social Security legal status and union accreditation for the collective labour agreement; and (2) requested the judicial authorities to dissolve and cancel the registration of the complainant union organization, on the grounds that it no longer had the minimum number of members required by law, as its membership had decreased as a result of pressure by the enterprise from 180 to eight.*

913. *More specifically, the Committee notes that, according to the complainant trade union, on 24 June 2006, in an act of reprisal for the steps by the labour inspectorate, at the trade union's request, to impose sanctions, the enterprise threatened to dismiss those who did not leave the complainant trade union, leading to 33 withdrawals of membership (the complainant trade union highlights that the withdrawal forms – which are attached – were all in the same format and were all filled out by the same person). The Committee notes that, indeed, the complainant trade union has provided a labour inspection report noting that the enterprise's workers were coerced to withdraw their union membership and that, on the basis of the inspection reports, the labour inspectorate imposed a fine on the enterprise. Likewise, the Committee observes that, according to the complainant trade union, the enterprise proceeded to establish a new trade union association (ASTECASACV) and that the Ministry of Labour granted it in record time its legal status*

and union accreditation for the collective agreement. The complainant organization challenged the administrative decision granting union accreditation before the judicial authorities, which have not yet issued a ruling on the matter. Lastly, the complainant organization alleges that the enterprise filed in October 2007 a judicial application to cancel the registration of and dissolve the complainant organization. The court ruled against the dissolution of the union, as the trade union's membership had been below the minimum level required by the Labour Code for less than one year, which, in the opinion of the complainant organization, will enable the enterprise in due course to resubmit its application to dissolve the trade union.

914. *The Committee urges the Government to send its observations on the allegations and all the administrative decisions without delay – in particular those which relate to anti-union discrimination and interference – and rulings on this case (application to dissolve the trade union; application relating to union accreditation for the collective agreement) and expects that, through the employers' organization concerned, it will also benefit from the comments of the enterprise.*

915. *Given the lack of observations on the part of the Government and the seriousness of the allegations, the Committee underscores in general that Convention No. 98 prohibits all acts of anti-union discrimination and interference in union matters and, therefore, any practice that involves pressure to join or leave a trade union, the promotion of workers' organizations by the employer and measures aimed at dissolving a trade union by an employer, which, according to the allegations, used pressure to bring about a reduction in union membership. The Committee requests the Government to guarantee that these principles are respected and to ensure an effective remedy for the workers and the trade union.*

The Committee's recommendations

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

(a) The Committee highlights the seriousness of the allegations and regrets that the Government has not sent its observations on this case even though it has been invited to do so on several occasions and was issued with an urgent appeal.

(b) The Committee urges the Government to send its observations on the allegations and all the administrative decisions without delay – in particular those which relate to anti-union discrimination and interference – and rulings on this case, including those relating to the application filed by the enterprise to dissolve the trade union and the issue of union accreditation for the collective agreement, and expects that, through the employers' organization concerned, it will also benefit from the comments of the enterprise.

(c) Given the lack of observations on the part of the Government, the Committee underscores in general that Convention No. 98 prohibits all acts of anti-union discrimination and interference in union matters and, therefore, any practice that involves pressure to join or leave a trade union, the promotion of workers' organizations by the employer and measures aimed at dissolving a trade union by an employer, which, according to the allegations, used pressure to bring about a reduction in union membership. The Committee

requests the Government to guarantee that these principles are respected and to ensure an effective remedy for the workers and the trade union.

CASE NO. 2625

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

Complaint against the Government of Ecuador presented by the National Federation of Judicial Associations of Equador (FENAJE) supported by Public Services International (PSI)

Allegations: The complainant organization alleges that the Supreme Court of Justice, without respecting the rules of due process, penalized and dismissed the FENAJE leaders for defending rights relating to the career and tenure of judicial officers; it also alleges that criminal proceedings were launched against the union leaders and orders were issued for their detention

917. The complaint is contained in a communication dated 26 October 2007 from the National Federation of Judicial Associations of Ecuador (FENAJE). The FENAJE sent further information in communications dated 9 and 11 February 2008. Public Services International (PSI) supported the complaint in a communication dated 15 November 2007.

918. The Government sent its observations in communications dated 5 March and 26 November 2008 and confirmed the observations made by the Supreme Court of Justice in a communication of 27 February 2008.

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

A. The complainant's allegations

920. In its communication dated 26 October 2007, the FENAJE presents a complaint against the Government of Ecuador to the effect that federation leaders and four members suffered anti-union harassment and reprisals for defending the dignity and rights relating to the career and tenure of judicial officers of the country. The FENAJE also alleges that detention orders were issued against the leaders with the aim of closing down the union of judicial workers.

921. The FENAJE states that by a decision of 17 May 2006 the Supreme Court of Justice ruled that the judiciary was to be reorganized. That decision was at odds with the guarantees relating to the judicial career system and tenure in office enshrined in the State Charter and caused the affected sectors to take related actions, using reason and law to prevent a legal irregularity of this sort from being implemented.

922. The complainant organization indicates that article 204 of the Political Constitution in force in the country states that the judicial career system is recognized and guaranteed and its regulation shall be determined by law. With the exception of the judges of the Supreme Court of Justice, the magistrates, judges, officials and employees of the judiciary shall be appointed through competition based on merit and testing, as applicable, in accordance with the provisions of the law.

923. The FENAJE points out that there is no question that the failure to respect the regulation of the judicial career system, apart from creating liability on the part of those responsible, violates the right to work and the rules of procedure, as well as the right of access to the judicial career system. Furthermore, the right to enjoy the benefits of that career system is suspended as a result of the deficient and negligent conduct of the respondent.

924. The FENAJE affirms that sections 129, 133 and 173 of the Organic Law on the Judiciary and section 223 of the Tax Code provide that, in each specific case, the posts held by the officers of the High Courts of Justice and the Court of Administrative Disputes, by judges in civil, criminal, labour, tenancy and traffic courts, and by property registrars, notaries and officers of the Court of Fiscal Disputes shall be for a fixed term. The FENAJE states that, by means of Act No. 82-PCL published in *Official Journal* No. 486 of 25 July 1990, section 158 of the Organic Law on the Judiciary was replaced by the following paragraph: "The judicial career system is hereby established, as are consequently the right to tenure and advancement of the members of the judiciary, provided that they perform their duties with integrity, ability and efficiency."

925. According to the FENAJE, on the basis of the cited regulations, officials in the judiciary have had career and tenure rights since 1990. Overall, this was enshrined in the philosophical concept of judicial independence, which is underpinned by career and tenure rights. The Political Constitution of the State – in force since 11 August 1998 – enshrines and expressly guarantees those career and tenure rights, in full conformity with section 158 of the Organic Law on the Judiciary. In addition, articles 272, 273, 274 and 18 of the Constitution guarantee: the supremacy of the Constitution; the obligatory application of the Constitution; the inapplicability of the ordinary law; and constitutional rights and guarantees. Hence the career and tenure rights of members of the judiciary are unquestionable in constitutional and legal terms.

926. With regard to the bodies having competence for the dismissal of members of the judiciary, the FENAJE states that it should be recalled that, when previously established judicial officials had fixed-term posts, the power to dismiss them was the prerogative of the Supreme Court of Justice, in accordance with section 13(1) of the Organic Law on the Judiciary. With the setting up of the National Judiciary Council, that power which previously belonged to the Supreme Court was transferred to this new entity. Due to its special nature, which is specifically linked to the administrative and disciplinary supervision of the judiciary, this power was expressly assigned by constitutional mandate in section 206 of the Constitution in conjunction with section 17(f) of the Organic Law on the Judiciary. It should be noted that there is currently no legislative provision in Ecuador which endows the Supreme Court with the power to dismiss officers of the high courts and other members of the judiciary or otherwise relieve them of their duties.

927. According to the FENAJE, the act of dismissal which it contests is invalid in law because it violates the constitutional standards referred to above and anything that violates the law, as stipulated principally by sections 9 and 10 of the Civil Code, is null and void. In relation to the above, the FENAJE took legal action to curb the arbitrary actions of the Supreme Court of Justice and the National Judiciary Council, filing a number of applications for *amparo* (protection of constitutional rights) against various administrative acts which violated constitutional standards, as well as calling for the resolution in question to be

declared unconstitutional. However, the response from the bodies responsible for respecting the State Charter – namely, the Supreme Court and the National Judiciary Council – has been to harass and penalize the union members who have displayed courage and integrity while acting within the framework of the law.

928. The National Judiciary Council, although previously containing two members illegally appointed by the Supreme Court of Justice without prior competition and despite the existence of an action for *amparo* in which the first-instance judge suspended the appointments made by the Council, reviewed a penalty imposed on lawyer and union member Mr Luis Hernán Muñoz Pasquel for making statements in the media which the Supreme Court considered defamatory. Hence he was suspended from his duties for 30 days and then dismissed from his post as a judicial official (it should be noted that he enjoyed immunity as a result of participating in the national elections and while their outcome was still pending). The complainant points out that two judges who allowed appeals lodged by the FENAJE were penalized.

929. Against this background and after the Constitutional Court had upheld the dismissal of two officers of the National Judiciary Council, the Supreme Court of Justice declared its position and on 11 February 2007 presented a statement to the country rejecting the constitutional decision. Thereupon, on 13 February 2007, with the judicial workers and employees in distress and despair, the National Judiciary Council building was occupied by employees from the judicial sector. The Supreme Court, in its session of 14 February 2007, despite having no legal competence to do so and violating the most basic principles of due process, dismissed a number of FENAJE leaders, on the basis of the following arguments: "The Supreme Court of Justice, considering that: the second clause of article 35(10) of the Political Constitution of the Republic of Ecuador prohibits any immobilization of public services, especially in the areas of health, education, justice and social security; that section 13(1) of the Organic Law on the Judiciary determines, among the tasks and duties of the Supreme Court, the appointment or dismissal of officers of the high courts and also the dismissal of judges, officials and employees of the judiciary for blatant misconduct in the performance of their duties; that section 17 of the Organic Law on the Judiciary determines that the Supreme Court has the essential duty of supervising the administration of justice in the Republic; that it is public knowledge that on 13 February 2007 the National Judiciary Council building was taken over by a group of persons led by Mr Luis Hernán Muñoz Pasquel, Mr Girard David Vernaza Arroyo, Ms Josefa Clementina Mendoza Zambrano, Mr Jaime Fabián Pérez Sánchez, Ms Alba Rosa Quinteros Campaña and others whose identity is under investigation and whose actions constitute flagrant offences, also entailing serious and blatant misconduct in the performance of their duties; that by a circular of the same date Mr Girard David Vernaza Arroyo and Mr Milton Pazmiño Soria, in their respective capacities as president of the FENAJE and president of the Association of Judicial Officers of Santo Domingo, call on all judicial employees and officials to engage in a national work stoppage, entailing a repeated violation of the constitutional mandate." The Supreme Court goes on to: "dismiss from the posts which they occupied in the judicial branch, Luis Hernán Muñoz Pasquel, Girard David Vernaza Arroyo, Josefa Clementina Mendoza Zambrano, Jaime Fabián Pérez Sánchez, Alba Rosa Quinteros Campaña and Milton Pazmiño Soria for blatant and serious misconduct in the performance of their duties and for violation of the constitutional prohibition referred to above without prejudice to the relevant civil and criminal legal proceedings".

930. The FENAJE alleges that the harassment and dismissal of the FENAJE leaders and members in question, the ban on meetings, union activities and leave of absence for union meetings constitute an attack on freedom of association. The union claims that leaders Luis Hernán Muñoz Pasquel, Girard David Vernaza Arroyo, Josefa Clementina Mendoza Zambrano, Jaime Fabián Pérez Sánchez, Alba Rosa Quinteros Campaña and

Milton Pazmiño Soria, have suffered personal and professional damage because of being dismissed illegally and unconstitutionally from the institution, left without work and without the possibility of continuing their careers in the judiciary, and had their right of defence restricted. These decisions were aimed at closing down the trade union.

931. The FENAJE indicates that, in order to silence its defence of the union, criminal court proceedings were launched on 25 October 2007 and the Third Criminal Chamber of the High Court of Quito issued a detention order against FENAJE leader Girard David Vernaza Arroyo and former FENAJE president Luis Hernán Muñoz Pasquel, with the aim of restricting freedom of association.

932. In its communications of 9 and 11 February 2006, the FENAJE sent press cuttings referring to statements made by judges of the Supreme Court of Justice, who were candidates for the presidency thereof, against FENAJE leaders Luis Hernán Muñoz Pasquel and Girard David Vernaza Arroyo, to the detention orders against both of them, to the FENAJE and a number of leaders in relation to alleged phone-tapping in the National Judiciary Council, to the occupation of the National Judiciary Council building and to the dismissals of Mr Muñoz and Mr Vernaza Arroyo by the Supreme Court, to cartoons which illustrate the penalties imposed on Mr Muñoz and Mr Vernaza Arroyo by the Supreme Court, and to editorials published in *Vistazo* magazine attacking and criticizing the actions of the FENAJE and its leaders.

B. The Government's reply

933. In its communication dated 5 March 2008, the Government states with regard to the complaints in question that it requested a report from the President of the Supreme Court of Justice and of the National Judiciary Council, which was sent to the Ministry of Labour and Employment as official document No. 275-SP-PCSJ-2008 of 27 February 2008. The report states that it has been proven that the complaint made by Dr Girard David Vernaza Arroyo against the Government of Ecuador and the Supreme Court of Justice is unfounded. It also states that the judicial actions taken autonomously by the Supreme Court of Justice and the National Judiciary Council in the matters covered by the complaint were undertaken in compliance with constitutional standards, the Organic Law on the Judiciary and the Organic Law on the National Judiciary Council, observing the principles of due process and legitimate defence.

934. With regard to Girard David Vernaza Arroyo, who states in his complaint that the Supreme Court of Justice of Ecuador, by a decision of 17 May 2006 published in *Official Journal* No. 282 on 1 June 2006, ruled that the judiciary should be reorganized and claims that this is at odds with the guarantees relating to career and tenure enshrined in the State Charter, i.e. at odds with judicial independence, the Government states that the following clarifications should be made: "The Constitutional Court received three complaints from: Girard David Vernaza Arroyo, in his capacity as people's representative for 4,000 citizens and acting president of the FENAJE; Dr Jorge Enrique Machado Cevallos, president of the Ecuadorian Federation of Notaries and people's representative for 1,000 citizens; and Dr Eliécer Flores Flores, people's representative for 1,000 citizens and representing property registrars and other judicial officials, all the aforementioned complaints opposing the decision issued by the Supreme Court on 17 May 2006 and published in *Official Journal* No. 282 on 1 June 2006."

935. The abovementioned complaints were joined by the Constitutional Court and after the procedure provided for in the Constitutional Control Act and its regulations, in which the parties presented the relevant evidence and allegations, the Court issued Decision No. 009-6-TC, 0012-2006-TC and 0014-2006-TC on 19 September 2006, essentially ruling that it was for the National Judiciary Council to hold as a matter of

urgency the necessary competitions based on merit and testing with regard to the appointments of judicial officers whose terms of office had expired; that the competitions for notaries and registrars whose terms of office of four and six years were ending would be subject to the respective laws; and that article 3 of the contested decision would remain as a guarantee of continuity and stability for the judiciary until its officials were legally replaced. The aforementioned article states as follows:

> Article 3. Provide that the incumbents of the high courts and tribunals of the Republic, judges, members of criminal courts, registrars and notaries shall continue to perform their duties until they are legally replaced, as laid down by the second clause of section 173 of the Organic Law on the Judiciary and other relevant legal provisions.

936. The key points of the abovementioned decision are as follows:

> (a) Article 204 of the Constitution states that the judicial career system is recognized and guaranteed and its regulations shall be determined by law. With the exception of the judges of the Supreme Court of Justice, magistrates, judges, officials and employees of the judiciary shall be appointed through competitions based on merit and testing, as applicable, in accordance with the provisions of the law. This provision is clear and the underlined sections are our own to emphasize the fact that the judicial career system, by constitutional mandate and the appointment of all judicial officials, through competitions based on merit and testing, is subject to the law. (b) Section 158 of the Organic Law on the Judiciary, a pre-constitutional standard published in Official Journal No. 486 of 25 July 1990, concurs with the constitutional principle inasmuch as it establishes the principle of the judicial career system. Sections 133 and 173 of the Organic Law on the Judiciary and section 11 of the Notary Act lay down periods of tenure for such officials. (c) The principle of the judicial career system guaranteed in article 204 of the Constitution and the recognition thereof, in addition to the concept of tenure, laid down in section 158 of the Organic Law on the Judiciary are not contradictory. Guarantees of tenure within a period specified by law can coexist with the recognition and appreciation of merit and judicial experience for the obligatory test-based competitions which the Constitution itself indicates as a condition of access to the judiciary for officials. Therefore, given that the Constitution reiterates that entry to and tenure in the career system are subject to the law, it is clear that legislative provisions on the terms of office of judicial officials who entered the system through competitions are in force and it is not possible to change the content of these provisions through interpretative decisions emanating from any public organization, except for the National Congress through law. As already stated, the regulations on terms of office do not contradict the general principle of tenure and the career system, with tenure for a specified period and a career system entailing the recognition of merit as a result of experience in the performance of duties with integrity, ability and efficiency. It could certainly be reasonably argued that the terms of office laid down in the Organic Law on the Judiciary and the Notary Act are short but this regulatory decision is the prerogative of the legislator, and as long as no new regulations exist, the terms of office laid down in the law are applicable and generally binding …

937. The same decision also states:

> The plaintiffs insist on the binding nature of the decision adopted by the Supreme Court of Justice on 24 July 2002, to which reference must be made, as follows and in accordance with the analysis undertaken, in order to avoid incorrect interpretations of its content and scope: (a) although, as has been analysed, in the constitutional order, the sphere of competence of the Supreme Court of Justice lacks powers of interpretation of general normative value – competence for which belongs to the National Congress through the adoption of an interpretative law – it is clear that the decision of 24 April 2002 has no other scope than to express a viewpoint which, as such, merely states an opinion which, as such, can be changed or reviewed for the purpose of providing guidance and ensuring the uniform application of the law but only in the exercise of judicial power and in conformity with the provisions of article 197 of the Constitution and section 15 of the Organic Law on the Judiciary, the latter of course being understood within the scope of that power. (b) The expression of viewpoints does not have general scope and so the assertion that the contested resolution of April 2002 constitutes a firm administrative act giving rise to rights cannot be accepted, since a viewpoint

or appraisal, no matter how respectable, does not produce or generate direct and immediate effects and, therefore, nor does it or can it create subjective rights. Furthermore, in accordance with the analysis, the Supreme Court of Justice lacks competence to issue generally binding decisions, nor does it have competence to lay down provisions concerning the governance and administration of the judiciary. Hence, even though the decision issued on 24 April 2002 was not challenged and there are no grounds for declaring it unconstitutional, it is of fundamental value and importance to clarify its nature, as expressing a viewpoint which did not and could not give rise to direct effects in favour of the parties under administration, since such a viewpoint does not change the law or alter appointments of judges and other judicial officials that have been made.

938. The Government indicates that the Constitutional Court decided to partially accept the appeals for the unconstitutionality of the decision of the Supreme Court of Justice dated 17 May 2006, published in *Official Journal* No. 282 of 1 June 2006, declaring the unconstitutionality of articles 4, 5 and 6 of the decision for the reasons stated in the operative part; and that the content of articles 1, 2 and 3 of the decision are consistent with the constitutional and legislative standards prevailing in Ecuador. This decision of the Constitutional Court was final, in accordance with section 14 of the Constitutional Control Act, which states that the decisions of the Constitutional Court cannot be appealed against, and with article 278 of the Political Constitution of Ecuador.

939. The reference by the complainant organization to international human rights instruments has no impact on the present case since these naturally recognize the political right to hold public office and it is left to the internal laws of each state to establish the details, the only requirement being that conditions of equality are maintained. As regards the resolutions of the United Nations General Assembly concerning the judiciary, these recommend tenure for judges for the periods specified, independence, and appropriate levels of remuneration and pension. It is not stated that it should be impossible to remove judges from their posts. The complainant is seriously mistaken in asserting that there has been a violation of the rules of due process to the detriment of officials of the judiciary. Due process occurs when legal proceedings take place. This is clearly established by article 24(1) of the Political Constitution of Ecuador.

940. The decision of the Supreme Court of Justice was issued in order to apply the law, which establishes specific terms of office for officials of the judiciary. The law does not state that a process must be followed in this regard and so the assertion that the rules of due process, including the right of defence, have been violated is groundless. The representatives and members of the FENAJE submitted three applications requesting that the decision of the Supreme Court of Justice of 17 May 2006 be declared unconstitutional, and these were joined together and decided in the form indicated by the Constitutional Court. However, with the aim of seeking to prevent the implementation of the Supreme Court decision concerning the reorganization and appointment of officers of the courts, judges, notaries and registrars, a number of judicial officials and other officers submitted various applications for *amparo* against the aforementioned decision in various geographical locations in Ecuador to numerous unspecified judges and courts. In this regard, the following points should be made.

941. Article 95 of the Political Constitution of the Republic of Ecuador states that any person may file an application for *amparo* with the judicial body designated by law. This recourse enables urgent measures to be taken to stop, avoid or immediately rectify the consequences of an unlawful act or omission by a public authority which violates, or may violate, any right enshrined in the Constitution or in an international treaty or convention in force and which poses an immediate threat of serious harm to persons in their own right or as representatives of a group.

942. Section 47 of the Constitutional Control Act states that competence for handling and resolving applications for *amparo* lies with the civil judges or courts of the territorial area in which an act violating protected constitutional rights is committed or may have an effect. The application may also be brought before a criminal judge or court on public holidays or outside the working hours of the courts or under exceptional circumstances, which must be cited by the applicant and confirmed by the judge or court in question, and therein shall lie competence for the case. Furthermore, article 2 of the decision of the Supreme Court of Justice of 27 June 2001, published in *Official Journal* No. 378 of 27 July 2001, states that the application for *amparo* is not admissible and shall be systematically rejected when it is submitted in respect of: (a) normative acts issued by a public authority, such as organic and ordinary laws, decree laws, decrees, ordinances, statutes, regulations and generally binding resolutions *(erga omnes)*, since suspension of their effects for violation of the Constitution, in substance or in form, calls for an application for unconstitutionality, which has to be brought before the Constitutional Court.

943. The Government indicates that the decision issued by the Supreme Court of Justice on 17 May 2006 is not an administrative act but, quite clearly, a resolution. The key feature of an *administrative act* is that it affects an individual person or specific group of persons and for this reason legal doctrine speaks of individual effects. On the other hand, a *normative act* (which may be contained in a law, decree, ordinance, regulation, resolution or other instrument) is issued to produce legal effects of a general character which are binding on everyone, which legal doctrine calls *erga omnes*. The Supreme Court of Justice issued a normative act through a binding decision of a general character *(erga omnes)*, and this must be applied to the judiciary throughout the country.

944. The applications for *amparo* brought before the judges of the country by judicial officers, despite the very clear provisions of a constitutional, legal and regulatory character, were allowed, in explicit violation of such legislation, because those judges as judicial officers were members of the FENAJE. Hence they acted without observing the requirement of impartiality and therefore appeared as both judges and interested parties. Most of these applications for *amparo* were rejected by the Constitutional Court.

945. The Government recalls that the FENAJE stated that the fourth civil judge of Manabí, by a decision relating to constitutional *amparo* issued on 23 October 2006, suspended the effects of the announcement by the Judiciary Council for a competition for posts based on merit and testing; an administrative investigation was launched by the Judiciary Council and subsequently the judge was dismissed, and the judge who handled the *amparo* application in respect of the illegal appointments of the two new officers of the Judiciary Council faces an investigation into his judicial actions. The Government also recalls that the complainant claims that these circumstances were the reason for the judicial officers and employees occupying the National Judiciary Council building on 13 February 2007 and that the Supreme Court of Justice, in its session of 14 February 2007, despite having no competence and violating the most basic principles of due process, proceeded to dismiss FENAJE officials Luis Hernán Muñoz Pasquel, Girard David Vernaza Arroyo, Josefa Clementina Mendoza Zambrano, Jaime Fabián Pérez Sánchez, Alba Rosa Quinteros Campaña and Milton Pazmiño Soria for blatant misconduct and violation of the constitutional prohibition on immobilizing a public service by occupying the National Judiciary Council building.

946. With regard to lawyer Luis Hernán Muñoz Pasquel, first assistant of the First Labour Court of Pichincha with administrative duties in the Planning Department of the National Judiciary Council, the Government declares that at various times and on various grounds the following administrative proceedings were initiated:

(I) No. 131-06-MCR: administrative proceedings were initiated because lawyer Luis Hernán Muñoz Pasquel gave interviews on *Radio Cadena Democracia*, the *Ecuavisa* TV programme *Contacto Directo, Gamavisión* TV news and the *El Noticiero* TV programme. After the conclusion of the investigation on 2 October 2006, the Human Resources Committee of the National Judiciary Council decided in the administrative proceedings that lawyer Luis Hernán Muñoz Pasquel should be suspended from his duties as first judicial assistant for 30 days without pay. In response to the review request submitted by Dr Jaime Velasco Dávila, President of the Supreme Court of Justice in the name of that organization, the Human Resources Committee of the National Judiciary Council decided on 7 November 2006 to review the decision issued on 2 October 2006, imposing an amended penalty of dismissal because the officer in question had breached sections 13(c) and (h) of the Judiciary Regulations on Discipline, Complaints and Penalties. The Committee ruled that its resolution should take effect immediately, in accordance with the provisions of section 15 of the Regulations. Dismissed lawyer Luis Hernán Muñoz Pasquel lodged an appeal and the National Judiciary Council decided on 1 November 2007 to uphold the penalty;

(II) No. 198-2006-SG: administrative proceedings were initiated on the grounds that the judicial official in question had been absent from the post in respect of which he receives a salary from the judiciary. After undertaking the relevant investigation, the Human Resources Committee of the National Judiciary Council decided on 28 February 2007 to dismiss lawyer Luis Hernán Muñoz Pasquel from the post of judicial assistant of the First Labour Court of Pichincha. In its resolution, the Committee states that analysis of the circumstances of the case showed that the judicial officer was not present at his post to earn his pay but had made trips to various foreign countries without permission. During the investigatory proceedings, it was not even possible to locate exactly where the judicial assistant was working. The penalty was imposed in accordance with section 17(f) of the Organic Law on the National Judiciary Council and sections 7, 8 and 10(d), in conjunction with sections 13(c), (d) and (p), of the Judiciary Regulations on Discipline, Complaints and Penalties. Lawyer Luis Hernán Muñoz Pasquel lodged an appeal against the aforementioned decision, and this is currently being examined by the National Judiciary Council; and

(III) No. 134-2006: administrative proceedings were initiated against lawyer Luis Hernán Muñoz Pasquel, on the basis of the complaint submitted by Supreme Court of Justice magistrate Dr Mauro Terán Cevallos to the Complaints Committee of the National Judiciary Council, for standing as first principal candidate for provincial deputy of Pichincha for the "*Causa Justa*" movement and for unlawfully engaging in a political campaign while serving as a judicial officer. On 30 August 2007, the Human Resources Committee decided to dismiss lawyer Luis Hernán Muñoz Pasquel, first judicial assistant of the Training Unit, and, in relation to the dismissal, decided to send a copy of the decision to the National Personnel Department and the District Delegation of Pichincha so that there would be a record of it in his personal file. The penalty imposed is based on article 97(13), (17) and (18) of the Political Constitution of the Republic; section 26(d) and (f) of LOSCCA; section 7 of the Judiciary Regulations on Discipline, Complaints and Penalties; and section 17(f) of the Organic Law on the National Judiciary Council, in conjunction with sections 8, 10(d) and 13(a), (c) and (p) of the aforementioned Regulations.

947. As regards the allegation that the Supreme Court of Justice unlawfully dismissed from the judiciary Luis Hernán Muñoz Pasquel, Girard David Vernaza Arroyo, Josefa Clementina Mendoza Zambrano, Jaime Fabián Pérez Sánchez, Alba Rosa Quinteros Campaña and Milton Pazmiño Soria, the Government states that it should point out that the Supreme Court decided on 14 February 2007 to dismiss the aforementioned persons from their

duties in the judiciary on the basis of the second clause of article 35(10) of the Political Constitution of the Republic, which prohibits any immobilization of public services, especially in the areas of health, education, justice and social security; article 13(1), which lays down that the tasks and duties of the Supreme Court include the appointment or dismissal of officers to/from the high courts, and also the dismissal of judges, officials and employees from the judiciary for blatant misconduct in the performance of their duties; and article 17, which determines that the primary duty of the Supreme Court is to supervise the administration of justice in the Republic.

948. The Government affirms that the aforementioned judicial officers were punished for the violent actions of 13 February 2007, which were reported as follows in the 14 February 2007 edition of the *El Comercio* newspaper of Quito, the capital of Ecuador:

> The differences between the Council of the Judiciary and the leadership of the federation representing the judicial officers have taken on a violent hue. At 10.30 a.m. yesterday, a group of demonstrators led by FENAJE president Girard David Vernaza Arroyo and ex-union leader Luis Hernán Muñoz occupied the Council building. The protesters abruptly entered the eighth floor, where the Human Resources Committee is located. At that moment, officers Ulpiano Salazar, Benjamín Cevallos, Víctor Castillo and Edgar Zárate were examining two cases against Vernaza Arroyo and Muñoz. Zárate left the meeting to attend to a personal matter. Several minutes later, the crowd shut the other three officers in the meeting room, "broke down the door of my office, insulted us and obliged us to get out," said Salazar, visibly shaken. The councillors and staff of the Council were removed from the building. At that time the police guard, composed of three uniformed officers, was only guarding the main entrance. "The demonstrators entered the offices with chains in their hands. They said they weren't going to use force but the whole action was violent. Lawyer Luis Hernán Muñoz was on the first floor making us all get out," said a female official, who declined to give her name for security reasons. The police arrived when the demonstrators took control of the upper floors of the building. The strikers identified themselves as relatives of judicial officers "who have been harmed by the decisions of the judiciary". Vernaza Arroyo, for his part, justified the use of force. "It's the only way left. The Supreme Court and the Judiciary have been harassing the FENAJE leaders. The only solution is to get rid of all the officers." The problem between the Council and the judicial officers started in May last year. At that time, the Supreme Court ordered the reorganization of the judiciary, shedding some 4,000 employees. After a series of applications for *amparo* filed by the judicial officers in the Constitutional Court, the latter decided that the process should continue. It also decided that the judiciary should hold competitions to elect new judicial officials. According to officer Zárate, this process is still in progress. "The convocations were issued for the officers of the courts of five districts: Pichincha, Guayas, Manabí, Azuay and Loja." The personal files of the applicants were in the office of councillor Salazar which was occupied by the demonstrators. "We are ordinary people, not criminals," said Muñoz, when consulted on this documentation. In the afternoon, the Council officers met the judges of the Supreme Court. The meeting began at 5 p.m. and two hours later the judges decided to impose administrative penalties on the demonstrators. The possibility of taking legal action is also being considered. According to judge Rubén Bravo, "it is a criminal offence to immobilize public services". Furthermore, the Court requested the Public Prosecutor's Office of Pichincha to appoint a prosecutor to take statements from the councillors who were assaulted during the occupation of the Council building. On the same day, 13 February 2007, FENAJE president Girard David Vernaza Arroyo and lawyer Milton Pazmiño Soria, president of the Santo Domingo Judiciary Association, ordered a national work stoppage of the judiciary with immediate effect, as a means of supporting the judicial colleagues who occupied the offices of the National Judiciary Council in Quito.

949. The Government states that the dismissed judicial officers referred to above took legal action as follows:

– Girard David Vernaza Arroyo, lawyer Luis Hernán Muñoz Pasquel, lawyer Milton Pazmiño Soria and Josefa Clementina Mendoza Zambrano filed applications for *amparo* against the decision issued by the Supreme Court of Justice. On 11 October

2007, after the corresponding legal procedure, the chamber decided not to accept the action. Consequently, the parties concerned lodged appeals with the Constitutional Court. The appeal having being allowed, the *amparo* application is currently being examined by the Third Chamber of the Constitutional Court and no ruling has yet been issued;

– Jaime Fabián Pérez Sánchez filed an application for *amparo* against the decision of the Supreme Court of Justice with the Second Chamber of the Quito District Administrative Disputes Court No. 1. After the corresponding procedure, the Court decided not to allow the application for *amparo*. Since the party concerned lodged an appeal, the case is currently being examined by the Third Chamber of the Constitutional Court and no ruling has yet been issued;

– Alba Rosa Quinteros Campaña filed an application for *amparo* against the decision of the Supreme Court of Justice with the Second Chamber of the Quito District Administrative Disputes Court No. 1. After the corresponding legal procedure, the Chamber decided to allow the application for *amparo*. Consequently, the Supreme Court judges who were impugned lodged an appeal. The case is currently being examined by the First Chamber of the Constitutional Court and no ruling has yet been issued.

950. The Government points out that it can be seen from the above that the applications for *amparo* filed by Girard David Vernaza Arroyo, lawyer Luis Hernán Muñoz Pasquel, Josefa Clementina Mendoza Zambrano, lawyer Milton Pazmiño Soria, Jaime Fabián Pérez Sánchez and Alba Rosa Quinteros Campaña have not yet been concluded. Therefore the complainants' assertion regarding their dismissal – that they have not had the opportunity to defend themselves and that their constitutional guarantees and rights have been violated – is unfounded.

951. As regards the complainants' allegation that, in order to silence the trade union, criminal court proceedings were launched in which, on 25 October 2007, the Third Criminal Chamber of the High Court of Quito issued a detention order against FENAJE official Girard David Vernaza Arroyo and former FENAJE president Luis Hernán Muñoz Pasquel, with the aim of restricting freedom of association, the Government indicates that the president of the Human Resources Committee of the National Judiciary Council filed a complaint with the Pichincha District Prosecutor's Office to the effect that, at 10.15 a.m. on 13 February 2007, numerous judicial officers had occupied the National Judiciary Council building. On 16 February 2007, the Pichincha District Prosecutor's Office launched preliminary investigation No. 488-07-FNC into the circumstances of the case. After this had been completed, the Pichincha District Prosecutor decided to commence the next stage on 10 October 2007 with the opening of Case No. 008-2007 against the defendants, Luis Hernán Muñoz Pasquel and Girard David Vernaza Arroyo, ordering that the whole case file and all the evidence, including potentially exonerating evidence, be made available to the accused and their defence lawyers, requesting the criminal court judge to order preventive detention for the accused, as well as the appropriate precautionary measures, considering that the prerequisites laid down in section 167 of the Code of Criminal Procedure had been met: namely, that there was sufficient evidence of the existence of the offence; clear and precise evidence that the accused were the perpetrators of, or accomplices to, the offence in question; and that the latter was covered and penalized by section 155 of the Penal Code, which states that anyone who, in order to disrupt public order, invades public or private buildings, installations or land, or who, in committing such acts for the said purposes, misappropriates property shall be imprisoned for three to six years and incur a fine of US$44–175.

952. The Government adds that, on 25 October 2007, the Third Special Criminal Chamber of the High Court of Justice of Quito, considering that the request of the Pichincha District Prosecutor to issue an order for preventive detention against lawyer Luis Hernán Muñoz Pasquel and Girard David Vernaza Arroyo meets the requirements of sections 167 and 168 of the Code of Criminal Procedure, ordered the preventive detention of the accused and that this matter be implemented by the judicial police of Pichincha and Esmeraldas. This measure was appealed against by the accused, and to date the outcome of the appeal is still pending.

953. The Government states that article 35 of the Political Constitution of Ecuador provides as follows:

> Work is a social right and duty and shall be protected by the State, which shall ensure that workers enjoy respect for their dignity, a decent existence and fair remuneration which meets their needs and those of their families. It shall be governed by the following fundamental standards … 10. The right of workers to strike and that of employers to halt work is recognized and guaranteed, in accordance with the law. Any immobilization of public services shall be prohibited, especially in the areas of health, education, justice and social security; electricity, drinking water and sewage disposal; processing, transport and distribution of fuel; public transport and telecommunications. Appropriate penalties shall be laid down by law.

Article 219 of the Political Constitution of Ecuador provides as follows:

> The Public Prosecutor's Office shall make procedural arrangements for the hearing of cases, and shall direct and conduct investigations before and during the criminal trial. If grounds are established, it shall accuse the presumed perpetrators of the offence before the competent judges and courts and shall conduct the prosecution to establish a verdict.

Article 199 of the Constitution provides as follows:

> The organs of the judiciary shall be independent in the exercise of their duties and tasks. No State entity shall be able to interfere in the affairs of other entities. Magistrates and judges shall be independent in the exercise of their jurisdictional powers, even vis-à-vis the other organs of the judiciary. They shall be subject solely to the Constitution and to the law.

Finally, section 2 of the Code of Civil Procedure provides as follows:

> The power to administer justice is independent. It may be exercised solely by the persons designated in accordance with the law.

954. The Government declares that from the above and from the cited provisions it can be seen that the criminal proceedings under way against the judicial officers who occupied the National Judiciary Council building were launched and substantiated by the competent authorities of the Ecuadorian State. In this case, these are the Public Prosecutor's Office, which enjoys autonomy and independence in the exercise of its functions, and one of the criminal chambers of the High Court of Justice, to which legal jurisdiction has been assigned. Hence the complainant's assertion that criminal proceedings have been launched to silence the trade union leaders' defence of their organization and to restrict freedom of association is unfounded.

955. The Government points out the relevance of establishing whether, in terms of Ecuadorian legislation, FENAJE president Girard David Vernaza Arroyo and the entity he represents (FENAJE) come within the scope of the Labour Code or Organic Law on the Judiciary in their legal relationship with the Ecuadorian judiciary. To this end, recourse must be had to the Political Constitution of Ecuador, article 204 of which states:

> Article 204. The judicial career system shall be recognized and guaranteed. Its regulations shall be determined by law.
>
> With the exception of the judges of the Supreme Court of Justice, judges, magistrates, officials and employees of the judiciary shall be appointed through competitions based on testing and merit, as applicable, in accordance with the provisions of the law.

In concordance with the above, the Organic Law on the Judiciary of Ecuador states:

> Section 1. Administration of justice. Justice shall be administered by the courts and tribunals established by the Constitution and the laws.
>
> Section 158, first clause. The judicial career system and, consequently, the right of the members of the judiciary to tenure and advancement are hereby established, provided that they perform their duties with integrity, ability and efficiency.
>
> The officers of the Supreme Court shall be protected by the judicial career system in so far as this is compatible with the provisions of the Political Constitution regarding judgeship.
>
> Advancement shall be governed by the regulations.
>
> Section 159. [National Committee on the Judicial Career System.] Under the auspices of the Supreme Court, the National Committee on the Judicial Career System is created, whose functions and composition shall derive from the respective regulations.
>
> There shall be a judicial career scale, in accordance with the provisions of the third clause of section 176 of the present act. The provision of posts shall be effected through competitions based on testing and merit, in accordance with the relevant laws and the regulations.

In line with the above, section 1 of the Organic Law on the National Judiciary Council states:

> Section 1. The National Judiciary Council is the administrative and disciplinary organ of the judiciary. It has legal personality in public law and administrative and financial autonomy. Its seat shall be in the capital of the Republic and it shall exercise its powers throughout the national territory, in accordance with the Constitution, the law and the respective regulations.
>
> Section 11(c). Examine and resolve administrative appeals for dismissal, incapacity or incompetence; for disciplinary penalties for the dismissal or removal of officers of high courts and district tribunals, officers of criminal courts, judges, registrars, notaries and all other officers of the judiciary ...

956. The Government asserts that the cited legal provisions demonstrate fully that the relationship of the judicial officials and other officers of Ecuador with the judiciary is governed by the Organic Law on the Judiciary and the Organic Law on the National Judiciary Council, in accordance with the principle of the autonomy and independence of the judicial authority from the other authorities of the State.

957. According to the Government, it is therefore contradictory that the complainant cites as the legal basis of its action ILO Conventions Nos 87 and 98, which refer to labour rights provided for in the Ecuadorian labour code, the scope of which does not cover judicial officers. Under Ecuadorian legislation, judicial officers are not classified as workers. The FENAJE is not a professional association or trade union in the form laid down by the Labour Code of Ecuador.

958. The Regional Labour Directorate of the Ministry of Labour and Employment of Ecuador certifies in Memorandum No. 235-UGL, which forms part of official communication No. 182-DRTQ-2007, issued on 22 February 2007 in Quito, that the FENAJE is not registered at that office. Consequently, since the organization has not been registered, there is no registration of any executive committee. In official communication No. 027-IML-2008, issued in Quito on 22 February 2008, the Regional Labour Directorate

certifies that, after examination of the archives of the Regional Labour Directorate of Quito, no collective labour complaint or list of demands has been submitted by the FENAJE against the judiciary or the National Judiciary Council.

959. In conclusion, the Government states that its reply shows that the complaint formulated by the FENAJE against the Government of Ecuador and the Supreme Court of Justice is groundless. The autonomous judicial actions of the Supreme Court and the National Judiciary Council in the matters raised in the complaint were undertaken in conformity with constitutional standards, the Organic Law on the Judiciary and the Organic Law on the National Judiciary Council, observing the principles of due process and legitimate defence. Furthermore, it is established that the legal grounds cited by the complainant as the basis of the present complaint are inapplicable and contradictory because, given that the judicial officers it represents are not officially classified as workers and the FENAJE does not have the status of a professional association or trade union, there cannot be any undermining of the rights cited in the complaint in terms of supposed violations of Ecuadorian or international labour legislation by the Supreme Court and the National Judiciary Council of Ecuador, and in relation to freedom of association and protection of the right to organize and collective bargaining, provided for in ILO Conventions Nos 87 and 98. In its communication dated 26 November 2008, in response to the request that it specify whether the FENAJE is a trade union and, if not, that it indicate the reasons therefor and whether officers of the judiciary enjoy the right to trade union organization as well as the other rights enshrined in Conventions Nos 87 and 98, the Government states that it shares the arguments set forth in the legal report of the Supreme Court of Justice relating to the legal situation of FENAJE.

C. The Committee's conclusions

960. *The Committee observes that the FENAJE asserts that owing to the fact that the Supreme Court of Justice issued a resolution dated 17 May 2006 ordering the reorganization of the judiciary which, in the union's opinion, conflicts with the guarantees relating to the career system and tenure enshrined in the Constitution, the sectors of workers affected initiated various judicial actions. The complainant organization alleges that the response of the Supreme Court and the National Judiciary Council was to harass and penalize the union members and officials. Specifically, the complainant indicates that, without there being any legal competence for doing so and in violation of the principles of due process, the following union members and officials were dismissed: Mr Luis Hernán Muñoz Pasquel, Mr José Barcia, Mr Girard David Vernaza Arroyo, Ms Josefa Clementina Mendoza Zambrano, Mr Jaime Fabián Pérez Sánchez, Ms Alba Rosa Quinteros Campaña and Mr Milton Pazmiño Soria, citing alleged blatant and serious misconduct in the performance of their duties. The complainant also alleges that, in order to silence the union, criminal proceedings were launched against the FENAJE leader Girard David Vernaza Arroyo and the former FENAJE president Luis Hernán Muñoz Pasquel in the Third Criminal Chamber of the High Court of Quito on 25 October 2007.*

961. *Firstly, the Committee wishes to refer to the Government's statement to the effect that the FENAJE is not a trade union and that judicial officers are not classified as workers. In this respect, the Committee recalls that Article 2 of Convention No. 87 is designed to give expression to the principle of non-discrimination in trade union matters, and that the words "without distinction whatsoever" used in this Article mean that freedom of association should be guaranteed without discrimination of any kind based on occupation, sex, colour, race, beliefs, nationality, political opinion, etc., not only to workers in the private sector of the economy, but also to civil servants and public service employees in general [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth edition, 2006, para. 209]. Consequently, the Committee requests the Government to ensure that judicial officers enjoy the right to establish and join*

organizations of their own choosing, and to take the measures necessary to ensure that the FENAJE is recognized as a trade union if it meets the formal requirements, which should conform to the principles of freedom of association.

962. *As regards the decision of the Supreme Court of Justice ordering the reorganization of the judiciary, the Committee, observing that the complainant has not alleged that this violates the principles of freedom of association, will not make any pronouncement on its content. However, the Committee recalls that on numerous occasions it has emphasized the importance it attaches to the promotion of dialogue and consultations on matters of mutual interest between the public authorities and the most representative occupational organizations of the sector involved [see* ***Digest****, fifth edition, 2006, para. 1067]. Under these circumstances, in order to ensure harmonious relations in the sector, the Committee considers that it would be appropriate in the future, when it is planned to adopt legislative or other measures which affect the conditions of employment of officials of the judiciary, to hold prior consultations with the workers' organizations concerned.*

963. *With regard to the alleged dismissals of the FENAJE members and leaders, the Committee notes the Government's general statement that the Supreme Court of Justice issued a decision on 14 February 2007 dismissing Luis Hernán Muñoz Pasquel, Girard David Vernaza Arroyo, Josefa Clementina Mendoza Zambrano, Jaime Fabián Pérez Sánchez, Alba Rosa Quinteros Campaña and Milton Pazmiño Soria from their posts in the judiciary, on the following basis: (1) the second clause of article 35(10) of the Political Constitution, which prohibits any immobilization of public services, especially in the areas of health, education, justice and social security; (2) section 13(1) of the Organic Law on the Judiciary, which establishes as one of the powers and duties of the Supreme Court the appointment or removal of officers of the high courts, as well as the dismissal of judges, officials and employees of the judiciary for blatant misconduct in the performance of their duties; (3) section 17 of the same Law, which determines that the Supreme Court has the essential duty of supervising the administration of justice in Ecuador; and (4) the abovementioned judicial officers were punished for violent acts committed on 13 February 2007 (occupation of the National Judiciary Council building). While noting the Government's reply, and the context of the allegations, the Committee calls attention to the importance of respecting the provisions of Convention No. 87 as regards the right to organize, as well as regarding the importance of the principle that "the Government has the duty to defend a social climate where respect for the law reigns as the only way of guaranteeing respect for and protection of individuals" [****Digest****, op. cit., para. 34].*

964. *Furthermore, the Committee notes that the Government supplies more detailed information to the effect that: (1) Luis Hernán Muñoz Pasquel, Girard David Vernaza Arroyo, Milton Pazmiño Soria and Josefa Clementina Mendoza Zambrano filed an application for* amparo *in relation to their dismissal on 1 October 2007; this application was not accepted and appeals were lodged against this decision in the Constitutional Court, which has not issued any ruling to date; (2) Jaime Fabián Pérez Sánchez filed an application for* amparo *with the Second Chamber of the Quito District Administrative Disputes Court No. 1; the Court did not allow the appeal and the applicant lodged an appeal for* amparo *with the Constitutional Court, which has not issued any ruling to date; and (3) Alba Rosa Quinteros Campaña filed an application for* amparo *with the Quito District Administrative Disputes Court No. 1, which decided to grant* amparo*, but the members of the Supreme Court lodged an appeal, which is being examined by the First Chamber of the Constitutional Court, which has not issued any ruling to date. In these conditions, the Committee requests the Government to keep it informed of the outcome of the judicial proceedings relating to the dismissal of the FENAJE members Luis Hernán Muñoz Pasquel, Girard David Vernaza Arroyo, Milton Pazmiño Soria, Josefa Clementina Mendoza Zambrano, Jaime Fabián Pérez Sánchez and Alba Rosa Quinteros Campaña.*

965. *As regards the allegation that, in order to silence the FENAJE, criminal court proceedings were launched against union official Girard David Vernaza Arroyo and former union president Luis Hernán Muñoz Pasquel, the Committee notes the Government's statement to the effect that: (1) the president of the Human Resources Committee of the National Judiciary Council filed a complaint with the Pichincha District Prosecutor's Office on the basis that a large number of judicial officers occupied the National Judiciary Council building on 13 February 2007; (2) on 6 February the Pichincha District Prosecutor's Office launched a preliminary investigation of the alleged acts; (3) after the end of the investigation period, the Pichincha District Prosecutor decided to initiate case No. 008-2007 against the accused, ordering the whole case file and all the evidence, including potentially exonerating evidence, to be made available to them and their lawyers; (4) the District Prosecutor requested the criminal court judge to issue an order for preventive detention against the accused, and also to prescribe the corresponding precautionary measures, considering that the conditions laid down in section 167 of the Code of Criminal Procedure had been met (namely, sufficient evidence of the existence of the offence and clear and precise evidence that the accused are the perpetrators of, or accomplices to, the offence in question, which is covered and penalized by section 55 of the Penal Code relating to the disruption of public order, the occupation of public or private buildings, installations or land, and the misappropriation of property); (5) the Third Special Criminal Chamber of the High Court of Justice of Quito ordered the preventive detention of the accused and the subsequent implementation of the order by the judicial police of Pichincha and Esmeraldas, the accused lodged an appeal and the outcome thereof is still pending; and (6) from the above and from the cited provisions it can be seen that the criminal proceedings under way against the judicial officers who occupied the National Judiciary Council building were initiated and substantiated by the competent State authorities and the assertion that criminal court proceedings have been launched to silence the trade union leaders' defence of their organization and to restrict freedom of association is unfounded.*

966. *In these conditions, the Committee requests the Government to keep it informed of the outcome of the appeal lodged by the FENAJE official Girard David Vernaza Arroyo and former union president Luis Hernán Muñoz Pasquel in the context of the criminal proceedings under way against them, and also to inform it whether they have been placed in custody. The Committee trusts that the judicial authority will issue a ruling as soon as possible.*

The Committee's recommendations

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

(a) The Committee requests the Government to ensure that judicial officers enjoy the right to establish and join organizations of their own choosing, and to take the measures necessary to ensure that the FENAJE is recognized as a trade union if it meets the formal requirements, which should conform to the principles of freedom of association.

(b) In order to ensure harmonious relations in the sector (judiciary), the Committee considers that it would be appropriate in the future, when it is planned to adopt legislative or other measures which affect the conditions of employment of officials of the judiciary, to hold prior consultations with the workers' organizations concerned.

(c) The Committee requests the Government to keep it informed of the outcome of the judicial proceedings relating to the dismissal of the members of the FENAJE – Luis Hernán Muñoz Pasquel, Girard David Vernaza Arroyo, Milton Pazmiño Soria, Josefa Clementina Mendoza Zambrano, Jaime Fabián Pérez Sánchez and Alba Rosa Quinteros Campaña.

(d) The Committee requests the Government to keep it informed of the outcome of the appeal lodged by the FENAJE official Girard David Vernaza Arroyo and former union president Luis Hernán Muñoz Pasquel in the context of the criminal proceedings under way against them, and also to inform it whether they have been placed in custody. The Committee trusts that the judicial authority will issue a ruling as soon as possible.

CASE NO. 2516

INTERIM REPORT

Complaint against the Government of Ethiopia presented by — the Ethiopian Teachers' Association (ETA) — Education International (EI) and — the International Trade Union Confederation (ITUC) supported by — the International Confederation of Free Trade Unions (ICFTU) and — the World Confederation of Labour (WCL)

Allegations: The complainant organizations allege serious violations in the ETA's trade union rights including continuous interference in its internal organization preventing it from functioning normally, and interference by way of threats, dismissals, arrest, detention and maltreatment of ETA members

968. The Committee last examined this case at its November 2007 meeting [see 348th Report, paras 629–695]. The Ethiopian Teachers' Association (ETA) and Education International (EI) sent new allegations in communications dated 10 December 2007 and 9 June 2008. In its communication dated 27 January 2009, the International Trade Union Confederation (ITUC) provides additional information on behalf of EI.

969. The Government sent its observations in communications dated 4 February and 2 July 2008 and 19 February 2009.

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

A. Previous examination of the case

971. At its November 2007 meeting, the Committee considered it necessary to draw the special attention of the Governing Body to this case because of the extreme seriousness and urgency of the matters dealt with therein and made the following recommendations [see 348th Report, paras 4 and 695]:

(a) The Committee calls on the Government to fully observe the right of the ETA to organize its internal administration free from interference by the public authorities and to provide a full and detailed reply in respect of the numerous and serious allegations raised in this case of repeated government interference and harassment, arrest, detention and torture of ETA members for over a decade.

(b) The Committee urges the Government to take the necessary measures as a matter of urgency to ensure observance of the right to freedom of association of civil servants, including teachers in the public sector in accordance with Convention No. 87 ratified by Ethiopia. The Committee requests the Government to keep it informed on any progress made in this respect.

(c) With regard to the allegations relating to interference in ETA activities and confiscation of its materials and documents, the Committee observes that the Government has not provided its observations on these very serious allegations of trade union rights infringement and requests it to do so without delay so that it may examine this question in full knowledge of the facts. In the meantime, it requests the Government to ensure respect for trade union rights and to return any confiscated material that may have been seized without an appropriate warrant or that has no relation to any outstanding charges.

(d) The Committee requests the Government to initiate a full and independent investigation into all of the allegations made in this case and in the earlier Case No. 1888 relating to the steps taken by the Government to support the rival ETA group and undermine the complainant organization and to provide full details on the progress made in this regard and on the conclusions reached. In the meantime, the Committee urges the Government to ensure that the ETA may carry out its activities without any Government repression. The Committee further requests the Government to provide information on any measure or action taken following the ruling of 21 June 2007 by the Federal High Court.

(e) The Committee strongly urges the Government to ensure that ETA members who are still being detained are released or brought to trial without delay before an impartial and independent judicial authority, enjoying all the guarantees necessary for their defence. Furthermore, the Committee requests the Government to take the necessary measures to ensure that in future workers are not subject to harassment or detention due to trade union membership or activities. The Committee urges the Government to send its observation without delay on the allegations relating to the arrest, detention or disappearance of the following individuals: Abate Angore, Teferi Gessesse, Tesfaye Yirga, Tamirat Testfaye, Dibaba Ouma, Ocha Wolelo, Bekele Gagie, Serkaalem Kebede, Mulunesh Ababayehu Teklewold and Tilahun Ayalew, as well as the list of 68 arrested teachers provided by the complainants. The Committee asks the Government to keep it informed of any decisions handed down by the courts in respect of these ETA members and to take steps to ensure the immediate release of any of these members and union leaders that may still be detained for their trade union activities and membership and to take steps for the payment of adequate compensation for any damage suffered.

(f) In view of the seriousness of the allegations concerning the torture of Messrs Getnet and Mengistu during their detention to make them confess their membership in an illegal organization, the long period of detention, the vague nature of the charges, their release on several occasions without any explanation as to the reasons for their detention only to be rearrested, the Committee urges the Government to initiate without delay an independent inquiry, to be led by a person that has the confidence of all the parties concerned, to fully clarify the circumstances surrounding their successive arrests and detentions, determine responsibility if it is found that they have been subjected to maltreatment and punish those responsible. If their detention is found to be based on anti-union grounds, the Committee requests the Government to take steps for their immediate release and for the payment of appropriate compensation for any damage

suffered. The Committee requests the Government to keep it informed of the results of the inquiry.

(g) The Committee firmly urges the Government to accept the direct contacts mission requested by the Conference Committee on the Application of Standards in the very near future and hopes that it will include an examination of all matters raised in the present complaint.

B. The complainants' new allegations

972. In their communications dated 10 December 2007 and 9 June 2008, the ETA and EI indicate that on 29 October 2007, the Federal Supreme Court decided to release on bail 47 prisoners. Among them were Anteneh Getnet, member of the ETA Addis Ababa Regional Council; Berhanu Aba-Debissa, member of the ETA and teacher at Wolaita Sodo; Woldie Dana, a member of the ETA, teacher in Bodity; and his wife, Wibit Ligamo. According to the information received, each detainee was to be released on 2,000 Ethiopian Birr (ETB) (150 euros (€)) bail. When the process of bailing began, the amount for the bail had reached ETB5,000 (€375) per person. Only the family of Anteneh Getnet was able to pay the ETB5,000 to get him out of prison. The others, Berhanu Aba-Debissa, Woldie Dana and his wife stayed in the Kality prison until 17 December 2007. It is reported that the relatives and friends who collected money for the bails have been harassed by the regional government officials. Unlike his union colleagues, Meqcha Mengistu, Chairperson of the ETA East Gojam Zonal Executive and a trained member of the ETA Committee for the implementation of the EI/ETA Education for All-HIV/AIDS programme, was denied the right to be released on bail and remains in prison.

973. The complainants recall that all six were arrested and detained for weeks without being notified of the charges against them. They were detained in various places where they were beaten and suffered injuries. During their detention, they were asked to give up their ETA membership. EI and the ETA believe that their detention was connected to their ETA membership.

974. The ETA is also concerned about the fate of Tilahun Ayalew, chairperson of the ETA Awi zone, who disappeared on 28 May 2007 and is still reported missing. The ETA does not know whether he is alive. Mr Anteneh Getnet is also reported missing since April 2008.

975. The complainants further allege that between September and November 2007, Ms Berhanework Zewdie, Ms Aregash Abu, Ms Elfinesh Demissie and Mr Wasihun Melese, all members of the National Executive Board of the ETA, as well as over 50 prominent ETA activists in Addis Ababa, Nekemt (eastern Wolega) and Jima (south-west) have been harassed. They have all been taken to police stations near their respective schools and strongly advised by security agents to quit their union activities. The colleagues arrested in Nekemt and Jima were kept under police arrest for five to ten days in September 2007.

976. In addition, Ms Elfinesh Demissie was fined 36 days' salary by her headmaster, despite the disciplinary committee rejecting all allegations filed against her. Ms Demissie is a teacher and a member of the ETA since 1974. In August 2006, she was elected to the National Board of the ETA. Ms Demissie is known in the education community but also in wider circles as a prominent women's rights activist and for her commitment in the Ethiopian Human Rights Council, for which she served two terms (1994–2005) as Executive Board member. In 2006, the school principal of her previous school, the Misrak Goah Primary School in Addis Ababa (she has since been transferred at her request), regularly complained about her union activism and eventually filed a complaint for absenteeism. The school principal accused Ms Demissie of absenteeism when she took leave to attend the ETA General Assembly from 30 August to 1 September 2006. The Discipline Committee

dismissed unanimously all the allegations filed against Ms Demissie. However, the headmaster fined her with non-payment of 36 days' salary, which amounts to ETB1,572 (about €120). Since then, her court case has been delayed.

977. The complainants further allege that teachers, who protested in support of the ETA, received serious warnings from their school administration. The Government controlled media gives a wide coverage of the social election organized by the ETA set up in 1993. It is reported that school administrations have been requested to facilitate the election process to be implemented throughout the country from the grass roots to the national levels.

978. The complainants also allege the suspension of teachers who refused to carry out the population census in Ethiopia's Somali region in November 2007. The complainants explain that a national census was carried out between 21 April and 22 May 2007 throughout the country with the exceptions of two regions: Afar (north-east) and Somali (east). The National Statistic Commission and the Minister of Education agreed that only teachers would conduct the census and therefore thousands of teachers went from house to house to count the residents in urban and rural areas, on a voluntary basis. However, when the census was carried out in Ethiopia's Somali region in November 2007, teachers throughout the country were randomly selected by their hierarchy. Those who refused to take part, because of the insecurity and the impunity in this part of the country, were sacked from their jobs. Hundreds of teachers were suspended for that motive. According to the information contained in a communication dated 10 December 2007, some teachers have been reinstated and their November salary was paid. The complainants point out, moreover, that when teachers are forcefully ordered to organize the population census, their school loads are redistributed among the remaining teachers, adding to their workload and affecting the quality of education.

979. Reporting on a positive development, the complainants indicate that in 2007, the ETA successfully conducted events on the World Teachers' Day in three major cities: Addis Ababa, Harar and Awasa. The ETA invited educators, parents, and students' representatives to celebrate the World Teachers' Day on Saturday, 6 October to avoid the hassle teachers usually receive from some school principals and government security agents when meetings are held on weekdays. The meetings focused on the working conditions of teachers. The ETA members reiterated their wish to be working with the Government to improve working conditions of teachers on the principle that "Better working conditions for teachers mean better learning conditions for learners".

980. In its communication dated 27 January 2009, the ITUC explains that it has been requested by EI to provide the following additional information in this case concerning complaints submitted by the ETA and EI in September 2006. The ITUC highlights the fact that EI continues to have an affiliate in Ethiopia, one that is attempting to register with a new name following the Supreme Court decision of 7 February 2008 which dissolved the association formerly known as ETA. The ITUC considers that EI and the former ETA have the fundamental right to submit additional information in this case despite the lack of formal recognition by the Government.

981. In particular, the ITUC indicates that on 7 February 2008 (after three adjournments on 14 December 2007, 31 December 2007 and 2 January 2008), the Federal Supreme Court ordered the Ethiopia Teachers' Association, created in 1949 (later referred to as the ETA 1949), to hand over property, other assets and its name to the Ethiopia Teachers' Association, established in 1993 (later referred to as the ETA 1993). On 21 February 2008, the ETA 1949 petitioned the Court of Cassation. On 26 June 2008 (after three adjournments on 7 April 2008, 18 April 2008 and 11 June 2008), the Court of Cassation upheld the ruling of the Federal High Court and of the Federal Supreme Court. On 28 July 2008, a representative of the ETA 1993 came to the ETA premises accompanied by a lawyer and security agents requesting to hand over the property. Since that date, it has been

very difficult for teachers belonging to the former ETA 1949 to be in touch, let alone attend teacher meetings and union activities. The ETA 1949 members have been very frustrated with this situation. The Education for All/HIVAIDS programme implemented by EI through the ETA 1949 has been suspended in 2008. This has deprived Ethiopian teachers of very relevant professional training and activities.

982. The ITUC further indicates that a group of ten teachers submitted an application for registration of the Ethiopia Teachers' National Association (ETNA) on 21 July 2008. On 4 August 2008, an official of the Ministry of Justice advised them to change the name of the new association, as the name ETNA was considered by the Ministry official to be too close to the previous name, the Ethiopia Teachers' Association (ETA). The second alternative proposed by the founding members, the Teachers' National Association, was not accepted either. Finally, on 12 August 2008, the Ministry of Justice acknowledged the application of the National Teachers' Association (NTA). In its communication of 15 August 2008 addressed to the NTA founders, the registration office of the Ministry of Justice stated that the NTA name was too similar to the already registered ETA and thus had to be changed. The letter further stated that since the NTA founders were also members of the ETA, the latter organization needed to express its support for the establishment of a new organization. The complainant points out that the law does not require prior approval from a third party to form an association. Neither is there any restriction on being a member of more than one association. On 1 September 2008, the NTA founding representatives addressed a complaint to the Minister of Justice protesting at the obstruction in the process of registration of their teacher association. On 8 September 2008, the Ministry of Justice submitted the registration application of the NTA to the Ministry of Education in order to obtain their view on the registration process. In its exchange of communication with the Ministry of Justice, the Ministry of Education considered that the NTA had the intention of organizing certain teachers from some regions, however, as the Ethiopian Teachers' Association had been established by all teachers based on their will, it could not recommend the establishment of a new association. On 15 December 2008, the Ministry of Justice notified founding members of the NTA that their request for registration was rejected on the grounds that the Ministry of Education, the employer of teachers, had not given its support for the registration of the NTA.

983. The NTA founding members lodged petitions to the new Minister of Justice on 25 December 2008 and to the FDRE Institution of the Ombudsman on 29 December 2008 to deplore the decision of the Ministry of Justice, which they consider restricted the constitutional rights of an independent teacher association to exist in addition to the existing ETA 1993.

984. In its communication, the ITUC also informs that on 23 October 2008, the 2nd Criminal Bench of the Federal High Court had a hearing to review the case of 55 people, including six ETA 1949 members suspected of involvement in an illegal organization. Thirty-three individuals attended the court proceedings (three persons died in prison, one was released and 18 were missing). The court ruled that those present should defend themselves but those who were missing would receive a verdict in absentia. Thus, two former ETA 1949 members, Tilahun Ayalew and Anteneh Getnet, who are still missing, were sentenced in absentia to some years of imprisonment in November 2008. Meqcha Mengistu is still detained. Woldie Danna and Berhanu Aba-Debissa, although released on bail, have been denied their right to be reinstated to their teaching duties. They appeared in the Federal High Court several times, but, until now, the hearing has always been adjourned. The last court hearing took place on 16 January 2009 and was adjourned until 28 January 2009. The court promised several times to take a decision at its next hearing, which has not been made until now.

985. The ITUC also submits further allegations of continuing violations of trade union rights. In particular, the ITUC refers to the dismissal of three trade union leaders, Nikodimos Aramdie, Wondewosen Beyene and Kinfe Abate, which occurred in September 2007, December 2004 and December 1995 respectively. It further alleges that five members of the former ETA, the complainant in this case, Tesfaye Yirga, Bekele Gagie, Mekonnen Tsega, Meftihie Biaznlign and Elfinesh Demissie, have been brought for questions at police offices on 19 February 2008 to be later released and warned that the next measures taken against them would be much tougher. Another member of the organization, Abera Zemedkun, was arrested and detained from 13 May to 30 August 2008. While upon his release he was reinstated, he did not receive his salary for June, July and August 2008. Moges Kiflie, member of the Retired Teachers' Association, affiliated to the ETA, was taken to the police station for questioning. All these trade unionists were strongly suggested to quit their activities in the ETA.

C. The Government's reply

986. In its communication dated 4 February and 2 July 2008, the Government states that it has, on several occasions, demonstrated its unwavering commitment to cooperate with the supervisory mechanisms of the International Labour Organization. It is in this spirit that the Government continues to respond to the questions raised by the Committee regarding this case. The Government reiterates that the outstanding legal issues relating to the ETA should be left for the Ethiopian courts to handle. On a number of occasions, both the Federal High Court and the Federal Supreme Court rendered decisions addressing various aspects of this case. On 21 June 2007, the Federal High Court rendered a decision which, among others, clarified the legal status of the ETA, the status of the rival executive committees (one of which is represented as a complainant in this case) and the restitution of property belonging to the ETA. The complainants' allegations that the Government is engaged in union favouritism and violations of the rights of teachers cannot be further from the truth. Members of the ETA freely exercise their constitutional rights without any interference whatsoever. Teachers, like other Ethiopian workers, enjoy the constitutional right to form professional associations to promote their interests. Thanks to the conducive political and economic atmosphere prevailing in the country, teachers are benefiting from the national education sector development programme, which, among others, promotes active participation of teachers in the planning and execution of educational policies and programmes. The Government and its educational institutions work with any organization that is established by teachers. It has never pursued any policy of union favouritism nor has it undertaken any measures muzzling the free exercise by teachers of their freedom of association rights.

987. The Government denies EI's allegation that members of the National Executive Board of the ETA, as well as members of Addis Ababa ETA, were harassed and briefly detained by the police and states that no individual was arrested on account of his or her ETA membership. The lawful incarceration of some teachers has nothing to do with the exercise of their rights as members of the ETA or their trade union activities. In this respect, the Government refers to the Committee's findings in other cases and, in particular, its observation that "participation in trade union activities cannot serve as immunity against prosecution for breaches of ordinary criminal laws". Following street riots and criminal offences perpetrated by extreme wings of opposition parties after the May 2005 elections, several individuals were charged and were brought before courts of law for their direct participation in activities which resulted in loss of lives and wanton destruction of public property. Other individuals were also arrested and detained in 2006 and 2007 for their involvement in a clandestine operation sponsored and run by illegal armed groups based in Eritrea with the declared objective of the forcible overthrow of the constitutional order in Ethiopia. Fully aware that they are wanted by the law enforcement bodies, some individuals are in hiding. This is the case of Mr Tilahun Ayalew, whom EI reports

"missing". The Government considers that he is a fugitive from justice. With regard to other individuals released on bail, the Government explains that the court had ordered their release, not because the defendants were members of the ETA but simply because the offence which they were charged with allows the release on bail.

988. Currently, the Federal High Court, 2nd Criminal Bench, is considering a criminal case involving Meqcha Mengistu, Anteneh Getnet, Tilahun Ayalew, Woldie Dana, Berhanu Aba Debissa for involvement in a clandestine operation, sponsored and run by illegal armed groups based in Eritrea with a declared objective of the forcible overthrow of the Ethiopian constitutional order. These charges are based on articles 32, 38 and 240 of the Ethiopian Federal Criminal Code.

989. The Government is appalled that EI continues to show little or no respect for the judicial organs of a sovereign member State of the ILO; that it treats Ethiopian institutions and officials with utmost contempt and disrespect, and pursues an aggressive and politically motivated campaign. In a situation (which is currently a subject of a legal process) where there are two groups claiming to be the legitimate executive organs of the teachers' organization, EI chose not only to take sides and bring the case against the Government on behalf of one of the groups it is sponsoring, but continues to invariably make baseless and false accusations against the Government. The Government refers to the practice of the Committee to take due account of the national judicial process for settling disputes.

990. With regard to the ruling of 21 June 2007 by the Federal High Court, the Government indicates that the defendants appealed to the Federal Supreme Court on 11 July 2007. The Supreme Court, without summoning the defendant, upheld the decision of the High Court and dismissed the appeal. In its reasoning, the Supreme Court agreed with the High Court's opinion that only the assembly has the sole authority to elect members of the executive committee. It cited numerous pieces of evidence brought to its attention, including the minutes of the assembly's meeting and a certificate from the Ministry of Justice establishing that an election of new members of the executive committee was held. The appellants, the court noted, proffered little in showing whether they represented a separate institution, whether they were selected by ETA's assembly, and, if the elections were held, whether these elections were conducted pursuant to the articles of the association's constitution or relevant laws. The decision by the highest judicial organ is significant as it brings to conclusion a long legal battle between two groups of individuals who both had been claiming that they were the legitimate representatives of the executive committee. The Government respects this decision.

991. The Government regrets that the complainants bring to the attention of the Committee some unrelated issues. For example, knowing full well that their reference to the population census in Somali National Regional State of Ethiopia does not have any relation whatsoever with trade union matters, the complainants attempt to suggest that some teachers were excluded from participating in the census carried out in the region in November 2007. The Government explains that the Ethiopian 2007 census was postponed in the Somali and Afar regions by a few months not because of the security concerns, but rather to ensure that the census activity is carried out during the season which is best suited to pastoralist lifestyle and climatic conditions in this area. Moreover, not all teachers participated in the 2007 census. The Government neither forced nor threatened to force teachers to participate in any census activity.

992. The Government reiterates its commitment to cooperate with the ILO and its supervisory bodies, including the Committee on Freedom of Association. The Government believes that it has already demonstrated this through its replies to the Committee, as well as to other ILO bodies in respect of the issues raised in connection with the implementation of the ILO Conventions Ethiopia has ratified. In this respect, the Government indicates that that it has decided to accept a direct contacts mission, as recommended by the Committee

on the Application of Standards in 2007. This acceptance is made within the context of Ethiopia's long standing cooperation with the ILO and its supervisory bodies. The Ethiopian high-level delegation led by the Minister of Social and Labour Affairs held consultations during the 97th Session of the International Labour Conference on modalities of the direct contacts mission. It was agreed for the mission to take place in October 2008.

993. In its communication dated 19 February 2009, the Government indicates that the substantive elements of this case have been extensively dealt with by the Committee, direct contacts mission and the domestic courts. The Government considers that the latest ITUC communication cannot be considered as additional information as it lacks any new evidence. The Government explains that the first element of the ITUC submission relates to the legal process involving the ETA, which has been already addressed by the Committee and brought to conclusion under the Ethiopian legal system. In this respect, the Government regrets that the ITUC has forwarded allegations that had been fully examined by the Committee and in respect of which the Government provided adequate information and observations. Some of the information presented as new or additional, in particular concerning the dismissal of three trade union leaders, Nikodimos Aramdie, Wondewosen Beyene and Kinfe Abate, relate to the events that have allegedly occurred as far back as December 1995. Furthermore, the allegations of harassment are false and not substantiated.

994. The second challenge put forward by the ITUC relates to the attempt by a new group of ten individuals to register a new organization, called the National Teachers Association (NTA), as a professional society in Ethiopia. The Government considers that this new element cannot be considered in the framework of Case No. 2516, which concerns alleged violations of trade rights of the former ETA members. With regard to the NTA, the Government indicates that this association is still seeking remedies within the bounds of the Ethiopian legal and constitutional system. The House of Peoples Representatives has recently adopted the Charities and Societies Proclamation which sets out detailed procedures for registration of societies, including professional associations. This matter will be addressed on the basis of the provisions of this law by the Ombudsperson to which the complaint was submitted. Any examination by the Committee of that matter is premature.

995. The Government recalls that pursuant to the June 2007 Recommendations of the Conference Committee on the Application of Standards, the Ethiopian Government has accepted a direct contacts mission. Consistent with its tradition of cooperating with the ILO mechanisms, the relevant authorities and officials cooperated with the mission. The report of the mission has been communicated to the Government. The Government intends to forward its detailed observations in due course and hopes that follow-up consultations on the findings of the report will be based on a constructive dialogue with the view to bringing this case to an end.

D. The Committee's conclusions

996. *The Committee notes the new allegations sent by the complainants in this case, the ETA and EI, as well as the ITUC communication dated 27 January 2009, sent on behalf of EI. With regard to the latter, the Committee observes that EI continues to have an affiliate in Ethiopia, one that is attempting to register with a new name, following the Supreme Court decision of 7 February 2008, which dissolved the ETA, and therefore continues to have a direct interest in the matter.*

997. *With regard to the Government's contention that the allegations concerning refusal to register a new teachers' association cannot be examined in the framework of this case, the Committee recalls that it is for the Committee to determine whether the information submitted by complainants is receivable within the framework of a particular case. It notes*

that the new association was established by the members of the former ETA, complainant in this case, following the final court judgement in relation to the latter. With regard to the Government's contention that it is premature to examine the allegations of refusal to register the new teachers' association as the same is pending before the Ombudsperson and will be examined in the Ethiopian legal system in due course, the Committee recalls that it has always considered that, in view of its responsibilities, its competence to examine allegations is not subject to the exhaustion of national remedies. The Committee considers that the information submitted in the latest ITUC communication is relevant to the case at hand and will therefore proceed with its examination bearing in mind the relevant information provided by both the complainant and the Government.

998. *The Committee observes that the long-standing dispute between the two groups claiming rights at the ETA has been concluded in the Ethiopian judicial system. The Federal Supreme Court has confirmed, in appeal, the ruling of the Federal High Court of 21 June 2007, which considered that the new ETA has a legal status which entitles it to possess the property of the previously recognized ETA.*

999. *The Committee welcomes the Government's acceptance of the direct contacts mission, which visited the country in October 2008, and appreciates the efforts made to provide the mission with all available information relating to this case. The Committee notes from this report that the complainant organization had decided to accept the final verdict of the Supreme Court, relinquishing the assets of the ETA to those recently elected in the officially recognized ETA, and that a number of teachers subsequently expressed their desire to form a new association. In particular, the Committee notes that, following the decision of the Supreme Court, in August 2008, a group of teachers made a request to the Ministry of Justice to be registered under the name of the National Association of Ethiopian Teachers. The Committee notes that, by its communication dated 15 December 2008, the Ministry of Justice rejected the application for registration. According to this communication, the Ministry's refusal at different stages of the process was based on the following grounds: (1) the NTA's name was found to be similar to the already registered association named the ETA; (2) as members of the ETA, the founding members of the NTA failed to provide the ETA's letter of support for the establishment of a new teachers' organization; and (3) the unfavourable opinion of the Ministry of Education as to whether the NTA should be registered. The Committee notes that according to the Ministry of Education, since the intention of the NTA is to organize certain teachers from some regions and that there was already the Ethiopian Teachers' Association which had been established by all teachers based on their will, it could not recommend an establishment of a new association. With regard to the fact that the Ministry of Justice requested the Ministry of Education to provide its opinion as to whether the new teachers' association should be registered, the Committee considers that a request to the Ministry of Education, who is the employer in this case, concerning the appropriateness of registering an association of teachers is contrary to the right of workers to form and join the organization of their own choosing without previous authorization. The Committee expresses particular concern and regret over the fact that the denial of registration occurs within the context of the longstanding allegations of serious violations of teachers' trade union rights, including the continuous interference by way of threats, dismissals, arrest, detention and maltreatment of the original complainant members. With regard to the need of the ETA's support for the establishment of the NTA, the Committee wishes to emphasize that the right of workers to establish organizations of their own choosing implies, in particular, the effective possibility of forming, in a climate of full security, organizations independent both of those which exist already and of any political party. The Committee therefore urges the Government to take all necessary measures to ensure that the National Teachers' Association is registered without further delay so that all teachers may fully exercise their right to form organizations for the furtherance and defence of teachers' occupational interests without further delay. It requests the Government to keep it informed of the progress made in this regard.*

1000. *The Committee regrets that the Government provides no information on the measures taken to ensure the right to freedom of association of civil servants, including teachers in the public sector, in accordance with Convention No. 87 ratified by Ethiopia. The Committee recalls that it had previously noted the Government's indication that it was in the process of revision of the Civil Servant Proclamation, which would protect and guarantee the right of civil servants, including teachers in public schools, to form and join trade unions. The Committee regrets to observe from the mission report that no concrete progress was made in this respect and that there are apparently no plans presently to adopt legislation in this regard. It therefore once again urges the Government to take the necessary steps to ensure that the freedom of association rights of civil servants, including teachers in the public sector, are fully guaranteed. It requests the Government to keep it informed of all progress made in this respect.*

1001. *With regard to the numerous cases of arrests and detention of the original complainant, ETA, members, the Committee notes that the Government reiterates its previous statement to the effect that these arrests and detentions do not relate to their trade union membership, but, rather, some were arrested and detained for their involvement in criminal offences perpetrated by extreme wings of opposition parties after the elections in May 2005, which resulted in loss of life, and others were arrested and detained in 2006 and 2007 for their involvement in clandestine operations sponsored and run by illegal armed groups based in Eritrea. The Committee regrets that the Government's replies amount to general denial that the arrests and detentions were related to trade union activities and are simply to the effect that the arrests were made for subversive activities, based on ordinary criminal law. The Committee has always followed the rule that, in such cases, the governments concerned should submit further and as precise information as possible in order to enable the Committee to conclude that they are not related to the exercise of trade union activities. The Committee expresses deep concern over the failure of the Government to conduct a full and independent inquiry into the allegations made relating to arrests and detention of trade unionists, particularly in light of the long time that has elapsed since their arrest without any court yet pronouncing itself on the matters and given that those teachers previously arrested on similar charges were finally released without charge by the Federal High Court ruling that they had no case to answer.*

1002. *The Committee understands from the information provided by the complainants and contained in the mission report that, with the exception of Mr Meqcha Mengistu, all teachers listed in the original complaint were released on bail by the end of December 2007 and that, on 8 October 2008, their case pending before the Federal High Court was adjourned until 23 October 2008. It further notes from the information provided by the Government and the ITUC that the Federal High Court, 2nd Criminal Bench, is considering a criminal case involving Meqcha Mengistu, Anteneh Getnet, Tilahun Ayalew, Woldie Dana, Berhanu Aba Debissa for involvement in a clandestine operation, sponsored and run by illegal armed groups based in Eritrea with a declared objective of the forcible overthrow of the Ethiopian constitutional order. The Committee notes that, on 23 October 2008, the 2nd Criminal Bench of the Federal High Court had a hearing to review the case of six ETA 1949 members suspected of involvement in an illegal organization. The court ruled that those present should defend themselves but those who were missing would receive verdicts in absentia. Thus, two former ETA 1949 members, Tilahun Ayalew and Anteneh Getnet, who are still missing, were sentenced in absentia to some years of imprisonment in November 2008. Meqcha Mengistu is still detained. Woldie Danna and Berhanu Aba-Debissa, although released on bail, have been denied their right to be reinstated in their teaching duties. They appeared in the Federal High Court several times, but until now the hearing has always been adjourned. The last court hearing took place on 16 January 2009 and was adjourned until 28 January 2009. The court promised several times to take a decision at its next hearing, which has not been made until now. The Committee recalls that it has always attached great importance to the principle of a prompt and fair trial by an independent and impartial judiciary in all cases, including*

cases in which trade unionists are charged with political or criminal offences. It points out in this respect that where persons have been sentenced on grounds that have no relation to trade union rights, the matter falls outside its competence. However, it emphasizes that whether a matter is one that relates to the criminal law or to the exercise of trade union rights is not one which can be determined unilaterally by the Government concerned. This is a question to be determined by the Committee after examining all the available information and, in particular, the text of the judgement [see ***Digest of decisions of the Freedom opf Assocation Committee****, op. cit., paras 109 and 114]. The Committee therefore expects that the decisions in respect of these ETA members will be handed down by the courts without further delay and requests the Government to communicate the full texts of these judgements once they have been rendered.*

1003. *Furthermore, the Committee notes that Mr Mengistu is still imprisoned awaiting the ruling of the Federal High Court and deplores the long period of his detention and the vague nature of the charges. It observes with deep concern from the previous examination of this case that Mr Mengistu has been released on several occasions without any explanation as to the reasons for his detention only to be rearrested later. The Committee urges the Government to ensure that Mr Mengistu is released or brought to trial without delay before an impartial and independent judicial authority.*

1004. *The Committee deplores the lack of reply from the Government on the serious allegations of torture of ETA members, including Messrs Getnet and Mengistu, during their detention to make them confess their membership in an illegal organization. The Committee urges the Government to initiate without delay an independent inquiry into these allegations to be led by a person that has the confidence of all the parties concerned and, if it is found that they have been subjected to maltreatment, to punish those responsible and to ensure appropriate compensation for any damages suffered. The Committee requests the Government to keep it informed of the steps taken in this regard and the results of the inquiry. The Committee stresses that carrying out such an inquiry is essential in view of the allegations of the use of torture to extract confessions, which can then be used in court against the defendants. The Committee expects that all trade unionists appearing before the court in this case enjoy the due process guarantees necessary for their defence.*

1005. *The Committee notes the allegations of harassment in September–November 2007 of Ms Berhanework Zewdie, Ms Aregash Abu, Ms Elfinesh Demissie and Mr Wasihun Melese, all members of the National Executive Board of the complainant organization; as well as over 50 of its prominent activists. According to the complainants, they have been taken to police stations near their respective schools and strongly advised by security agents to quit their union activities. Some were kept under police arrest for five to ten days in September 2007. The Committee regrets that no information has been provided by the Government. It therefore urges the Government to initiate a full and independent investigation into these allegations in order to determine responsibilities, punish the guilty parties and prevent the repetition of similar acts. It requests the Government to keep it informed in this respect.*

1006. *With regard to Ms Demissie, the Committee notes that the complainants allege that she was punished by her headmaster for her trade union activities and was unpaid for 36 days of work (about €120), despite the fact that the Discipline Committee, to whom the headmaster filed a complaint for absenteeism, dismissed unanimously all the allegations. In these circumstances, the Committee is bound to conclude that Ms Demissie was in fact punished for her trade union activities. It therefore requests the Government to take the necessary measures without delay in order to ensure the payment of the lost wages to Ms Demissie, as well as adequate indemnities or penalty, constituting a sufficiently dissuasive sanction against any further act of anti-union discrimination. It requests the Government to keep it informed in this respect.*

1007. *The Committee notes the allegations of the suspension of teachers who refused to participate in the carrying out of a population census in Ethiopia's Somali region in November 2007. The complainants explain that, while in the rest of the country the census was carried out by teachers on a voluntary basis, the teachers were randomly selected for the Somali region. Moreover, such forced participation added to the workload of those teachers remaining in school. According to the complainants' communication dated 10 December 2007, some teachers were reinstated and their November salary was paid. The Government, on the other hand, states that this allegation is unrelated to trade union matters and explains that it has neither threatened nor forced teachers to participate in the population census procedure, agreed upon by the National Statistic Commission and the Ministry of Education. The Committee notes that the population census procedure, which was to be carried out exclusively by teachers, seems to be agreed upon without any consultation with teachers' organizations. The Committee requests the complainants to indicate how the decision of the Government with regard to the conduct of the census in the Somali region affected trade union rights of the teachers concerned.*

1008. *With regard to the allegations of dismissal of three trade union leaders occurring in 1995, 2004 and 2007 and contained in the ITUC communication dated 27 January 2009, the Committee notes the Government's indication that the alleged cases of dismissals date as far back as 1995 and therefore cannot be presented as new or additional information. While no formal rules fixing any particular period of prescription are embodied in the procedure for the examination of complaints, it may be difficult if not impossible for a government to reply in detail to allegations regarding matters which occurred a long time ago. In this particular case, the Committee observes that only one of the allegations dates back to 1995 whereas the other two concern incidents allegedly occurring in 2004 and 2007. It therefore requests the Government to reply in substance to these allegations and, as regards the dismissal in 1995 of Kinfe Abate, requests the complainant to provide relevant and detailed information in respect of this dismissal and to indicate why it was not possible to provide this information previously.*

1009. *The Committee notes the ITUC's allegations of harassment of seven trade unionists occurring between February and August 2008. While noting the Government's statement that the ITUC's submissions are false, the Committee urges the Government to conduct an independent investigation into these allegations of harassment and to provide a detailed reply as to its outcome.*

The Committee's recommendations

1010. ***In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:***

(a) The Committee urges the Government to take all necessary measures to ensure that the National Teachers' Association is registered without delay so that teachers may fully exercise their right to form organizations for the furtherance and defence of teachers' occupational interests without further delay. It requests the Government to keep it informed of the progress made in this regard.

(b) The Committee once again urges the Government to take the necessary steps to ensure that the freedom of association rights of civil servants, including teachers in the public sector, are fully guaranteed. It requests the Government to keep it informed of all progress made in this respect.

(c) The Committee expects that decisions in respect of the original complainant, ETA, members mentioned in the complaint will be handed down by the courts without further delay. It requests the Government to communicate the full texts of these judgements as soon as they have been rendered.

(d) The Committee urges the Government to ensure that Mr Mengistu is released or brought to trial without delay before an impartial and independent judicial authority.

(e) The Committee urges the Government to initiate without delay an independent inquiry into the allegations of torture and maltreatment of the detained persons to be led by a person that has the confidence of all the parties concerned, and if it is found that they have been subjected to maltreatment, to punish those responsible and to ensure appropriate compensation for any damages suffered. The Committee requests the Government to keep it informed of the steps taken in this regard and the results of the inquiry.

(f) The Committee expects that all trade unionists appearing before the court enjoy the due process guarantees necessary for their defence.

(g) The Committee urges the Government to initiate a full and independent investigation into the allegations of harassments in September–November 2007 of Ms Berhanework Zewdie, Ms Aregash Abu, Ms Elfinesh Demissie and Mr Wasihun Melese, all members of the National Executive Board of the complainant organization; as well as over 50 of its prominent activists in order to determine responsibilities, punish the guilty parties and prevent the repetition of similar acts. It requests the Government to keep it informed in this respect.

(h) The Committee requests the Government to take the necessary measures without delay in order to ensure the payment of lost wages to Ms Demissie, as well as adequate indemnities or penalty constituting a sufficiently dissuasive sanction against any further act of anti-union discrimination. It requests the Government to keep it informed in this respect.

(i) The Committee requests the complainants to indicate how the decision of the Government with regard to the conduct of the census in the Somali region affected trade union rights of the teachers concerned.

(j) The Committee requests the Government to reply in substance to the allegations of dismissal of two trade union leaders, Nikodimos Aramdie and Wondewosen Beyene, and, as regards the dismissal in 1995 of Kinfe Abate, requests the complainant to provide relevant and detailed information in respect of this dismissal and to indicate why it was not possible to provide this information previously.

(k) The Committee requests the Government to conduct an independent investigation into the allegations of harassment of seven trade unionists and to provide a detailed reply as to its outcome.

CASE NO. 2361

INTERIM REPORT

Complaint against the Government of Guatemala presented by
— the Union of Workers of the Chinautla Municipal Authority (SITRAMUNICH)
— the National Federation of Trade Unions of State Employees of Guatemala (FENASTEG)
— the Union of Workers of the Directorate General for Migration (STDGM) and
— the Union of Workers of the National Civil Service Office (SONSEC)

Allegations: The mayor of Chinautla refused to negotiate a collective agreement and dismissed 14 union members and two union leaders; the Government is promoting a new Civil Service Act containing provisions contrary to ratified ILO Conventions on freedom of association; departments in the Ministry of Education are being reorganized with the possible elimination of posts with the aim of destroying the union that operates in that Ministry; the Directorate General for Migration refused to negotiate the collective agreement and to reinstate union leader Mr Pablo Cush with payment of lost wages and is taking measures to dismiss union leader Mr Jaime Roberto Reyes Gonda without court authorization; the Directorate General for Migration refused to set up the joint committee provided for in the collective agreement; 16 members of the Union of Workers of the "José de Pineda Ibarra" National Centre for Textbooks and Educational Material were dismissed as a result of a reorganization ordered by the Minister of Education and action is being taken to dismiss all members of the union's executive committee

1011. The Committee last examined this case at its November 2007 meeting and submitted an interim report to the Governing Body [see 348th Report, paras 724–754, approved by the Governing Body at its 300th Session]. The Union of Workers of the Chinautla Municipal Authority (SITRAMUNICH) sent new allegations in a communication of 27 October 2008.

1012. The Government sent further observations in communications dated 2 January, 23 June and 27 October 2008.

1013. 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

1014. In its previous examination of the case, the Committee made the following recommendations [see 348th Report, para. 754]:

(a) With regard to the dismissal of 14 trade union members and the union leader, Mr Marlon Vinicio Avalos, from the Chinautla Municipal Authority, the Committee requests the Government to keep it informed concerning the judicial proceedings under way in connection with the six workers mentioned by the Government and concerning the workers who have been effectively reinstated in their posts, and to provide information on the other dismissed workers, including the trade union leader Mr Marlon Vinicio Avalos.

(b) The Committee requests the Government to take the necessary measures to promote collective bargaining in the Chinautla Municipal Authority and to keep it informed in this respect.

(c) With regard to the civil service bill, the Committee requests the Government to keep it informed of the bill's passage through Congress, and trusts that the ILO will provide the requested technical assistance.

(d) With regard to the dismissal of 16 members of the Union of Workers of the "José de Pineda Ibarra" National Centre for Textbooks and Educational Material and the action taken by the Ministry of Education to dismiss all the members of the executive committee, the Committee requests FENASTEG to provide information on the case file numbers or on the courts which handled the relevant proceedings, so that the Government is able to send its observations.

(e) …

(f) With regard to the dismissal of trade union leaders Mr Pablo Cush and Mr Jaime Roberto Reyes Gonda, the Committee requests the Government to do everything in its power to ensure that Mr Pablo Cush – who according to the Government has been reinstated in his post – receives payment of lost wages and to keep it informed of the outcome of the judicial proceedings relating to the dismissal of trade union leader Mr Jaime Roberto Reyes Gonda. If the law prohibits or prevents the payment of these wages, the Committee considers that it should be modified.

(g) With regard to the new allegations presented by SONSEC and FENASTEG, the Committee: (1) requests the Government to take the necessary measures to promote collective bargaining between ONSEC and SONSEC; and (2) expects that ONSEC will consult fully with SONSEC if it intends to adopt new internal regulations. The Committee requests the Government to keep it informed in this regard.

B. New allegations

1015. In its communication dated 27 October 2008, SITRAMUNICH alleges that the Chiquimula Municipal Authority dismissed several workers despite the fact that, in two sets of judicial proceedings to settle collective disputes of an economic and social nature that were before the First Instance Labour, Social Welfare and Family Court of the Department of Chiquimula (involving a summons to engage in collective bargaining), the court warned the parties not to take reprisals against each other and indicated to the municipal authority that, from that point on, court authorization was required for the termination of any employment contract. The municipal authority has initiated legal proceedings to request the termination of the employment contracts of several workers, in particular trade union members. Furthermore, the municipal authority has indicated that it will only pay the

workers' wages if they resign or sign a fixed-term contract. This led many workers to withdraw their union membership.

1016. The trade union organization adds that, despite having been summoned to appear before the judicial authority, the municipal authority did not engage in collective bargaining. For its part, the judicial authority has not convened a conciliation tribunal, even though the prescribed time period has elapsed, in order to advance the collective bargaining process, which would lead to compulsory arbitration or recourse to strike.

C. The Government's reply

1017. In its communications dated 2 January, 23 June and 27 October 2008, the Government sent the following observations.

1018. With regard to the civil service bill, which, according to the allegations, would contain provisions that are contrary to the ILO Conventions, the Government reports that, on 7 November 2007, the plenary of the Congress of the Republic returned the case file for Bill No. 3395 to the Labour Committee for further consideration and opinion. In this regard, the Government adds that it has requested ILO assistance for the preparation of the opinion by the Labour Committee.

1019. With regard to the allegations submitted by the National Federation of Trade Unions of State Employees of Guatemala (FENASTEG) relating to the dismissal of 16 members of the Union of Workers of the "José de Pineda Ibarra" National Centre for Textbooks and Educational Material and the action being taken by the Ministry of Education to dismiss all the members of the union's executive committee, the Government reports that the Minister of Education dismissed all the members of the union in the context of a reorganization. These dismissals were carried out in accordance with a decision of the National Civil Service Office (ONSEC). The Government indicates that the members of the union's executive committee engaged in a collective dispute of a social and economic nature in which an application for *amparo* (protection of constitutional rights) was filed and rejected by the judicial authority. The trade union organization appealed to the Constitutional Court, which upheld the ruling.

1020. With regard to the allegations presented by the Union of Workers of the National Civil Service Office (SONSEC), the Government indicates that, in accordance with the principle of due process, the prescribed procedures and time periods have to be respected. With regard to the allegations relating to the failure to establish a joint committee, the Government indicates that, according to ONSEC, a joint committee has already examined and settled cases that have been brought before it. With regard to the violation of the right to advancement, ONSEC indicates that this right is regulated in the Civil Service Act and in the collective agreement on working conditions.

D. The Committee's conclusions

1021. *The Committee takes note of the observations of the Government, which relate to some of the issues that were pending. The Committee also takes note of the new allegations presented by SITRAMUNICH, relating to the dismissal of several workers by the Chiquimula Municipal Authority, the application to terminate the contracts of union members and the non-payment of the workers' wages in order to force them to resign from their posts or to accept fixed-term contracts. This led to the withdrawal of many workers who belonged to the union. The Committee notes that these measures adopted by the municipality intentionally overlooked the fact that, because a collective labour dispute was before the judicial authority and in accordance with the court's instructions, acts of*

reprisal among the parties and the dismissal of workers without the court's authorization were prohibited.

1022. *With regard to the allegations that the Government was promoting a new Civil Service Act which, according to the trade unions, contains provisions that are contrary to the ILO Conventions, the Committee notes that the plenary of the Congress of the Republic returned the case file for Bill No. 3395 to the Labour Committee for further consideration and opinion, for which the Government once again requested ILO assistance. In this regard, the Committee has been informed that this matter is being handled in the framework of ILO technical assistance to the Tripartite Committee on International Affairs.*

1023. *With regard to the allegations relating to the dismissal of 16 members of the Union of Workers of the "José de Pineda Ibarra" National Centre for Textbooks and Educational Material and the action to dismiss all the members of the executive committee in the context of a process of reorganization by the Minister of Education, the Committee takes note of the information provided by the Government indicating that, in the context of a reorganization, the Minister of Education dismissed all the union members in accordance with a decision of ONSEC. The Committee takes note that the Government adds that the members of the union's executive committee engaged in a collective dispute in which an application for* amparo *was filed and rejected, a decision that was upheld by the Constitutional Court. In this regard, so as to be able to reach its conclusions in full knowledge of the facts, the Committee requests the Government to provide information, including figures, to indicate whether the dismissal affected only unionized workers or whether the reorganization process and subsequent dismissal also affected other workers of the institution in question. The Committee also requests the Government to send a copy of the court decisions handed down.*

1024. *With regard to the allegations presented by SONSEC and FENASTEG, the Committee recalls that it had requested the Government to take the necessary measures to promote collective bargaining between ONSEC and SONSEC, and that ONSEC should consult fully with SONSEC if it intended to adopt new internal regulations. The Committee notes that the Government's reply does not relate in any way to these allegations. Consequently, the Committee reiterates its previous recommendations.*

1025. *The Committee notes with regret that the Government has not sent its observations with regard to the other pending matters. In these circumstances, the Committee is bound to reiterate its previous recommendations:*

– *With regard to the dismissal of 14 trade union members and the union leader, Mr Marlon Vinicio Avalos, from the Chinautla Municipal Authority, the Committee requests the Government to keep it informed concerning the judicial proceedings under way in connection with the six workers mentioned by the Government and concerning the workers who have been effectively reinstated in their posts, and to provide information on the other dismissed workers, including the trade union leader Mr Marlon Vinicio Avalos.*

– *The Committee requests the Government to take the necessary measures to promote collective bargaining in the Chinautla Municipal Authority and to keep it informed in this respect.*

– *With regard to the dismissal by the Directorate General for Migration of trade union leaders Mr Pablo Cush and Mr Jaime Roberto Reyes Gonda, the Committee requests the Government to do everything in its power to ensure that Mr Pablo Cush – who according to the Government has been reinstated in his post – receives payment of lost*

wages and to keep it informed of the outcome of the judicial proceedings relating to the dismissal of trade union leader Mr Jaime Roberto Reyes Gonda. If the law prohibits or prevents the payment of these wages, the Committee considers that it should be modified.

1026. *The Committee requests the Government to send its observations on the latest allegations presented by SITRAMUNICH relating to the dismissal of various workers by the Chiquimula Municipal Authority and the pressure placed by the Municipal Authority on the workers, who were not paid until they resigned or accepted a fixed-term contract, even though because a collective labour dispute is before the judicial authority and, in accordance with the court's instructions, acts of reprisal among the parties and the dismissal of workers without the court's authorization are prohibited.*

The Committee's recommendations

1027. ***In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:***

(a) With regard to the allegations relating to the dismissal of 16 members of the Union of Workers of the "José de Pineda Ibarra" National Centre for Textbooks and Educational Material and the action taken to dismiss all the members of the executive committee in the context of a process of reorganization by the Minister of Education, the Committee, so as to be able to reach its conclusions in full knowledge of the facts, requests the Government to provide information, including figures, indicating whether the dismissal affected only unionized workers or whether the reorganization process and subsequent dismissal also affected other workers of the institution in question. The Committee also requests the Government to send a copy of the court decisions handed down.

(b) With regard to the allegations presented by SONSEC and FENASTEG, the Committee requests the Government to take the necessary measures to promote collective bargaining between ONSEC and SONSEC and expects that ONSEC will consult with SONSEC if it intends to adopt new internal regulations.

(c) With regard to the dismissal of 14 trade union members and the union leader, Mr Marlon Vinicio Avalos, from the Chinautla Municipal Authority, the Committee requests the Government to keep it informed concerning the judicial proceedings under way in connection with the six workers mentioned by the Government and concerning the workers who have been effectively reinstated in their posts, and to provide information on the other dismissed workers, including the trade union leader Mr Marlon Vinicio Avalos.

(d) The Committee requests the Government to take the necessary measures to promote collective bargaining in the Chinautla Municipal Authority and to keep it informed in this respect.

(e) With regard to the dismissal by the Directorate General for Migration of trade union leaders Mr Pablo Cush and Mr Jaime Roberto Reyes Gonda, the Committee requests the Government to do everything in its power to ensure

that Mr Pablo Cush – who according to the Government has been reinstated in his post – receives payment of lost wages and to keep it informed of the outcome of the judicial proceedings relating to the dismissal of trade union leader Mr Jaime Roberto Reyes Gonda. If the law prohibits or prevents the payment of these wages, the Committee considers that it should be modified.

(f) The Committee requests the Government to send its observations on the latest allegations presented by SITRAMUNICH relating to the dismissal by the Chiquimula Municipal Authority and the pressure placed by the Municipal Authority on the workers, who are not paid until they resign or accept a fixed-term contract, even though because a collective labour dispute is before the judicial authority and in accordance with the court's instructions, acts of reprisal among the parties and the dismissal of workers without the court's authorization are prohibited.

CASE NO. 2621

DEFINITIVE REPORT

Complaint against the Government of Lebanon presented by the International Confederation of Arab Trade Unions (ICATU)

Allegation: The complainant organization alleges that the authorities interfered in the election of officials of the General Confederation of Lebanese Workers (CGTL)

1028. The Committee last examined this case at its June 2008 session and presented an interim report to the Governing Body [see 350th Report, paras 1222–1241, approved by the Governing Body at its 302nd Session].

1029. The Government transmitted additional information in a communication dated 2 September 2008.

1030. Lebanon has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). It has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

A. Previous examination of the case

1031. In its previous examination of the case in June 2008, the Committee made the following recommendations [see 350th Report, para. 1241]:

(a) The Committee requests the Government to ensure that the current legal proceedings do not in practice pose an obstacle to the functioning of the CGTL and the activities that it would like to carry out.

(b) The Committee expects that a judicial decision will be made in the very near future regarding the elections of representatives of the CGTL and asks the Government to keep it informed of any decision and any follow-up action taken in this regard.

B. The Government's observations

1032. In a communication dated 2 September 2008, the Government provides a copy of a court ruling on this case (Order No. 160/2008 of 27 March 2008, handed down in Beirut by the urgent applications judge).

1033. The case was referred to the urgent applications judges by Mr Abd Allatif Al-Tiriaqi in his capacity as President of the Trade Union Federation of Workers and Employees of the South, and Mr Suleiman Hamdan, president of the Federation of Chemical and Like Products Workers of Lebanon, which sought, inter alia, a ruling to cancel the announcement, issued on 22 May 2007 by the leaders of the General Confederation of Lebanese Workers (CGTL), of elections to take place on 21 June 2007. The claimants also requested that the results of the CGTL leadership elections held on 21 June 2007 be declared null and void. At a subsequent hearing (on 26 July 2007), Mr Halim Elias Matar and Mr Yasser Mahmoud Ni'mah, as members of the CGTL Executive Committee, endorsed these claims and lodged an additional request for an injunction against the CGTL until a ruling could be given on the substance of the case. Mr Matar subsequently withdrew his application.

1034. In Court Order No. 160/2008 of 27 March 2008, the urgent applications judge considered, first, with regard to the request to cancel the announcement of elections made on 22 May 2007 by the CGTL officers, that the court order of 21 June 2007 suspending the announcement of elections had been rendered moot, given that the elections had already taken place and the results had been registered. As regards the cancellation of the elections for CGTL officers held on 21 June 2007, the urgent applications judge ruled that the court was not competent to rule on an action that had already taken place and required no intervention by the urgent applications court in response to some imminent risk of loss or damage. Lastly, the judge considered that the application for an injunction against the CGTL was receivable in respect of form, but not connected with the principal action, and also noted the absence of any imminent risk of loss or damage; the application was accordingly rejected. The urgent applications judge in his ruling thus rejected all the claimants' demands.

C. The Committee's conclusions

1035. *The Committee recalls that, in this case, the International Confederation of Arab Trade Unions (ICATU) alleged interference by the Ministry of Labour in the internal affairs of the CGTL when leadership elections were held on 21 June 2007 in the presence of an ICATU representative, in particular by issuing, one hour after the elections had finished, an interim relief order suspending the elections on the basis of a complaint lodged by two individuals including Mr Abd Allatif Al-Tiriaqi, who was described as an adviser to the Minister of Labour. The ICATU also complained that this situation had already arisen in 2005, when the same urgent actions judge had given an identical ruling to suspend elections of CGTL representatives.*

1036. *The Committee takes note of Court Order No. 160/2008 of 27 May 2008 issued by the urgent actions judge, a copy of which has been provided by the Government. The Committee also notes that the court order in question concerns the order to suspend the election of CGTL officers held on 21 June 2007 which is the subject of the ICATU complaint. The Committee notes that the urgent actions judge on 27 March 2008 ruled that the application by Mr Abd Allatif Al-Tiriaqi and Mr Suleiman Hamdan to cancel the announcement made on 22 May 2007 for CGTL leadership elections had been rendered moot, that furthermore the court was not competent to rule on the elections which had already been held on 21 June 2007, and that an application made subsequently by*

Mr Yasser Mahmoud Ni'mah for an injunction against the CGTL should also be rejected on the grounds that there was no imminent risk of loss or damage.

1037. *The Committee notes that the procedure before the urgent actions judge has been concluded and that the Government has communicated the ruling handed down in this case.*

The Committee's recommendation

1038. ***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. 2637

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

Complaint against the Government of Malaysia presented by the Malaysian Trades Union Congress (MTUC)

Allegations: The complainant alleges that the Government refuses to allow migrant domestic workers to establish organizations to defend their interests

1039. The complaint is set out in a communication of 10 April 2008 from the Malaysian Trades Union Congress (MTUC).

1040. The Government submitted its observations in a communication of 29 October 2008.

1041. Malaysia has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). It has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

A. The complainant's allegations

1042. In its communication of 10 April 2008, the complainant states that foreign domestic workers are the most marginalized group of migrants in the country: they are not recognized as workers in the labour legislation; they do not receive standardized contracts, apart from Filipino domestic workers, and work in isolated conditions for very long hours without holidays. The complainant states that migrant workers are entirely at the mercy of their employers and have no access to mechanisms for their protection, leaving them vulnerable to violence and abuse.

1043. The complainant indicates that following several widely reported cases of abuse of Indonesian domestic workers, it decided to organize domestic workers by registering an association of domestic workers under the Societies Act. The aims and objectives of the association were to obtain reasonable wages, hours of work and other conditions of employment; to promote a spirit of mutual respect and understanding between the association and employers; to aid domestic workers in investing their earnings; and to

organize educational activities and professional trainings on skills, safety, and the labour law. The complainant further states that it held an inaugural meeting, formed a committee, drafted a constitution and submitted the requisite documents for registration of an association of migrant domestic workers to the Registrar of Societies on 8 May 2006. On 23 July 2007, the Registrar rejected the application without providing any reason for doing so.

1044. With respect to migrant workers in general (apart from migrant domestic workers), the complainant states that the Department of Trade Union Affairs has ruled that they may join trade unions representing other workers at their respective enterprises. However, the work permits issued by the Immigration Department stipulate, as a condition of employment, that migrant workers may not join a "persatuan", or association, which is interpreted by employers to also mean a "kersatuan" – or trade union. Most employers consequently prevent migrant workers from joining trade unions. In this regard, the complainant annexes copies of an employment contract where it is stipulated that the migrant worker shall not participate in any activity connected with a Malaysian trade union. Furthermore, migrant workers supplied by labour contractors are not treated as employees of the workplace where they physically work and therefore may not join a trade union, and, since unions are only permitted to organize workers employed within similar industries or at the enterprise level, migrant workers employed by labour suppliers cannot join any of the existing 600 trade unions in the country.

B. The Government's reply

1045. In its communication of 29 October 2008, the Government states that the rights of foreign workers, including their right to join a trade union, are protected under the same law that applies to all workers – the Employment Act, 1955, the Industrial Relations Act, 1967, and the Trade Unions Act, 1959. However domestic workers, whether foreign or local, are exempted from the scope of the Employment Act.

1046. As concerns the 23 July 2007 rejection of the complainant's application by the Registrar of Societies, the Government states that the Registrar reached its decision for the following reasons: (1) existing laws and guidelines on foreign workers, especially domestic workers, are adequate to accommodate their needs and concerns; and (2) migrant domestic workers may bring their concerns to their respective embassies, the Malaysian Association of Foreign Maid Agencies (PAPA) or other relevant authorities, which serve as platforms for addressing their needs and for fostering harmony.

1047. The Government indicates that all applications before the Registrar of Societies are referred to other agencies, including the Royal Malaysian Police, for further recommendation, in order to ensure that the national interest is ensured. Furthermore, regular meetings and workshops are conducted, in concert with the social partners, in order to improve the existing policies to promote decent work for all – including foreign domestic workers. To date more than 20 meetings have been held between the Government and the social partners on labour issues, including those pertaining to migrant workers.

C. The Committee's conclusions

1048. *The Committee notes that the present case involves allegations of the refusal of freedom of association rights to migrant workers, including migrant domestic workers, in law and in practice. The complainant alleges, firstly, that various stipulations in the labour legislation lead to the effective exclusion of migrant workers from its coverage. In particular, the complainant asserts that, while the Department of Trade Union Affairs had ruled that migrant workers may join trade unions representing other workers at their respective*

enterprises, the work permits issued by the Immigration Department stipulate, as a condition of employment, that migrant workers may not join a "persatuan", or association, which is interpreted by employers to also mean a "kersatuan" – or trade union. Most employers consequently prevent migrant workers from joining trade unions. In addition, since migrant workers supplied by labour contractors are not treated as employees of the workplace where they physically work, they are unable to join any of the existing 600 trade unions in the country – which may only organize employees within similar industries or at the enterprise level. Moreover, the right to organize has been further obstructed for migrant domestic workers who are excluded from the minimum working conditions set out in the Employment Act and who have recently been denied the exercise of their organizational rights due to the refusal by the Registrar of Societies to register the newly created association for migrant domestic workers that had been constituted by the Malaysian Trade Union Congress (MTUC).

1049. *The Committee notes the Government's statement that the freedom of association rights of migrant workers are protected under the same laws that apply to all workers – the Employment Act, 1955, the Industrial Relations Act, 1967, and the Trade Unions Act, 1959, while domestic workers, whether foreign or local, are excluded from the Employment Act. In this regard, migrant workers would, according to the Government, be guaranteed the right to form and join a trade union under the Trade Unions Act. The Committee recalls, however, that in previous cases concerning Malaysia spanning nearly 20 years, the Committee has commented upon a number of fundamental deficiencies in the legislation and, in particular, recommended that the Trade Unions Act and the Industrial Relations Act be amended so as to bring them into conformity with freedom of association principles. The serious matters previously highlighted concern, in particular: restrictions on the right of workers to establish and join organizations at all levels, including the primary and other levels; the excessive discretion of the registrar authority to refuse registration in violation of the principle of the right to organize freely chosen workers' organizations without previous authorization; and restrictions on the right of workers' organizations to adopt their rules and elect their representatives in full freedom [see e.g. Case No. 2301, 333rd Report, paras 586–594, and 349th Report, paras 165–173].*

1050. *As for the more specific allegation relating to the refusal to register the association of migrant domestic workers, the Committee notes the Government's reply that: (1) existing laws and guidelines on foreign workers, especially domestic workers, are adequate to accommodate their needs and concerns; and (2) migrant domestic workers may bring their concerns to their respective embassies, the PAPA or other relevant authorities, which serve as platforms for addressing their needs and for fostering harmony.*

1051. *The Committee recalls that Article 2 of Convention No. 87 is designed to give expression to the principle of non-discrimination in trade union matters, and the words "without distinction whatsoever" used in this Article mean that freedom of association should be guaranteed without discrimination of any kind based on occupation, sex, colour, race, beliefs, nationality, political opinion, etc. [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 2006, fifth edition, para. 209]. On numerous occasions, the Committee has interpreted this right to include migrant workers and has further stated that domestic workers are not excluded from the application of Convention No. 87 and should therefore be governed by the guarantees it affords and have the right to establish and join occupational organizations [****Digest****, op. cit., para. 267]. The Committee has further emphasized that all workers, without distinction whatsoever, whether they are employed on a permanent basis, for a fixed term or as contract employees, should have the right to establish and join organizations of their own choosing [****Digest****, op. cit., para. 255].*

1052. *The Committee considers that the arguments put forward by the Government to explain the Registrar's refusal to register the association of migrant domestic workers can in no way*

justify the denial of the fundamental right to organize these workers. The Committee therefore expects that the Government will take the necessary measures, including legislative if necessary, to ensure in law and in practice that domestic workers, including contract workers, whether foreign or local, may all effectively enjoy the right to establish and join organizations of their own choosing. It further requests the Government to take the necessary steps to ensure the immediate registration of the association of migrant domestic workers so that they may fully exercise their freedom of association rights. It requests the Government to keep it informed of the progress made in this regard.

The Committee's recommendation

1053. ***In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendation:***

The Committee expects that the Government will take the necessary measures, including legislative if necessary, to ensure in law and in practice that domestic workers, including contract workers, whether foreign or local, may all effectively enjoy the right to establish and join organizations of their own choosing. It further requests the Government to take the necessary steps to ensure the immediate registration of the association of migrant domestic workers so that they may fully exercise their freedom of association rights. It requests the Government to keep it informed of the progress made in this regard.

CASE NO. 2533

INTERIM REPORT

Complaint against the Government of Peru presented by
— the Federation of Fishing Industry Workers of Peru (FETRAPEP)
— the National Federation of Mine, Metal and Steel Workers of Peru (FNTMMSP) and330

— the General Confederation of Workers of Peru (CGTP)

Allegations: The complainant organizations allege dismissals and suspensions of trade union officials and members, and also obstruction of collective bargaining in fishing industry enterprises; collective bargaining with minority unions in a mining enterprise; and violations of trade union rights in a textile enterprise

1054. The Committee last examined this case at its meeting in June 2008 and on that occasion submitted an interim report to the Governing Body [see 350th Report, paras 1452–1493, approved by the Governing Body at its 302nd Session]. In its communications dated 13 June 2008 and 22 August 2008, the Federation of Fishing Industry Workers of Peru (FETRAPEP) sent new allegations.

1055. The Government sent its observations in communications dated 26, 28 and 30 May, 10 September and 22 October 2008, and 20 January 2009.

1056. 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. Previous examination of the case

1057. When it examined this case in June 2008, the Committee made the following recommendations [see 350th Report, para. 1493]:

(a) The Committee expects that the administrative authority will launch without delay the evaluation which it announces in relation to the allegations concerning Pesquera San Fermín SA (dismissal of the last two general secretaries of FETRAPEP, Mr Eugenio Caritas and Mr Wilmert Medina Campos, and of member Mr Richard Veliz Santa Cruz, and pre-dismissal letters sent to Mr Juan Martínez Dulanti records and archives secretary, Mr Ronald Díaz Chilca, discipline, culture and sport secretary, and Mr Freddy Medina Soto, member), Tecnológica de Alimentos SA Grupo SIPESA (after putting pressure on the workers, all workers at all plants were dismissed on 25 July 2006) and Alexandra SAC (non-recognition of the union and harassment of its members), and requests the Government to send its observations in this respect.

(b) The Committee urges the Government to send its observations without delay regarding the allegations concerning: (1) Pesquera Diamante SA (the alleged dismissal of 37 unionized workers who refused to sign a six-month contract and the alleged forcible detention of all unionized workers until they signed a new contract; at present, the workers have signed a contract for one year with the proviso that the union remains inactive for one year); and (2) CFG Investment SAC (the alleged dismissal of 16 workers who were members of the union including eight members of the executive committee and the members of the board negotiating the list of claims for non-completion of the negotiations for the 2006–07 period). The Committee also requests the Government to obtain and transmit the comments of the enterprises on these allegations, through the employers' organizations concerned.

(c) The Committee requests the Government to keep it informed without delay of the outcome of the investigations undertaken by the National Labour Inspection Directorate at the Southern Peru Copper Corporation to verify whether any actions had been committed by the enterprise during the collective bargaining with three unions (minority unions, in the complainant's view) which had affected the freedom of association of the workers or trade unions.

(d) …

(e) With regard to the allegations of anti-union dismissals of the workers of the Single Union of Workers of Textiles San Sebastián SAC including the officials mentioned by the complainant the Committee requests the Government, if the allegations already verified by the administrative authority are confirmed, to take all the necessary measures to reinstate the dismissed trade union leaders and members as a primary remedy; if the judicial authority determines that reinstatement of trade union members is not possible for objective and compelling reasons, adequate compensation should be awarded to remedy all damages suffered and prevent any repetition of such acts in the future, so as to constitute a sufficiently dissuasive sanction against acts of anti-union discrimination. The Committee also urges the Government to take the necessary steps to ensure that the enterprise recognizes the trade union, remedies the anti-union measures taken against it and refrains from adopting any such measures in the future, and also to promote collective bargaining between the parties. The Committee requests the Government to keep it informed in this respect.

(f) As regards the allegation that Pesca Perú Huarmey SA requested judicial revocation of the registration of the trade union on the grounds that the latter no longer had the requisite minimum number of members, the Committee, while observing that the

revocation was effected through judicial channels, requests the Government to confirm that the judicial authority did not find that the reduction in the minimum number of workers which gave rise to the revocation of the union registration occurred as a result of anti-union persecution.

B. New allegations

1058. In its communications dated 13 June and 22 August 2008, the FETRAPEP alleges, with regard to the dismissal in September 2007 by CFG Investment SAC of 16 workers who were members of the Union of Workers of CFG Investment SAC at the Chancay plant (including all members of the executive committee and of the board negotiating the list of claims for the 2006–07 period), invoking section 46, paragraph (b), of Supreme Decree No. 003-97-TR, without following the procedure provided for under section 48 of that decree, that the union has submitted an application for *(amparo)* protection of constitutional rights to the judicial authority of Chancay, which issued an interim injunction (Decision No. 01) ordering the temporary reinstatement of 15 of the 16 affected workers.

1059. Despite that, the enterprise sent a notarized letter to the 15 workers informing them that, from Tuesday, 22 April 2008 onwards, they would be transferred to the La Planchada plant, in Ocoña district, Camaná province, department of Arequipa.

1060. The complainant organization also alleges that Mr Abel Rojas Villagaray, the union's General Secretary, and Mr Richard Limo Llontop, have been dismissed, and that Mr Roberto Gargate Arellán has been sent notice of dismissal.

1061. Finally, the complainant organization alleges that Directive No. 118-2008-MTPE/2/12.2 of the Department for Conflict Prevention and Resolution revoked the automatic registration of the changes to the union's by-laws and the union's official records made by the union's national executive committee for the period 2008–10.

C. The Government's reply

1062. In its communications dated 26, 28 and 30 May, 10 September and 22 October 2008, and 20 January 2009, the Government sent the following observations.

1063. With regard to the allegations relating to the fishing industry, the Government states that the National Labour Inspection Directorate has been requested to carry out an inspection visit to the following employers:

- Pesquera San Fermín SA (in relation to the dismissal of Mr Eugenio Ccaritas, Mr Wilmert Medina Campos and Mr Richard Veliz Santa Cruz, and the pre-dismissal letters sent to Mr Juan Martínez Dulanto, Mr Ronald Díaz Chilca and Mr Freddy Medina Soto);

- Tecnológica de Alimentos SA Grupo SIPESA (regarding the dismissal of all workers at all the company's plants on 25 July 2006);

- Alexandra SAC (with regard to the non-recognition of the trade union and the harassment of its members).

1064. With regard to Pesquera San Fermín SA, the Government states that, under Inspection Order No. 15430-2007-MTPE/2/12.3, the commissioned labour inspector found that the union did not exist at the enterprise's administrative offices, and, with regard to the case of Mr Richard Veliz Santa Cruz, the dismissed trade union official, a representative of the

enterprise stated that the complainant was hired as a mechanic under a temporary contract to cover an increase in activity.

1065. With regard to CFG Investment SAC, the Government states that, on 2 November 2006, the union submitted its list of claims for the period 2006–07 to the administrative labour authority, which initiated the direct negotiation stage. On 16 February and 26 March 2007, the union indicated that there had been changes in the membership of the negotiating committee. On 26 June 2007, the union declared the direct negotiating stage to be concluded and requested that the conciliation stage begin. As a result, the administrative labour authority summoned the parties to conciliation meetings on 4 July, 3, 10 and 24 August and 7 September 2007; it should be noted that no union representatives attended the last meeting. On 19 September 2007, the union again indicated that there had been changes in the membership of the negotiating committee. On 11 February 2008, the enterprise requested that the process be abandoned, a request which was rejected by the Area Office for Labour and Employment Promotion on 14 February 2008. On 13 May 2008, the union requested that the collective bargaining process be reinitiated with a call to all the parties to attend a conciliation meeting on 5 June 2008.

1066. With regard to the disciplinary proceedings at CFG Investment SAC (File No. 035-2006-PS-MTPE/2/12.621), the Government states that, through Communication No. 188-2008-MTPE/2/12.621 dated 8 April 2008, the Area Office for Labour and Employment Promotion referred the file to the Labour Inspection Directorate because an appeal had been lodged against area office resolution No. 027-2008-MTPE/2/12.621 dated 30 January 2008, which imposed a fine of 12,144 nuevos soles.

1067. The Government adds that, with regard to the collective bargaining process between the Union of Workers of CFG Investment SAC in Chancay and the enterprise (File No. 005-2006-NC-MTPE/2/12.621), it will forward the relevant information once it is received.

1068. With regard to the allegations relating to the enterprise Pesquera Diamante SA, the Government states that, after ordering the inspection, a contravention notice was issued and the enterprise was fined 6,900 nuevos soles. It was also confirmed that the enterprise had merged with several enterprises in the industry, taking over their assets and liabilities, and that the 40 former Pesquera Polar SA employees had been included on its payroll. The enterprise also authorized the hiring of the staff affected by the suspension of work under intermittent contracts and the payment of their wages. The administrative labour authority fined Pesquera Diamante SA for disregarding the terms of the contracts, without prejudice to the right of the workers concerned to resort to appropriate legal action.

1069. With regard to the reasons for the judicial decision ordering the dissolution and deregistration of the union at Pesca Perú Huarmey SA, the Government states that this measure is supported by section 20 of the Collective Labour Relations Act (Supreme decree No. 010-2003-TR), according to which if it is found that one of the legal requirements for a union's existence is no longer met (in this case, the minimum legal membership), the judicial authority must issue the appropriate ruling. Having verified that the union no longer had the minimum of 20 members from the enterprise, the court therefore upheld the company's application (a ruling that still stands as no appeal has been submitted) and the labour authority, pursuant to the court ruling, revoked the trade union registration of the workers in question.

1070. The Government emphasizes that the administrative labour authority has actively participated in efforts to resolve the issues raised by the workers through the Regional Directorate of Labour and Employment Promotion of Lima–Callao, by carrying out the

relevant inspection visits. The enterprises that have violated social and labour standards have been fined.

1071. With regard to the alleged obstruction of collective bargaining in some enterprises in the fishing industry, the Government states that this was duly reported and additional information has been requested to clarify the current state of affairs.

1072. With regard to the allegations relating to the mining industry, and in particular the Southern Peru Copper Corporation, the Government states that, in communication No. 2970-2007-MTPE/2/11.1 dated 15 November 2007, the National Labour Relations Directorate of the Ministry of Labour and Employment Promotion refers to the collective bargaining process of 2007, which was referred to during the previous examination of the case and in the context of which the anti-union acts are alleged to have occurred. In that regard, the Government states that the National Labour Relations Directorate, through communication No. 2320-2007-MTPE/2/11.1 dated 18 September 2007, requested the National Labour Inspection Directorate to carry out an investigation to verify whether the enterprise had committed any actions that had affected the freedom of association of the workers or trade unions concerned.

1073. The Government states that, in communication No. 964-2008-MTPE/2/11.4, the National Labour Inspection Directorate declared that anti-union practices had occurred, affecting 2,446 trade union members, and, as the inspection requirement had not been complied with in a timely manner, proposed that the company should be fined 103,500 nuevos soles.

1074. With regard to the allegations relating to Textiles San Sebastián SAC, the Government reiterates the information submitted in the previous examination of the case, according to which the administrative authority had confirmed the occurrence of anti-union acts. The examination of the facts and the inspections undertaken revealed the enterprise's unwillingness to recognize the union and its refusal to engage in dialogue with it. At the same time, acts of anti-union persecution against union members were reported: assigning them tasks to which they were not accustomed and transferring them to various workplaces without assigning them specific tasks and leaving them virtually without work. This anti-union practice culminated in the dismissal of 73 workers. It has been shown that, in the outsourcing process undertaken by Textiles San Sebastián SAC, the workers of that enterprise were assigned to other enterprises with different company names but still linked to Textiles San Sebastián SAC, giving rise to a situation in which workers are not sure which enterprise they work for. The other enterprises in question were set up at the same notary's office and the machinery is still owned by Textiles San Sebastián SAC.

1075. The Government has sent a transcript of the final report and the contravention notices. As a result of the proven infringements, administrative disciplinary proceedings were initiated against Textiles San Sebastián SAC under contravention notice No. 3294-2007 which arose from inspection order No. 9532-2007-MTPE/2/12.3, the current status of which is as follows: subdirectorate Decision No. 130-2008-MTPE/2/12.320 dated 7 February 2008 imposed a fine of 103,500 nuevos soles, or the equivalent of US$36,315.79, on the enterprise, which was notified on 2 April 2008 and, as it did not appeal, the decision was upheld and enforced through a ruling of 11 April 2008.

1076. With respect to the new allegations of the FETRAPEP concerning Directive No. 118-2008-MTPE/2/12.2 of the Department for Conflict Prevention and Resolution, which revoked the automatic registration of the changes to the union's by-laws made by the national executive committee for the period 2008–10 as well as the union's official records, the Government indicates that according to the Regional Department of Labour and Employment Promotion of Lima-Callao, this revocation was due to the fact that the trade union had failed to comply with clauses 13, 14, 15 and 21 of its by-laws, even though

the administrative authority had suggested that it respect these clauses within ten days – a requisite condition provided for in article 10, paragraph (a), of the law on labour relations, which was not complied with.

D. The Committee's conclusions

1077. *The Committee takes note of the new allegations presented by the FETRAPEP and the Government's observations on the recommendations that remain pending.*

1078. *With regard to paragraph (a) of the recommendations, the Committee recalls that it had requested the Government to launch the evaluation in relation to the allegations concerning: Pesquera San Fermín SA (dismissal of the last two general secretaries of FETRAPEP, Mr Eugenio Ccaritas and Mr Wilmert Medina Campos, and of union member Mr Richard Veliz Santa Cruz, and pre-dismissal letters sent to Mr Juan Martínez Dulanto, records and archives secretary, Mr Ronald Díaz Chilca, discipline, culture and sport secretary, and Mr Freddy Medina Soto, member); Tecnológica de Alimentos SA Grupo SIPESA (after pressure was put on the workers, all workers at all plants were dismissed on 25 July 2006); and Alexandra SAC (non-recognition of the union and harassment of its members).*

1079. *With regard to Pesquera San Fermín SA, the Committee takes note of the Government's information, according to which the National Labour Inspection Directorate was requested to carry out an inspection to determine whether the alleged acts took place. The Committee notes that, according to the Government's observations, the inspection found that the union did not exist and information was received from the enterprise's representative indicating that Mr Richard Veliz Santa Cruz, a dismissed trade union leader, had been hired under a temporary contract to cover an increase in activity. The Committee notes with regret, however, that the Government has not sent any information regarding the dismissal of Mr Wilmert Medina Campos and Mr Eugenio Ccaritas, general secretaries of FETRAPEP, or with regard to the pre-dismissal letters sent to Mr Juan Martínez Dulanto, records and archives secretary, Mr Ronald Díaz Chilca, discipline, culture and sport secretary, and Mr Freddy Medina Soto, member.*

1080. *Under these circumstances, the Committee once again urges the Government to carry out an in-depth investigation at Pesquera San Fermín SA to obtain information on the dismissals of and pre-dismissal letters sent to the aforementioned officials and members, and the reasons for them. The Committee requests the Government to keep it informed in that regard.*

1081. *With regard to Tecnológica de Alimentos SA Grupo SIPESA and Alexandra SAC, the Committee notes that, according to the Government, the National Labour Inspection Directorate was requested to carry out inspection visits at those enterprises; the Committee also notes, however, that the Government has not provided information on the outcome of those visits. The Committee therefore urges the Government to inform it whether those inspection visits have already been carried out and, if so, what the outcome was.*

1082. *With regard to paragraph (b) of the recommendations, in particular in relation to the allegations concerning Pesquera Diamante SA, the Committee recalls that those allegations concerned the dismissal of 37 unionized workers who had refused to sign a six-month contract, and the forcible detention of all unionized workers until they signed a new contract containing a clause requiring the union to remain inactive for one year, which they eventually signed. In that regard, the Committee notes that the administrative authority carried out a labour inspection on the basis of which a contravention notice was issued, fining the enterprise 6,900 nuevos soles for distorting contracts, leaving the*

workers the option of resorting to legal action. Under these circumstances, the Committee requests the Government to send copies of the relevant inspection reports, the contravention notices and details of the fines imposed, since, from the information provided by the Government, it is not possible to tell whether the fines were imposed for violations of trade union rights or for other violations of labour legislation that were covered by the inspection.

1083. *With regard to paragraph (b) of the recommendations concerning the allegations against CFG Investment SAC (dismissal of 16 workers who were members of the Union of Workers of CFG Investment SAC at the Chancay plant, including eight members of the executive committee and the members of the committee negotiating the list of claims), the Committee notes that, according to the Government, the administrative authority on 8 April 2008 imposed a fine of 12,144 nuevos soles, the enterprise appealed, and collective bargaining between the union and the enterprise is under way. Nevertheless, the Committee emphasizes that the Government also pointed out that the registration of the union executive committee was cancelled by administrative decision as will be seen below.*

1084. *The Committee notes that, according to the new allegations presented by FETRAPEP, following the aforementioned dismissal of trade union officials and members, a petition for protection of constitutional rights* (amparo*) was filed, which led to the order to reinstate the workers. The day after they were reinstated, the workers were transferred to a plant in a different region, and the union's General Secretary, Mr Abel Rojas Villagaray, and two other workers were dismissed.*

1085. *In that regard, the Committee requests the Government to carry out an in-depth investigation, without delay, into the new allegations and, if it is confirmed that new anti-union acts are taking place, to take appropriate measures to impose further sanctions on the enterprise that are sufficiently dissuasive to ensure that, in the future, it refrains from anti-union acts against trade union officials and members, reinstates the official dismissed, and revokes the transfers. With regard to the other dismissed workers, the Committee requests the Government, if the allegations of anti-union dismissal are proven true, to have them reinstated or, where this is not possible for objective and compelling reasons, to ensure that they are adequately compensated so as to constitute sufficiently dissuasive sanctions. The Committee requests the Government to keep it informed in that regard, as well as of the outcome of the appeal lodged by the enterprise against the sanction imposed previously.*

1086. *With regard to the new allegations of the FETRAPEP concerning Directive No. 118-2008-MTPE/2/12.2 of the Department for Conflict Prevention and Resolution, which revoked the automatic registration of the changes to the union's by-laws made by the national executive committee for the period 2008–10 as well as the union's official records, the Committee notes that, according to the Government, the union had failed to comply with clauses 13, 14, 15 and 21 of its by-laws. As a consequence, the executive committee's registration was annulled. The Committee notes that on the basis of article 10, paragraph (a), of the law on labour relations the organization was requested to comply with the requisite conditions within ten days, and did not. The Committee requests the Government to indicate any ongoing judicial actions concerning this matter.*

1087. *With regard to paragraph (c) of the recommendations, the Committee recalls that that paragraph refers to the allegations presented by the National Federation of Mine, Metal and Steel Workers of Peru (FNTMMSP), according to which the Southern Peru Copper Corporation is seeking to impose a six-year period of validity on collective bargaining, by using five minority unions which represent 350 out of a total of 2,500 workers. The Committee further recalls that the Government had stated, in the previous examination of the case [see 350th Report, para. 1491], that the National Labour Inspection Directorate*

had been requested to carry out an investigation to verify whether the enterprise had committed anti-union acts against the workers or trade union organizations. In that regard, the Committee notes that the National Labour Inspection Directorate informed the Government, in a preliminary report, that anti-union practices had occurred, affecting 2,446 trade union members, and, for failure to comply with the inspection requirements, it proposed that the company should be fined 103,500 nuevos soles. The Committee requests the Government to provide information as to whether that measure had been carried out.

1088. *With regard to paragraph (e) of the recommendations concerning the allegations presented by the General Confederation of Workers of Peru (CGTP) (non-recognition of the Single Union of Workers of Textiles San Sebastián SAC, refusal to apply the check-off facility for the collection of union dues, refusal to provide a noticeboard, refusal to bargain collectively, outsourcing of production with a view to restricting the exercise of freedom of association, the transfer of unionized workers, and the dismissal of the General Secretary, the secretary for workers' rights and another member), the Committee recalls that in its previous examination of the case it had noted that the administrative authority had confirmed the anti-union nature of the measures including non-recognition of the union, harassment of union members, transfer of workers to other centres where no work was assigned to them and, finally, dismissal of 73 workers. The Committee notes that the Government again refers to these circumstances by stating that the administrative authority initiated disciplinary proceedings against the enterprise and that it issued subdirectorate Decision No. 130-2008-MTPE/2/12.320 dated 7 February 2008, imposing a fine of 103,500 nuevos soles (US$36,315.79), which has been upheld. In that respect, taking into account that the veracity of the allegations has been confirmed by the administrative authority, the Committee again requests the Government, in addition to implementing the sanction imposed, to take the necessary measures without delay to ensure that the enterprise reinstates the dismissed officials and workers with the payment of wage arrears, recognizes the union, rectifies the anti-union measures taken against it, and refrains from adopting any such measures in the future. The Committee further requests the Government to promote collective bargaining between the parties and to keep it informed of developments.*

1089. *With regard to paragraph (f) of the recommendations regarding the judicial revocation of the trade union registration of the Pesca Perú Huarmey SA Trade Union, requested by the enterprise, because the union fell below the requisite minimum membership, the Committee recalls that it had requested the Government to confirm whether the judicial authority had found that the fall in the union's membership was not the result of anti-union persecution. The Committee notes that the Government states once again that, having verified that the union no longer had 20 members, in accordance with section 20 of the Collective Labour Relations Act (Supreme Decree No. 010-2003-TR), the enterprise's request was upheld and the union's registration was revoked. In that regard, the Committee once again asks the Government to confirm whether the judicial authority was able to determine that the reduction in the union's membership to a level below the legal minimum membership was not the result of dismissals or anti-union pressure exerted on union members.*

The Committee's recommendations

1090. ***In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:***

(a) With regard to the allegations concerning Pesquera San Fermín SA in relation to the dismissal of the last general secretaries of FETRAPEP, Mr Eugenio Ccaritas and Mr Wilmert Medina Campos, and of member Mr Richard Veliz Santa Cruz, and the pre-dismissal letters sent to Mr Juan

Martínez Dulanto, records and archives secretary, Mr Ronald Díaz Chilca, discipline, culture and sport secretary, and Mr Freddy Medina Soto, member, the Committee notes with regret that the information provided by the Government only refers to Mr Richard Veliz Santa Cruz, and urges the Government to carry out an in-depth investigation at the company to obtain information on the dismissals of and pre-dismissal letters sent to the union officials and members, and the reasons for them.

(b) With regard to the allegations relating to Tecnológica de Alimentos SA Grupo SIPESA (after pressure was put on the workers, all workers at all the plants were dismissed on 25 July 2006) and Alexandra SAC (non-recognition of the union and harassment of its members), the Committee urges the Government to inform it whether those inspection visits have already been carried out and, if so, what the outcome was.

(c) With regard to the allegations concerning Pesquera Diamante SA relating to the dismissal of 37 unionized workers who refused to sign a six-month contract, and the forcible detention of all unionized workers until they signed a new contract containing a clause requiring the union to remain inactive for one year, which they eventually signed, the Committee requests the Government to send copies of the contravention notices drawn up during the inspections and the records relating to any fines imposed, in order to determine whether the fines were imposed for violations of trade union rights or for other violations of labour legislation that were covered by the inspection.

(d) With regard to the allegations concerning CFG Investment SAC (dismissal of 16 workers who were members of the Union of Workers of CFG Investment SAC at the Chancay plant, including eight members of the executive committee and the members of the committee negotiating the list of claims; the sanction imposed on the enterprise for these anti-union acts; the reinstatement of the officials and members following a petition for protection of constitutional rights (amparo) and their subsequent transfer to a plant in a different region; and, finally, the dismissal of the union's General Secretary, Mr Abel Rojas Villagaray, and two other workers), the Committee requests the Government to carry out an in-depth investigation without delay into the new allegations and, if it is confirmed that new anti-union acts are taking place, to take appropriate measures to impose further sanctions on the enterprise that are sufficiently dissuasive to ensure that, in the future, it refrains from anti-union acts against trade union officials, reinstates the official, and revokes the transfers. With regard to the other dismissed workers, the Committee requests the Government, if the allegations of anti-union dismissal are proven true, to have them reinstated or where this is not possible for objective and compelling reasons, to ensure that they are adequately compensated so as to constitute sufficiently dissuasive sanctions. The Committee requests the Government to keep it informed in that regard, as well as of the outcome of the appeal lodged by the enterprise against the sanction imposed previously.

(e) With regard to the new allegations presented by FETRAPEP regarding the revocation of the registration of the national executive committee for the period 2008–10, the amendments to the union's by-laws, and its official records through Directive No. 118-2008-MTPE/2/12.2 issued by the Department for Conflict Prevention and Resolution, the Committee requests the Government to indicate any ongoing judicial actions concerning this matter.

(f) With regard to the allegations presented by the FNTMMSP that the Southern Peru Copper Corporation is seeking to impose a six-year period of validity on collective bargaining, by using five minority unions representing 350 out of a total of 2,500 workers, the Committee requests the Government to provide information as to whether the fine of 103,500 nuevos soles proposed by the National Labour Inspection Directorate has already been imposed.

(g) With regard to the allegations presented by the CGTP (non-recognition of the Single Union of Workers of Textiles San Sebastián SAC, refusal to apply the check-off facility for the collection of union dues, refusal to provide a noticeboard, refusal to bargain collectively, outsourcing of production with a view to restricting the exercise of freedom of association, transfer of unionized workers, and dismissal of the union's General Secretary, secretary for workers' rights and another member), the Committee, while taking note of the fine of 103,500 nuevos soles (US$36,315.79) imposed on the enterprise, and taking into account the fact that the veracity of the allegations has been confirmed by the administrative authority, once again requests the Government, in addition to implementing the sanction imposed, to take the necessary measures without delay to ensure that the enterprise reinstates the dismissed officials and workers with the payment of wage arrears, recognizes the union, rectifies the anti-union measures taken against it, and refrains from adopting any such measures in the future. The Committee further requests the Government to promote collective bargaining between the parties and to keep it informed of developments.

(h) With regard to the judicial revocation of the registration of the Pesca Perú Huarmey SA Trade Union, requested by the enterprise, for falling below the legal minimum membership, the Committee again asks the Government to confirm whether the judicial authority was able to determine that the reduction in the union's membership to a level below the legal minimum membership was not the result of dismissals or anti-union pressure exerted on union members.

CASE NO. 2539

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

Complaint against the Government of Peru presented by — the General Confederation of Workers of Peru (CGTP) and — the National Federation of Mining, Metallurgy and Steel Workers of Peru (FEDMINEROS)

Allegations: Anti-union dismissals of leaders of the Union of Workers of Owens-Illinois Perú SA and unlawful suspension from work without pay of two leaders of the Union of Workers of the SIDERPERU Plant

1091. The Committee last examined this case at its June 2008 meeting, when it presented an interim report to the Governing Body [see 350th Report, paras 1494–1516, approved by the Governing Body at its 302nd Session]. In a communication dated 10 September 2008, the General Confederation of Workers of Peru (CGTP) sent new allegations.

1092. The Government sent its observations in communications dated 3 March, 26, 28 and 30 May, 9 August, 11 and 15 September and 22 October 2008.

1093. 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. Previous examination of the case

1094. In its previous examination of the case in June 2008, the Committee made the following recommendations [see 350th Report, para. 1516]:

(a) The Committee requests the Government to communicate the text of the court decision in relation to the dismissal of seven leaders of the Union of Workers of Owens-Illinois Perú SA.

(b) The Committee regrets that the Government has failed to respond to the allegation by the FEDMINEROS of 16 August 2007 related to the illegal suspension from work without pay for 30 days of the Secretary-General and the Secretary for Defence of the trade union of the SIDERPERU Plant, for having denounced conduct on the part of a company representative who placed the health of workers in jeopardy. The Committee urges the Government to send its observations in this respect without delay.

B. New allegations

1095. In its communication dated 10 September 2008, the CGTP refers to the ruling handed down in the proceedings initiated by the dismissed leaders to have the decision to dismiss them revoked by the Third Labour Court of Callao (Case No. 1628-2005), which ordered the reinstatement of six trade union leaders. The CGTP reports that the ruling stated that "it has been found that the sanction of dismissal imposed by the defendant on the plaintiffs, who were accused of the events in question, is without just cause and the real motive behind the sanction was to damage the organizational structure of the trade union to which

they belong and prejudice the exercise of their trade union rights. Consequently, the claim should be upheld." The ruling also states that "by means of trade union immunity, the State promotes the full exercise of trade union rights by establishing a set of mechanisms which guarantee and facilitate free exercise of freedom of association for the purpose of defending the legitimate interests of workers, in accordance with the provisions of Article 11 of ILO Convention No. 87 and Article 1 of ILO Convention No. 98 on freedom of association and protection of the right to organize and collective bargaining".

1096. The complainant organization recalls that the company fraudulently accused the leaders of appropriating company property. However, in accordance with a permanent clause of the collective agreement which granted it the autonomous management of the staff canteen, the union had, for more than 20 years, been concluding agreements for the provision of a canteen service under which the contractor handed over a percentage of the receipts to the union. As demonstrated during the court proceedings, these sums were always used to support the union. Furthermore, the complainant organization points out that the workers' meals were not funded by the company but were paid for by the workers themselves. Hence, the argument that there was an "appropriation of company property" was shown to be untenable and it was proved that this was nothing more than a justification for dismissing the leaders. The CGTP points out that the company appealed against the ruling and that, as a result of this appeal, the workers have to date still not been reinstated in their posts.

1097. The CGTP emphasizes that in view of the excessive and unjustified delay on the part of the judiciary in handing down a ruling in the case brought by the dismissed leaders to have their dismissal revoked and the appeal lodged by the company, the reinstatement of the dismissed workers has been postponed.

C. The Government's reply

1098. In its communications dated 3 March, 26, 28 and 30 May, 9 August, 11 and 15 September and 22 October 2008, the Government sent the following observations.

1099. With regard to the allegations concerning the company Owens-Illinois Perú SA, the Government indicates that, as reported by the employer, one of the complainant workers, Mr Jorge Luis Martínez Guevara, reached an out-of-court settlement with the company and therefore abandoned the legal proceedings under way.

1100. The Government adds that the company Owens-Illinois Perú SA has distorted the claims of unjustified dismissal of 13 trade union leaders, eight from the current executive committee and five from the previous one, by stating that these workers used their position as members of the union's executive committee and took advantage of the right granted under the collective agreement signed on 1 December 1993 to collect illegal contributions or "cuts" from contractors providing the staff canteen service. It argues that in this way they made unlawful use of the receipts on meals provided by the employer and the alleged anti-union acts would have to be proved before the judicial authority, in the context of Case No. 1628-2005 currently before the Third Labour Court of Callao, in which the dismissal of the former employees is being contested as null and void.

1101. With regard to the allegations made against the Peruvian Government by the National Federation of Mining, Metallurgy and Steel Workers of Peru (FEDMINEROS) concerning the violation of trade union rights by Empresa Siderúrgica del Perú SAA, the Government points out that the Regional Directorate of Labour and Employment Promotion of Ancash convened an informal meeting attended by both parties but no settlement was reached. The company confirmed its decision to apply the sanction ordered.

1102. The Government adds that no indication is given as to whether subsequent investigations were carried out which complement or add to the information available concerning the events which led to the sanctions applied.

1103. Notwithstanding the above, the National Director of Industrial Relations convened Empresa Siderúrgica del Perú SAA, the Union of Workers of the SIDERPERU Plant and the FEDMINEROS to an informal meeting on 19 July 2007, but no agreement was reached at the meeting and the company confirmed its decision to apply the sanction to the trade union leaders. By means of Note No. 451-2008-MTPE/9.1 (214/214) of 21 May 2008, the National Directorate of Industrial Relations was requested to take the necessary steps to obtain information from the Regional Directorate of Labour and Employment Promotion of Ancash about any new inspection activities carried out.

1104. Finally, the Government reports that both the Union of Workers of the Chimbote Iron and Steel Plant and the Union of Workers of the SIDERPERU Plant have concluded their respective collective agreements for the period 2007–10, which were duly registered with the administrative labour authority on 7 February 2008.

D. The Committee's conclusions

1105. *The Committee notes the new allegations made by the CGTP and the Government's observations on the pending issues.*

1106. *With regard to the allegations concerning the anti-union dismissal of seven trade union leaders of the Union of Workers of Owens-Illinois Perú SA and the pending legal proceedings instituted by the workers affected, the Committee notes the information provided by the Government that the company denies that there were anti-union motives behind the dismissals and points out that one of the complainant workers reached an out-of-court settlement and therefore dropped the legal action. The Committee also notes that the CGTP reports that the Third Labour Court of Callao has handed down a ruling in pending proceedings and that the court considered that the dismissals had no just cause and were intended to damage the structure of the union to which the leaders belonged. It declared the dismissals null and void and ordered the reinstatement of the workers and payment of wages owed to them. The Committee also notes that the company has lodged an appeal against this ruling.*

1107. *In this regard, taking into account the court's ruling which declared the dismissals null and void, although that ruling is the subject of a pending appeal, the Committee requests the Government to take the necessary steps to have the dismissed leaders reinstated without delay, while awaiting a final ruling from the court of appeal. The Committee requests the Government to keep it informed of developments in this regard, including the final outcome of the appeal.*

1108. *With regard to the allegations made by the FEDMINEROS concerning the illegal suspension from work without pay for 30 days of the General Secretary (Mr Eduardo Manrique Alvarez) and the Defence Secretary (Mr Jaime Luján Garrido) of the Union of Workers of the SIDERPERU Plant, for having denounced the conduct of a company representative who allegedly put the health of the workers at risk, the Committee notes that the Regional Directorate of Labour and Employment Promotion of Ancash and the National Director of Industrial Relations both convened informal meetings, but no agreement was reached in either case between the company and the trade union organization. The Government adds that the Regional Directorate of Labour and Employment Promotion of Ancash has been requested to report on whether any new inspections have been carried out.*

1109. *In this regard, observing that serious allegations have been made concerning the suspension from work of two trade union leaders without pay for 30 days following their denouncement of a company representative who allegedly had put the workers' health at risk, and that this matter has been pending since its last examination of the case, the Committee requests the Government to take the necessary steps without delay to have an investigation carried out to determine whether the sanction imposed was anti-union in nature and if the allegations are found to be true, to take the necessary steps to compensate the trade union leaders affected and their organization. The Committee requests the Government to keep it informed in this regard.*

The Committee's recommendations

1110. ***In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:***

(a) With regard to the allegations concerning the anti-union dismissal of seven trade union leaders of the Union of Workers of Owens-Illinois Perú SA and the pending legal proceedings initiated by the workers affected, the Committee, taking into account the judicial authority's ruling declaring the dismissals null and void, although that ruling is the subject of a pending appeal, requests the Government to take the necessary steps to have the dismissed leaders reinstated in their posts without delay, while awaiting the final ruling to be handed down by the court of appeal. The Committee requests the Government to keep it informed of any developments in this regard, including the final outcome of the appeal.

(b) With regard to the allegations made by the FEDMINEROS concerning the illegal suspension without pay for 30 days of the General Secretary (Mr Eduardo Manrique Alvarez) and the Defence Secretary (Mr Jaime Luján Garrido) of the Union of Workers of the SIDERPERU Plant, for denouncing the conduct of a company representative who allegedly put the workers' health at risk, the Committee, observing that these are serious allegations which have been pending since its last examination of this case, requests the Government to take the necessary steps to ensure that an investigation is carried out without delay to determine whether there were anti-union motives behind the sanction imposed and if the allegations are found to be true, to take the necessary steps to compensate the trade union leaders affected and their organization. The Committee requests the Government to keep it informed in this regard.

CASE NO. 2553

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

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

Allegations: Acts of anti-union discrimination and anti-union practices and hindrances to collective bargaining in the enterprise Mar y Tierra de IMI del Perú SAC

1111. The Committee last examined this case at its May 2008 meeting, at which it presented an interim report to the Governing Body [see 350th Report of the Committee, paras 1517–1539, approved by the Governing Body at its 302nd Session].

1112. The Government sent its observations in communications dated 23 and 30 May 2008.

1113. 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. Previous examination of the case

1114. When it examined this case at its May 2008 meeting, the Committee made the following recommendations [see 350th Report, para. 1539]:

(a) Regretting the fact that the Government has not sent its reply to the allegations, the Committee requests it to send, without delay, a detailed reply to all the allegations as well as copies of the rulings and administrative decisions concerning this case.

(b) The Committee requests the Government to obtain the enterprise's comments relating to this case through the relevant employers' organization and to send them to the Committee.

(c) The Committee requests the Government to continue to promote collective bargaining as set out in Convention No. 98, which Peru has ratified.

B. The Government's reply

1115. In its communications dated 23 and 30 May 2008, the Government sent the following observations on the matters still pending, based on a communication from the enterprise, a copy of which was attached.

1116. Concerning the alleged violation of trade union rights committed by the enterprise Mar y Tierra de IMI del Perú SAC against the Single Trade Union of Workers of Mar y Tierra de IMI del Perú SAC, the Government states that, according to the enterprise, the allegations presented by the International Trade Union Confederation (ITUC) are untrue, wholly generic and based on false assertions. According to the enterprise, there had been certain irregularities in the registration of the union with the labour administrative authority (Piura region), including the failure to have the union's founding documents stamped by a public notary or a judge, lack of the statutory number of members, irregular election of its officers and even failure to hold the union's constituent assembly.

1117. The Government adds that in report No. 041-2007-DRTPE-PIURA-DPSC, dated 7 May 2007, the Dispute Prevention and Settlement Directorate stated that as regards registration, the union had applied on 21 September 2006 to the labour authority for registration of the Single Trade Union of Workers of Mar y Tierra de IMI del Perú SAC. On 25 September of the same year, the head of the subdirectorate for general registration, certification, workers' defence and free legal aid of the Piura Regional Directorate for Labour and Employment Promotion issued a decision (unnumbered) requiring the applicants to remedy the defect by having the founding documents stamped by a notary or judicial and to submit

a complete copy of the by-laws (as sections 25 and 27 were missing from the document), within a 48-hour time limit. Since the defects in the application were duly remedied, on 3 October 2006 the subdirectorate registered the Single Trade Union of Workers of Mar y Tierra de IMI del Perú SAC in that body's register of trade unions subject to private sector labour law. On 26 October of the same year, the IMI del Perú SAC enterprise filed a challenge against the union's registration; on 30 October 2006, the challenge was declared irreceivable because of its late submission. On 8 November 2006, the employer filed a petition against the decision to reject its appeal, which was declared without legal basis in directorial decision No. 192-2006-DRTPE-PIURA-DPSC of 23 November of the same year, which amended the previous decision declaring the appeal irreceivable because the enterprise was not a party to the administrative proceedings.

1118. Concurrently with the matter of trade union registration, in report No. 059-2007-DRTPE-PIURA-DPSC, dated 4 June 2007, the Dispute Prevention and Settlement Directorate of the Piura Regional Directorate for Labour and Employment Promotion stated that on 24 October 2006, the trade union submitted to the Talara Area Office for Labour and Employment Promotion its list of demands for 2006–07, which was presented to the employer; the Talara labour administration then initiated case No. P.R.009-2006-DRTPE-PIURA-ZTPET, requesting the parties to inform it of the outcome of the direct negotiation process.

1119. On 15 November 2006, the enterprise replied that the negotiations could not begin, as the trade union had not provided the minimum amount of information necessary for recognition; however, the Talara labour authority considered that, since this was not required by the current labour legislation, it was not a prerequisite for opening negotiations, and it therefore initiated the conciliation stage on 20 November of the same year. The enterprise disagreed with the labour authority's decision and filed an appeal against it; on 20 December 2006 the appeal was declared without legal basis and the previous administrative decision upheld.

1120. The IMI del Perú SAC enterprise did not agree with the administrative decisions on the validity of the first-level trade union's registration, and therefore filed administrative proceedings with the Piura High Court of Justice requesting that the decisions granting registration to the trade union be cancelled, along with the other administrative decisions rejecting its appeal. These administrative proceedings are currently pending before the Fourth Civil Court of Piura, in case No. 4672–2006. In the main proceedings filed on 18 December 2006 seeking a declaration of nullity, the enterprise requests that the decision granting registration of the trade union be cancelled, along with the other administrative decisions rejecting the challenges filed by the employer in that regard. The action was admitted in decision No. 01 of 29 December of that year and the hearing of the evidence took place on 14 May 2007.

1121. In addition, on 22 February 2007, the plaintiff submitted a motion for a precautionary measure suspending the effect of the registration of the Single Trade Union of Workers of Mar y Tierra de IMI del Perú SAC; the court granted the motion in decision No. 01 of 29 January 2007, specifying that the measure referred to in its decision applied solely to the collective bargaining process that had been initiated with the plaintiff, on a provisional basis, pending a final decision in the main proceedings. On 1 February 2007, the court decision was communicated to the Piura Regional Directorate for Labour and Employment Promotion, which forwarded it to the Talara Area Office for Labour and Employment Promotion. Pursuant to the court decision, the effect of the registration of the Single Trade Union of Workers of Mar y Tierra de IMI del Perú SAC was suspended on 20 February of the same year, along with the collective bargaining process.

1122. The Government states that the motion to cancel the union's registration was declared irreceivable by the court; in addition, the precautionary measure in respect of collective bargaining was revoked on 16 November 2007. The case is currently pending an appeal judgment in the First Civil Chamber of Piura, which is to rule on the challenges filed by the parties against the content of the judgment.

1123. As regards the arbitrary dismissal of union members and officers, the Government states that, according to the enterprise, their employment was terminated in accordance with the labour legislation in force, using the channels provided for by law in such cases. According to the communication from the enterprise, two of the persons dismissed were not working for the enterprise; in another case the worker's contract was simply not renewed, while in the remaining case the worker was dismissed for serious misconduct. Civil, criminal and labour proceedings have been initiated in the Piura High Court of Justice as a result of these cases.

1124. The Government adds that the labour authority reported that inspections conducted in the enterprise, whether at the initiative of the inspectorate or at the request of the union allegedly affected, have not found any evidence of anti-union practices, arbitrary dismissals or non-compliance with labour standards by the IMI del Perú SAC enterprise.

1125. The Government states that in the context of measures taken by the labour authority in this case, the IMI del Perú SAC enterprise filed complaints with the Public Prosecutor's Office against two officials for abuse of authority (failure to perform their official duties); the complaint was rejected by the Eighth Criminal Court of Piura in decision No. 01 of 16 March 2007. That decision was supported by the senior regular prosecutor of the Combined Superior Prosecutor's Office of Piura, which issued opinion No. 186–2007 of 27 April of the same year requesting the First Criminal Chamber of Piura to uphold the decision of the court of first instance.

1126. Lastly, the Government states that the competent labour authority summoned the parties to out-of-court meetings to settle the dispute, which had not yielded the intended results, owing to the antagonistic stance of the parties.

1127. As regards the alleged criminal complaint filed against the IMI del Perú SAC enterprise and some of its officials with the Provincial Criminal Prosecutor's Office of Talara, concerning offences against freedom of labour in the form of coercion of workers into leaving the trade union, using threats of dismissal, the enterprise states in the communication sent as an attachment by the Government that it is unaware of the complaint, as it has not been informed of any complaint having been filed. It was only summoned by the Peruvian National Police to make a statement in regard to a complaint by the trade union, which was shelved by the Public Prosecutor's Office on the grounds that it had no legal basis.

1128. As regards the resignation of Mr Julio César Morales Ortega from his office as secretary responsible for defending union rights and as member of the Single Trade Union of Workers of Mar y Tierra de IMI del Perú SAC, allegedly as a result of pressure by the enterprise, the enterprise denies the allegations. It adds that in his letter of voluntary resignation, Mr Julio César Morales Ortega informs the trade union that his resignation from union office and membership was motivated by purely personal reasons.

1129. As regards the alleged dismissal of Mr Pedro Pablo Ayala, press and propaganda secretary of the trade union, while on annual leave, the enterprise states that he was dismissed for serious misconduct on 12 January 2007. The dismissal took effect after his return from leave. His employment was terminated after it had been proved – following an internal disciplinary procedure against him, with all the guarantees of due process being provided –

that he was guilty of the serious misconduct of which he had been accused. It transpires from communications between the dismissed officer and the enterprise, sent by the enterprise as an attachment, that the dismissal was due to his having spoken badly of the enterprise and its representatives on a television programme.

C. The Committee's conclusions

1130. *The Committee recalls that, according to the allegations presented by the International Trade Union Confederation (ITUC) considered during the previous examination of the case: (1) the enterprise challenged the registration of the Single Trade Union of Workers of Mar y Tierra de IMI del Perú SAC on the grounds that it did not meet the legal requirements for establishment; (2) the labour authority declared the challenge irreceivable, but the enterprise appealed against that decision in court; (3) the enterprise has refused to negotiate the list of demands presented by the union on the grounds that the union did not meet the abovementioned requirements for establishment; (4) the enterprise failed to attend the conciliation meeting convened by the labour authority, requested the courts to cancel the union's registration and filed a criminal complaint against the Ministry of Labour; (5) after the trade union was established, the Mar y Tierra de IMI del Perú SAC enterprise dismissed four workers who were close relatives of union leaders and members working in the same group of the IMI enterprise; (6) the enterprise coerced workers into leaving the union, using threats of dismissal: as a result of pressure by the enterprise, Mr Julio César Morales Ortega resigned from his trade union office; and (7) dismissal of Mr Pedro Pablo Ayala, the union's press and propaganda secretary, while on annual leave.*

1131. *The Committee notes that the Government states in its observations that, according to the communication sent by the enterprise, the latter denies the allegations of anti-union discrimination, considering them to be false.*

1132. *As regards the allegations concerning the challenge filed against the registration of the Single Trade Union of Workers of Mar y Tierra de IMI del Perú SAC and the enterprise's refusal to bargain collectively on the grounds that the union had not met the legal requirements for establishment, the Committee notes that the Government states that according to the enterprise, the union had not met the notarization requirement, did not have the minimum number of members, had appointed its officers in an irregular manner and had not held a constituent assembly, and there were thus irregularities in its registration. However, the Committee also notes that the administrative authority required the applicants to remedy the defects and that this was done. Accordingly, the trade union was registered on 3 October 2006. The Committee notes that the enterprise filed an appeal, which was rejected.*

1133. *The Committee notes further that the Government states that concurrently, on 24 October 2006, the union presented a list of demands to start the collective bargaining process, but the enterprise refused to begin direct negotiation on the grounds that the union had not provided the minimum amount of information required in order to be recognized. However, the labour authority considered that this requirement was not legal and initiated the conciliation stage on 20 November 2006. The Committee notes that the appeal filed against these decisions by the enterprise with the labour authority was found to be without legal basis on 20 November 2006, and that the enterprise therefore filed a motion to cancel the decisions granting registration to the trade union, as well as the subsequent administrative decisions, and requesting a precautionary measure so that it would not have to engage in collective bargaining with a trade union it did not recognize.*

1134. *The Committee notes the information from the Government stating that the judicial authority declared the motion to cancel the union's registration irreceivable and revoked*

the precautionary measure suspending collective bargaining which it had granted to the enterprise. The Committee notes that the case is currently pending an appeal judgement before the First Civil Chamber of Piura. The Committee notes that the enterprise and the trade union have been summoned to conciliation hearings, which the enterprise has refused to attend.

1135. *In these circumstances, the Committee expresses its concern at the alleged action taken by the enterprise to prevent registration of the trade union and collective bargaining. Given that the judicial authority of first instance rejected the motion to cancel the union's registration, the Committee urges the Government to ensure that, pending a final decision by the judicial authority of second instance, the trade union is able to carry out all its activities, including collective bargaining (the latter point having been expressly endorsed by the judicial authority of first instance). The Committee urges the Government to pursue its efforts to bring the parties together through out-of-court conciliation hearings and to keep it informed of any developments in this regard, and of the final outcome of the pending judicial proceedings.*

1136. *As regards the dismissal of four workers who were close relatives of union officers and members working in the same group of the IMI enterprise, the Committee notes that the Government states that according to information provided by the enterprise, the dismissals were carried out in accordance with the legislation in force. The Committee notes that the communication from the enterprise indicates that two of the workers allegedly dismissed were not working for the enterprise and that in the other two cases, one worker's contract was simply not renewed, while the other was dismissed for serious misconduct.*

1137. *As regards the allegations that the enterprise is coercing workers into leaving the trade union, as in the case of Mr Julio Morales Ortega, who resigned from his office as secretary responsible for defending union rights, the Committee notes that the communication from the enterprise indicates that it is not aware of any criminal complaint concerning coercion, with the exception of a police summons to make a statement concerning a complaint filed by the trade union against the enterprise, which was shelved by the Public Prosecutor's Office on the grounds that it had no legal basis. The Committee notes further that the communication sent by Mr Morales to the trade union (attached to the communication sent by the enterprise) indicates that he resigned voluntarily from union office. The Committee points out, however, that if he was forced to resign, that communication would have no evidential value.*

1138. *As regards the alleged anti-union dismissal of Mr Pedro Pablo Ayala, press and propaganda secretary of the trade union, while on annual leave, the Committee notes that according to the information provided by the enterprise to the Government, Mr Ayala was dismissed for serious misconduct. The Committee notes, however, that the communications relating to the dismissal sent by the enterprise and forwarded by the Government indicate that the dismissal was due to the fact that Mr Ayala, in his capacity as union leader, had spoken badly of the enterprise and its representatives (accusing them of offences and conduct contrary to morality and decency) in a television programme while on annual leave. The Committee points out, however, that the enterprise has not reproduced the union officer's statements. It thus requests the Government to provide this information.*

1139. *The Committee notes further that the Government states that inspections conducted in the enterprise, whether at the initiative of the inspectorate or at the union's request, have not found any cases of anti-union practices, arbitrary dismissal or non-compliance with labour standards by the enterprise. The Committee notes further that the enterprise filed complaints with the Public Prosecutor's Office against two labour inspection officials for abuse of authority and failure to perform their duties, and that the complaint was rejected by the judicial authority.*

1140. *In view of the discrepancy between the allegations concerning dismissals and coercion of workers and the enterprise's reply, and given that the Government has not expressed its position on these matters, and in order to determine conclusively whether or not the acts referred to constituted anti-union discrimination, the Committee requests the Government to take the necessary steps to ensure that a thorough and independent investigation is carried out without delay into the following:*

(i) The alleged dismissal of four workers who were close relatives of union leaders and members working in the same group of the IMI enterprise.

(ii) Alleged coercion by the enterprise of workers into leaving the union, using threats of dismissal, in particular in the case of Mr Julio Morales Ortega, who resigned from union office.

(iii) The dismissal of Mr Pedro Pablo Ayala, press and propaganda secretary of the trade union, while on annual leave.

1141. *The Committee requests the Government, should the investigation called for find that the acts referred to were motivated by anti-union considerations, to take the necessary steps to ensure that they are revoked, that the dismissed workers are reinstated and fully compensated, and that the prescribed penalties constituting sufficiently dissuasive sanctions are applied where appropriate. The Committee requests the Government to keep it informed in this regard.*

The Committee's recommendations

1142. ***In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:***

(a) As regards the allegations concerning the challenge filed against the registration of the Single Trade Union of Workers of Mar y Tierra de IMI del Perú SAC and the enterprise's refusal to bargain collectively on the grounds that the union did not meet the legal requirements for establishment, in view of the fact that the judicial authority of first instance rejected the motion to cancel the union's registration, the Committee urges the Government to ensure that, pending a final decision by the judicial authority, the trade union is able to carry out all its activities, including collective bargaining. The Committee urges the Government to pursue its efforts to bring the parties together through out-of-court conciliation hearings and to keep it informed of any developments in this regard, and of the final outcome of the pending judicial proceedings.

(b) Concerning the allegations concerning dismissals and coercion of workers and the enterprise's reply in that regard, in view of the discrepancy between them, and given that the Government has not expressed an opinion on these matters, and in order to determine conclusively whether or not the Acts referred to constituted anti-union discrimination, the Committee urges the Government to take the necessary steps without delay to ensure that a thorough and independent investigation is carried out into the following:

(i) The alleged dismissal of four workers who were close relatives of union leaders and members working in the same group of the IMI enterprise.

(ii) Alleged coercion by the enterprise of workers into leaving the union, using threats of dismissal, in particular in the case of Mr Julio Morales Ortega, who resigned from union office.

(iii) The dismissal of Mr Pedro Pablo Ayala, press and propaganda secretary of the trade union, while on annual leave.

(c) The Committee requests the Government, should the investigation called for find that the Acts referred to were motivated by anti-union considerations, to take the necessary steps to ensure that they are revoked, that the dismissed workers are reinstated and fully compensated, and that the prescribed penalties constituting sufficiently dissuasive sanctions are applied where appropriate. The Committee requests the Government to keep it informed in this regard.

CASE NO. 2596

INTERIM REPORT

Complaint against the Government of Peru presented by the General Confederation of Workers of Peru (CGTP)

Allegations: the complainant alleges that: (1) the Manuel Polo Jiménez FAP school applied for the dissolution of the Manuel Polo Jiménez FAP School Single Union of Workers (SINPOL); refuses to engage in collective bargaining with the union or operate the payroll check-off facility; and dismissed the union's general secretary, Ms Nelly Palomino Pacchioni; (2) the La Pampilla SA oil refinery (RELAPASA) dismissed Mr Pedro Germán Murgueytio Vásquez, former general secretary of the Refinería La Pampilla SA Single Union of Workers and current general secretary of the Single National Federation of Petroleum, Energy and Allied Workers of Peru (FENUPETROL); (3) the BBVA Banco Continental bank dismissed the external secretary of the BBVA Banco Continental Federated Union of Employees, Mr Luis Afocx Romo, and a union member, Mr Rafael Saavedra Marina; (4) the Agroindustrias San Jacinto SA company dismissed the social assistance secretary of the Agroindustrias San Jacinto SA Single Union of Workers

1143. The complaint is contained in communications from the General Confederation of Workers of Peru (CGTP) dated 10 September and 5 and 13 November 2007.

1144. The Government sent its observations in communications dated 26 and 30 May and 10 September 2008.

1145. 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

1146. In its communications dated 10 September and 5 and 13 November 2007, the CGTP states that the Manuel Polo Jiménez FAP school was founded in Lima in 1968 by Ministerial Decision No. 0895-68 as one of the educational establishments run by the Peruvian Air Force (FAP). Act No. 23384 (General Education Act) establishes two regimes for the running of educational institutions: a state regime and a non-state regime.

1147. Ministerial Decision No. 1650-91-ED establishes the non-state (private) regime for educational institutions run by the FAP and the rules which apply to the employer are governed by Directorate Decision No. 003-04-DIACE. In accordance with that decision, teachers and administrative workers at these educational institutions were previously affiliated to the employment regime established by Act No. 4916 (Private Employees Act) and are now covered by the private employment regime, which is governed by Legislative Decree No. 728 (Labour Productivity and Competitiveness Act).

1148. Furthermore, both the judicial authority (by means of ruling No. 130 2001-7.JTL of 13 July 2001 and ruling No. 33-2005-25.JL of 27 April 2005) and the administrative labour authority (by means of Subdirectorate Order No. 044-2006-MTPE/2/12.3 of 2 February 2006 and Subdirectorate Order No. 019-2007-MTPE/2/12.210 of 4 May 2007) ruled that the Manuel Polo Jiménez FAP school, which is sponsored by the FAP, comes under the private employment regime as the employer.

1149. Moreover, the FAP itself, by means of document No. 3, included in judicial authority file No. 183426-2003-582, indicated its position with regard to the workers' employment situation by requesting to be removed from the judicial proceedings against the Manuel Polo Jiménez FAP school, using the following argument: "Firstly: … that the Manuel Polo Jiménez FAP school, by means of Ministerial Decision No. 1650-91-ED … has legal personality under national law and also administrative, technical and financial autonomy. Secondly: that the educational centres run by the FAP are under the non-state management regime and therefore the workers at those centres, whether teachers or administrative employees, who previously came within the scope of Act No. 4916 (Private Employees Act), now come within the scope of Legislative Decree No. 728."

1150. The CGTP alleges that the Manuel Polo Jiménez FAP School Single Union of Workers (SINPOL) was founded on 12 November 2005 and entered in the register of trade unions on 5 January 2006. However, the employer refuses to apply the payroll check-off facility – a legal obligation for the employer – thereby adversely affecting the union's organizational capacity, since it has thus been deprived of its main source of funding.

1151. Consequently, the union filed a complaint with the Ministry of Labour and Employment Promotion (MTPE) (Inspection Order No. 005930-2007-MTPE/2/12.3), and this resulted in the relevant labour inspections. These established that the employer had failed to meet the said obligation and was hence liable to be sanctioned, as was recorded in the report of 14 June 2007 drawn up by the labour inspector, which contained the following conclusion:

"Further to evaluation of the documentation received, a breach of section 24(10) of D.S. 019-2006-TR (General Inspection Regulations) has been established, i.e. non-compliance with the provisions relating to the check-off facility for union dues."

1152. The CGTP states that the employer filed an application with Lima Labour Court No. 18 for the dissolution of the trade union, claiming that "the workers are civilian employees of the FAP, their employer is the FAP and they come under the public employment regime". However, the Manuel Polo Jiménez FAP school applies the terms of Legislative Decree No. 728 when it issues memoranda showing the existing link and subordination to the employer.

1153. On 12 April 2006, the union sent a letter to the Manuel Polo Jiménez FAP school clearly stating that the right to organize does not depend on the whim of the employer but on the collective wishes of the workers. Hence, in a document dated 16 June 2006, the union presented the Ministry of Labour with its list of demands for 2006 (on 24 June 2006 the Ministry ordered the parties to begin collective bargaining – file No. 118885-2006-MTPE/2/12.210). But the employer refused to begin collective bargaining and filed an appeal against the Ministry of Labour, stating that it was not the employer of workers belonging to SINPOL or of any other worker. The appeal was declared inadmissible by Subdirectorate Order No. 019-2007-MTPE/2/12.210 of 4 May 2007, confirmed by Directorate Order No. 056-2007-MTPE/2/12.2 of 1 August 2007, which required the employer to convene the negotiation board for collective bargaining with respect to the list of demands.

1154. According to the complainant, despite all the above, the Manuel Polo Jiménez FAP school authorities refused to engage in collective bargaining, recognize the workers' rights or comply with the labour provisions, ignoring the complaints made to date and failing to reply to them.

1155. The CGTP adds that since March 2004 the employer has been changing the format of the workers' payslips, omitting to include the previous indication that they are covered by Legislative Decree No. 728 relating to the private employment regime. Moreover, payrolls have changed in format, showing them as workers of the Ministry of Defence (MINDEF), despite the fact that they are not part of it. This is designed to maintain the argument that the workers are civilian employees of the FAP and come under the public employment regime. On 31 October 2006, a complaint was filed against the Ministry of Defence for these irregularities but to date no reply has been received, the Ministry's lack of interest pointing to its complicity with the employer. Moreover, a strategy has been devised aimed at inducing the staff to resign and change regime, and also at the gradual dismissal of staff covered by Legislative Decree No. 728 (an average of 100 people per year). Accordingly, the employer, with the aim of persuading staff to resign or change regime and refrain from exercising their freedom of association, has failed repeatedly to respect the rights of the workers who are governed by the private employment regime, including:

- the payment of ordinary bonuses in July and December each year, established by Act No. 27735 regulating bonuses for workers in the private employment regime for the national holidays and Christmas and its regulations (Supreme Decree No. 005-2002-TR);

- the payment of family benefit, regulated by Act No. 25129 (Family Benefit Act) and its regulations (Supreme Decree No. 035-90-TR);

- the deposit in a private bank of compensation payments for length of service, in accordance with the consolidated text of the Act on compensation for length of service, approved by Supreme Decree No. 001-97-TR.

1156. In view of these breaches of the regulations, a number of workers at the Manuel Polo Jiménez FAP school have taken legal action. The Government states that the various Lima High Court Labour Divisions (First – files Nos 5758-2006 and 4030-059; Second – files Nos 4241-2005, 4667-05 and 6404-05; Third – file No. 4317-2006) have issued uniform rulings declaring the workers' complaints to be well founded and recognizing them as workers subject to the private employment regime.

1157. The administrative labour authority has established (in various inspections) the lack of compliance with the legal provisions in force, which has led the Ministry of Labour to impose a fine of 99,000 nuevos soles, by means of Subdirectorate Decision No. 185-06-MTPE/2/12.320 of 1 June 2006, confirmed by Directorate Decision No. 507-2006-MTPE/2/12.3 of 5 December 2006.

1158. The CGTP adds that on 26 October 2007, SINPOL general secretary Ms Nelly Palomino Pacchioni received dismissal notice NC-40_PEAL No. 6529 on grounds of alleged serious misconduct, namely: undue failure to meet her employment obligations and consequently a breach of good faith; inappropriate conduct towards the employer's representative in the workplace; and passing false information to the employer with the intention of causing detriment to the employer or obtaining an advantage.

1159. The CGTP states that after this complaint was presented on 14 September 2007, the assistant administrative director of the FAP educational centres convened a staff meeting in which he insulted and slandered Ms Nelly Palomino Pacchioni, claiming that she and SINPOL were acting maliciously and confusing the workers by saying that their employer was the Manuel Polo Jiménez FAP school and not the FAP itself, and that therefore SINPOL was an illegal organization.

1160. The complainant emphasizes that the dismissal of the general secretary is based on the Labour Productivity and Competitiveness Act governing the private employment regime, whereby the employer tacitly accepts that Ms Palomino Pacchioni and the other employees form part of the Manuel Polo Jiménez FAP school and not of the FAP itself and that therefore SINPOL is a legitimate and legal trade union, recognized by the Ministry of Labour. The employer should not therefore refuse to recognize the union or to engage in collective bargaining.

1161. In another communication of 5 November 2007, the CGTP alleges that on 6 July 2006 the La Pampilla SA oil refinery (RELAPASA) dismissed Mr Pedro Germán Murgueytio Vásquez, who had completed 32 years of service at the company and was employed as a laboratory technician. Mr Murgueytio Vásquez is a member of the Refinería La Pampilla SA Single Union of Workers, having formerly been its general secretary. He is currently the general secretary of the Single National Federation of Petroleum, Energy and Allied Workers of Peru (FENUPETROL). The company alleges serious misconduct by the worker, namely undue failure to meet his employment obligations and consequently a breach of good faith. According to the complainant, RELAPASA bases its arguments on the claim that the worker failed to meet his employment obligations by giving his identification card to third parties working for a RELAPASA contractor so that they could gain entry to the works canteen. The complainant emphasizes that ever since the company was informed of the worker's election as general secretary of FENUPETROL, he has been the subject of various acts of harassment such as suspension without pay for seven working days for an unproven fault and a second suspension, arising from the first, from 28 to 30 November 2005. The above situation involves a clear act of reprisal against union official Mr Murgueytio, and this constitutes a violation of freedom of association (the complainant describes the facts in detail).

1162. In a third communication, also dated 5 November 2007, the CGTP alleges that the BBVA Banco Continental bank dismissed the external secretary of the BBVA Banco Continental Federated Union of Employees, Mr Luis Afocx Romo, who had been employed by the company since 8 August 1988 and was working as a services adviser at the time of his dismissal, and union member Mr Rafael Saavedra Marina, who had been employed by the company since 1 July 1981 and was working as a services adviser at the time of his dismissal. Both were working at the branch of the bank in Pucallpa, a city in eastern Peru. An error made in a banking operation, for which Mr Afocx was penalized by the bank at the time, was cited by the bank as the grounds for the workers' dismissal. The CGTP explains that the BBVA Banco Continental Federated Union of Employees, through its members at the Pucallpa branch, especially union official Mr Luis Afocx, who was also the union delegate at the branch, carried out checks at the Pucallpa branch to ensure that the workers were not subjected to abusive practices. For example, at the union leader's request, the Ministry of Labour conducted a number of inspections at the bank, resulting in the imposition of two fines: one on 4 November 2005 (16,500 nuevos soles) for obstruction of an inspection, the other on 2 November 2006 (10,200 nuevos soles) for failure to produce the workers' attendance register. The above situation involves a clear act of reprisal against union leader Mr Luis Afocx and union member Mr Rafael Saavedra Marina, and this constitutes a violation of freedom of association.

1163. In its communication dated 13 November 2007, the CGTP alleges that the social assistance secretary of the Agroindustrias San Jacinto SA Single Union of Workers was dismissed by the Agroindustrias San Jacinto SA company on a charge of serious misconduct which was not proven. In view of this violation, the worker appealed to the judicial authority on 25 January 2006, applying to the El Santa High Court Labour Division (file No. 2006-241-0-2501-JR-LA-6) to have the dismissal overturned and to be reinstated in his post. Decision No. 22 of 28 September 2007 finally declared the application to be well founded and ordered the respondent to reinstate the worker in his regular post and pay his outstanding wages. The company appealed against the Labour Division ruling and consequently the worker has not yet been reinstated.

B. The Government's reply

1164. In its communications of 26 and 30 May and 10 September 2008, the Government states that, with regard to the allegations relating to the SINPOL, the employer and the most representative employers' organizations were notified in order to obtain their comments.

1165. The Government states that the following replies have been received:

- by means of a communication dated 9 January 2008, the administrative director of the FAP educational centres states that all workers employed at FAP educational institutions have been recruited by the Peruvian Air Force as civilian employees and not by the FAP educational institutions in which they work, so the Ministry of Defence should be asked for its comments with regard to the present complaint

- by a communication dated 7 January 2008 the general manager of the National Association of Industry states that he has no knowledge of the administrative or judicial situation of the Manuel Polo Jiménez FAP school since the school does not form part of Peruvian private industry.

1166. Nevertheless, the Government states that the Labour Inspection Directorate carried out inspections at the Manuel Polo Jiménez FAP school and, by means of report No. 120-2007-MTPE/2/12.350 corresponding to Inspection Order No. 7602-2007-MTPE/2/12.3, concluded in accordance with the principle of the precedence of actual conditions that the workers of the SINPOL come under the private employment regime

governed by the consolidated text of Legislative Decree No. 728 (Labour Productivity and Competitiveness Act) inasmuch as the said educational institution is the employer and not the Peruvian Air Force. It was also established that authorization of the employment records of the inspected school was requested by the Ministry of Defence, FAP headquarters, and that until March 2004 the employer issued payslips to the workers with an indication of their affiliation to the private employment scheme but subsequently omitted this information without any explanation.

1167. The Government adds that as a result of these irregularities the Collective Bargaining Subdirectorate issued Subdirectorate Order No. 066-2007-MTPE/2/12.210 on 26 November 2007, confirmed by the Dispute Prevention and Settlement Directorate via Directorate Order No. 021-2008-MTPE/2/12.2 of 14 February 2008, imposing a fine of 2,587.50 nuevos soles, which has currently been referred to the Fines Control Unit for enforcement of the payment.

1168. The Government states that, owing to the inspected educational institution's failure to issue payslips as required, to effect the due payments for May 2002 to May 2007 with the corresponding payment records, to pay bonuses from July 2002 to December 2006 and to allow the full exercise of trade union rights, the labour authority issued certificate of infringement No. 2675-2007 for a total fine of 26,220 nuevos soles.

1169. With regard to the registration of SINPOL, the Manuel Polo Jiménez FAP school stated, by means of document No. 279498-2007, that judicial proceedings concerning the validity of the registration of the union were in progress in Labour Court No. 18.

C. The Committee's conclusions

1170. *The Committee observes that the present case refers to allegations presented by the General Confederation of Workers of Peru (CGTP), namely: (1) the Manuel Polo Jiménez FAP school applied for the dissolution of the SINPOL; refuses to engage in collective bargaining with the union or operate the payroll check-off facility for the union; and dismissed the union's general secretary, Ms Nelly Palomino Pacchioni; (2) the RELAPASA dismissed Mr Pedro Germán Murgueytio Vásquez, former general secretary of the Refinería La Pampilla SA Single Union of Workers and current general secretary of the FENUPETROL; (3) the BBVA Banco Continental bank dismissed the external secretary of the BBVA Banco Continental Federated Union of Employees, Mr Luis Afocx Romo, and a union member, Mr Rafael Saavedra Marina; (4) the Agroindustrias San Jacinto SA company dismissed the social assistance secretary of the Agroindustrias San Jacinto SA Single Union of Workers and although the judicial authority ordered the worker's reinstatement, the order was not implemented because of an appeal lodged by the company.*

1171. *The Committee notes the following points from the CGTP's allegations against the Manuel Polo Jiménez FAP school:*

- *The school considers that it is subject to the public employment regime and that its relationship with the employees is of a civilian nature. Consequently it refuses to recognize the union and does not comply with the obligation to apply the check-off facility for union dues.*
- *The union reported the situation to the Ministry of Labour and Employment Promotion, which confirmed the non-compliance in question.*
- *The employer filed an application for the dissolution of the union with Lima Labour Court No. 18.*

- *The union presented a list of demands in order to start the collective bargaining process but the employer refused to engage in collective bargaining and lodged an appeal with the Ministry of Labour. The appeal was declared inadmissible and the employer was instructed to convene the negotiation board. However, no bargaining process has been initiated to date.*

- *The SINPOL general secretary was dismissed on 26 October 2007 for alleged serious misconduct. In addition, the general secretary has been the subject of intimidation and slander by the authorities of the educational institution since her appointment as general secretary.*

1172. *The Committee notes the Government's statement in this regard that the employer and the most representative employers' organizations were notified so that their views could be obtained and that according to them the Manuel Polo Jiménez FAP school does not form part of Peruvian private industry but comes under the Ministry of Defence.*

1173. *The Committee notes that the Labour Inspection Directorate nevertheless conducted inspections at the Manuel Polo Jiménez FAP school and concluded that, according to the principle of the precedence of actual conditions, the workers are affiliated to the private employment regime, a circumstance which the employer indicated on the workers' pay slips until March 2004 but subsequently omitted. It was also noted that the obligation to deposit union dues and pay certain benefits was not met and that the workers were prevented from fully exercising their union rights. Because of this non-compliance, the institution was fined 26,200 nuevos soles. In addition, the Collective Bargaining Subdirectorate imposed a fine of 2,587.50 nuevos soles. The Committee notes the Government's additional statement that, as regards the registration of SINPOL, judicial proceedings are in progress in Labour Court No. 18.*

1174. *The Committee observes that the Government has not sent its observations with respect to the acts of intimidation and slander against SINPOL general secretary Ms Nelly Palomino Pacchioni and her subsequent dismissal on 26 October 2007. The Committee expresses its concern at the judicial application for the dissolution of the union and at the dismissal of the union leader, which appears to be an act of reprisal further to the establishment of the union. The Committee requests the Government to launch an investigation into this dismissal without delay and, if the dismissal proves to have been on anti-union grounds, to take steps to ensure that the union leader is reinstated in her post without delay and her outstanding wages are paid. The Committee requests the Government to keep it informed in this regard and to inform it of the final outcome of the judicial application for the dissolution of SINPOL in progress in Labour Court No. 18.*

1175. *The Committee observes that the Government has not sent its observations with respect to the other allegations contained in the present complaint. The Committee therefore requests the Government to send its observations without delay with regard to: (1) the dismissal of Mr Pedro Germán Murgueytio Vásquez, former general secretary of the Refinería La Pampilla SA Single Union of Workers and current general secretary of the FENUPETROL; (2) the dismissal of Mr Luis Afocx Romo, external secretary of the BBVA Banco Continental Federated Union of Employees, and Mr Rafael Saavedra Marina, a union member; (3) the dismissal of the social assistance secretary of the Agroindustrias San Jacinto SA Single Union of Workers in connection with which the judicial authority ordered the worker's reinstatement but the order was not implemented because of an appeal lodged by the company.*

The Committee's recommendations

1176. ***In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:***

(a) The Committee requests the Government to launch an investigation without delay into the dismissal of Ms Nelly Palomino Pacchioni, general secretary of the SINPOL, and, if the dismissal proves to have been on anti-union grounds, to take steps to ensure that the union leader is reinstated in her post without delay and her outstanding wages are paid. The Committee requests the Government to keep it informed in this regard and to inform it of the final outcome of the judicial application for the dissolution of SINPOL in progress in Labour Court No. 18.

(b) The Committee requests the Government to send its observations without delay with regard to: (1) the dismissal of Mr Pedro Germán Murgueytio Vásquez, former general secretary of the Refinería La Pampilla SA Single Union of Workers and current general secretary of the FENUPETROL; (2) the dismissal of Mr Luis Afocx Romo, external secretary of the BBVA Banco Continental Federated Union of Employees, and Mr Rafael Saavedra Marina, a union member; (3) the dismissal of the social assistance secretary of the Agroindustrias San Jacinto SA Single Union of Workers in connection with which the judicial authority ordered the worker's reinstatement but the order was not implemented because of an appeal lodged by the company.

CASE NO. 2597

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

Complaint against the Government of Peru presented by the General Confederation of Workers of Peru (CGTP)

Allegations: The complainant organization alleges the refusal to register a trade union and anti-trade union acts in a company in the mining sector, and acts of anti-trade union discrimination, in particular mass dismissals of trade union officials and members, in a company in the textiles sector

1177. The complaint is contained in communications of the General Confederation of Workers of Peru (CGTP) dated 10 September 2007 and 14 February 2008.

1178. The Government sent its observations in communications dated 3 March, 28 May and 15 and 29 August 2008.

1179. 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. Allegations of the complainant

1180. In its communication of 10 September 2007, the General Confederation of Workers of Peru (CGTP) alleges that the mining company Barrick Misquichilca SA is violating the trade union rights of the Union of Workers of the Subcontractors and Agencies of the mining company Barrick Misquichilca SA. The CGTP indicates that the Pierina gold mining operations began in 1998. The owner of this mining concession is Barrick Misquichilca (BM), a subsidiary of Barrick Gold, a Canadian-based multinational. In this company, since 2004, there has been the Single Union of Workers of the mining company Barrick Misquichilca SA (SUTRAMBIM). There are approximately 17 rural communities in the zone of influence of the mining operation. These communities have been represented by an informal organization called the Central Committee of Communities in the Zone of Influence of the mining company Barrick Misquichilca SA (CCCIEMBM). Since at least the start of operations, i.e. the actual extraction of ore, in 1998, these communities have provided services to BM under a system of work known as "communal work rotation system". The CGTP points out that, following a dispute between the members of the communities represented by the CCCIEMBM and the BM company in 2006, which included acts of violence by the police against demonstrators, a process of rapprochement and links at institutional level began between SUTRAMBIM and the rural communities in the zone of influence of BM. According to SUTRAMBIM officials, this rapprochement was not well received by the company. Faced with the charter of solidarity between SUTRAMBIM and the communities concerning the facts described above, representatives of BM went to the trade union premises to protest at SUTRAMBIM's approach.

1181. On 10 May 2006, a memorandum of understanding was signed between the representatives of 18 communities in the zone of influence of the mining company, nine officials representing BM and various public authorities including the Ombudsperson in Huaraz. Subsequently, they met on 17 May and signed a second memorandum. In these memoranda, BM directly assumes various undertakings to the rural communities.

1182. With the support of SUTRAMBIM officials and the Federation of Mine, Metal and Steel Workers of Peru (FTMMSP), on Sunday 1 July 2007, the members of the various rural communities in the BM zone of influence met in a general assembly and decided to constitute and found a trade union to organize the members of the communities who work through various agencies and subcontractors for BM. The constitution of the trade union was published through a notice on a web site. This organization adopted the name of Union of Workers of the Subcontractors and Agencies of the mining company Barrick Misquichilca SA (STCAMB). It arose from the need to represent the workers from the communities in collective bargaining on the economic conditions, conditions of work, occupational safety and health, among other things, which apply when they work for BM.

1183. The workers belonging to the rural communities in the zone of influence of the mining company BM work for this company indirectly through subcontractors and agencies, on a temporary and rotating work basis. This means that for three or four months hundreds of workers from the communities work for the mining company and then give way to another group, thereby rotating access to work. Thus there are three particular factors which needed to be considered by the community workers when defining the structure of their trade union: (a) the fact that they are workers but also belong to rural communities (community workers), a situation which makes them very vulnerable as workers, as many of them cannot read or write; (b) their work is temporary and rotational since it is subject to a "communal rotating

work system"; and (c) they work for BM indirectly, i.e. through various subcontractors and agencies, which means they are employed through more than one employer.

1184. These factors prevent the community workers from joining SUTRAMBIM which is a union of direct employees, i.e. belonging to the BM payroll. The multiplicity of employers means that a company union is inappropriate. Likewise, forming a traditional type of union which can enrol all workers in general who work for the mining company through subcontractors and agencies is not the best suited to their interests, since it would mean expanding the scope, since workers other than community workers could join, with different working systems, different work involving technical skills which the community workers do not possess, and with different levels of education, problems and ambitions.

1185. For these reasons, the community members decided that the STCAMB would be a sectoral union which would only enrol community workers in the zone of influence of the mining company, who are working, have worked or expect to work for BM through subcontractors or agencies, who work in units of production which BM has or might have in the city of Huaraz. On 2 July 2007, an application for registration of the trade union was submitted to the Huaraz Labour Zone – Ancash Regional Labour Directorate (ZTH–DRTA). The application was accompanied by the documents required under Peruvian law, namely the minutes of the extraordinary general assembly, the statutes of the trade union, the appointment of the executive committee, the list of members and the list of those present at the general assembly. On 26 July, the administrative authority notified the STCAMB that, by a decision of 3 July 2007, the following were required for registration of the trade union, allowing only two days to comply with the following: (a) that the minutes of the assembly constituting the STCAMB must be entered in the book of minutes authorized by the administrative authority; (b) with respect to the scope of the trade union, it would only be possible for persons actually working to join the trade union; and (c) it was necessary to list the position, profession or office, and the name of the company to which the affiliated workers belonged, thus supposing subjectively that the scope of the trade union is the company.

1186. The CGTP considers that these requirements are not valid and reflect the arbitrary conduct and subjective opinion of the Head of the Labour and Employment Promotion Zone of Huaraz – Regional Directorate of Labour and Employment Promotion of Ancash. On 1 August 2007, the trade union submitted a written document to the ZTH–DRTA arguing that the requirements demanded by the administrative authority were invalid. On 6 August 2007, the ZTH–DRTA notified the STCAMB that, by a decision of 3 August 2007, the administrative proceeding was closed, thereby denying the STCAMB registration as a trade union. The STCAMB lodged an appeal on 22 August 2007 against the refusal of its registration as a trade union, but this appeal has not yet been decided by the administrative authorities.

1187. The community workers trusted that, through the trade union and collective bargaining, i.e. democratic dialogue between the workers and employers, it would be possible to achieve better conditions of work. The collective agreement should contain constructive agreements, reconciling the interests of everyone, thereby avoiding confrontations which were costly for both sides, as happened in 2006 as explained in the background to this complaint. However, due to the fact that in Peru registration as a trade union granted by the Ministry of Labour and Employment Promotion allows trade unions to obtain legal personality as a trade union, without that registration, the STCAMB is prevented from initiating a collective bargaining process with a view to concluding a collective agreement which would provide better conditions of work for the community workers. Moreover, the lack of this registration prevents it from accessing other rights or powers, such as trade union status for officials, trade union leave or obtaining deductions of members' trade union dues from the payroll.

1188. The CGTP adds that the constitution of the STCAMB and its efforts at rapprochement and negotiation with the company led to the failure to hire a group of workers whose turn it was in the rotation. It also led to the dismissal of another group. It should be noted that they were all members of the union. This situation is incomprehensible because they are workers who have been working for years in the company so there is no question of their ability and expertise. In addition, according to the community workers themselves, the company has hired new workers from outside the communities to replace them in the jobs that they had been doing, and this practice was aggravated when the union was formed.

1189. The CGTP indicates that the workers barred from working and those dismissed by the company are as follows. Officials: (1) deputy general secretary, Tito Huamaliano, prevented; (2) legal secretary, Julio Dionisio Obispo Delgado, dismissed; (3) treasurer, Mario Walter Mejía Prince, dismissed; (4) mining health and safety secretary, Cipriano Rosas Heredia, dismissed. Members: (1) Rómulo Chávez Montenegro, dismissed; (2) Jesús Huaman, barred; (3) Norberto Méndez, dismissed; (4) Reynaldo Hilario Vergara Guerrero, barred; (5) Emilio Zacarías Sánchez Gonzáles, dismissed; (6) Elías Inocente Delgado Huamaliano, dismissed; (7) Mauro Félix Delgado Huamaliano, dismissed; (8) Juan Rupay, dismissed; (9) Villafuerte Rupay Caushi, dismissed; (10) David Huamaliano, dismissed; (11) Perci Damián Delgado Huamaliano, dismissed.

1190. According to the complainant organization, all of this shows clear evidence of anti-trade union practice since, in the middle of a collective bargaining process, affiliated workers were dismissed and not allowed to renew their contracts, undermining the trade union and encouraging workers not to join. In addition, it reflects unequal treatment of community workers because of their situation compared with other workers, both by the BM company and the Peruvian State, consisting of: different conditions of work; lack of training; decision-making without taking them into account; lack of interest in their claims and even in extreme cases the use of force.

1191. The CGTP emphasizes that under article 14 of the consolidated text of the Collective Industrial Relations Act (TUO), Supreme Decree No. 010-2003-TR: "To be constituted and continue in existence, trade unions must have a membership of at least 20 workers in the case of company trade unions or 50 workers in other types of trade union." Currently, STCAMB, which is a sectoral trade union, has a membership of over 50 workers and thus fully meets the requirements to be constituted and to exist. According to article 17 of the TUO: "The trade union must be registered in the appropriate register maintained by the Labour Authority. Registration is a formal act, not a substantive one, and cannot be refused except where the requirements established in this Act are not fulfilled." Furthermore, article 22 of the TUO states: "Registration of the trade unions described in article 17 of the Act shall be automatic simply on submission of the application in the form of a sworn declaration, in accordance with the requirements established in the previous article."

1192. As can be seen, entry in the trade union register has a formal and not a substantive character and is automatic if the requirements of the law are satisfied. However, the Ministry of Labour refused to register the trade union, clearly violating domestic law. Despite the challenge by the trade union, the ZTH–DRTA refused registration. This act is therefore a violation of the right of workers to establish organizations of their own choosing without previous authorization, and thus violates the right of freedom of association.

1193. In Peru, the right to collective bargaining has constitutional rank and is thus a fundamental right, full respect for which is essential to the recognition of human dignity. However, up to now, in this case, the state authorities have not provided efficient and effective protection to workers to ensure that they can enjoy that right in full.

1194. As regards anti-trade union practices, article 29 of the consolidated text of Legislative Decree No. 728 provides that "dismissal on the grounds of membership of a trade union or participation in trade union activities, being a candidate for workers' representative or acting or having acted in that capacity is void". Thus, according to national law and jurisprudence, dismissal of workers on the grounds of their membership and/or official position in a trade union is prohibited. It must therefore be concluded that, when the BM company on the occasion of the constitution of the trade union, dismissed the members and officials and/or did not hire them as they should have done under the employment scheme, it acted in an illegal manner and violated the right of freedom of association.

1195. Finally, the CGTP indicates that the State has ratified Conventions Nos 87 and 98. Yet, despite the fact that these Conventions establish obligations for the Peruvian State, through its administrative organs, it has been breaching its international obligations.

1196. Furthermore, in its communication of 14 February 2008, the CGTP alleges acts of anti-trade union discrimination in several companies, specifically.

Topy Top SA

1197. The clothing firm Topy Top SA is a company which exports clothing which it manufactures itself. Its main base is in Zárate, San Juan de Lurigancho, where it started operating in 1998 as Creaciones Flores. Subsequently it traded under the name of Topy Top SA, and embarked on an aggressive expansion into the domestic and international markets, generating turnover of over 65 million dollars and trading profits under the ATPDEA treaty. Topy Top SA has an average of 5,000 workers, of which 95 per cent are employed under a variety of contractual arrangements, with the objective of precluding any trade union organization, by the following measures: (1) punishing trade union membership by threat of dismissal; (2) undermining the trade union by dismissing officials; and (3) mass dismissals of workers for belonging to a trade union.

1198. On 21 January 2008, the human resources department sent a letter to the trade union informing it that, due to the decline in production, there would be redundancies at the factory. At the same time, the Union of Topy Top SA Workers (SINTOTTSA) was founded on 25 February 2007 and began the process of registration with the Ministry of Labour and Employment Promotion on 5 March 2007. Topy Top SA revived an aggressive anti-trade union policy involving renewed threats against the trade union, with massive and arbitrary dismissals between 31 January and 1 February 2008 of 60 unionized workers, alleging, among other things, that their contracts had terminated. This is belied by the policy statements and requests for affiliation to the SINTOTTSA union. (The dismissed unionized workers are as follows: (1) Hilda Valer Huaman; (2) Marilú Mendoza Barrientos; (3) Segundo Reque Chamioque; (4) Flor de María Saldarriaga Carrión; (5) Beatriz Monroy Ríos; (6) Eida Flores Ramos; (7) Rosalinda Sedano Cuya; (8) Dina Chacara Narváez; (9) Rosa Pardo Oria; (10) Antonio Alva Alcántara; (11) Eloy Asaul Quispe Timoteo; (12) Janet Flores Aranda; (13) Liliana Maza Chincha; (14) José A. Almeida Villanueva; (15) Lucía N. Rivera Quispe; (16) William Castillo Rimac; (17) Miriam Porras Cosme; (18) Julia Burga Díaz; (19) Carlos Olivera Atapoma; (20) Katy Ríos Cusihuaman; (21) Leoncio Bravo Ocaña; (22) Sonia Quevedo Reyes; (23) Lizet Villacorta Sánchez; (24) Neker Bravo Padilla; (25) Irenio Medina Bustamante; (26) Elton J. Fernández Aguayo; (27) Jessica Malqui Flores; (28) Claudio Barahona Ccorahua; (29) Ambrosio Velásquez Juan; (30) Javier Cahuana Mendoza; (31) Segundo Hernández Acedo; (32) Edith Valdivia Quispe; (33) Miriam Bautista Típula; (34) Debora Tapia Vicente; (35) Russell Medrano Matías; (36) Jackeline Acencio Monterroso; (37) Mariela Paredes Vega; (38) Lidia Moreno Días; (39) Roberto Bocanegra Asencio; (40) Jenny Medina Días; (41) Janet Medina Tanca; (42) Jorge Coronado Pasache; (43) Fiorela Salinas Villagaray; (44) Mirilla Trujillo Mejía; (45) Milagros Llumpo Cabrera; (46) Elizabeth Hilario Meza; (47) Nancy Mantilla

Peccalaico; (48) José Almeida Ochoa; (49) Jessica Alvites Huaroto; (50) José Jara Apaza; (51) Marcia Barrionuevo Zarate; (52) Cecilia Neciosup Navarro; (53) José Villanueva Blas; (54) Rosa Sánchez Llatas; (55) Yovana Pajares Cano; (56) María Zegarra Rodríguez; (57) Nancy Pérez Mallma; (58) Charito Vega Serrano; (59) Miguel Quispe Medina; (60) Ana Paucar Quispe.)

Sur Color Star SA

1199. The clothing company Sur Color Star SA provides weaving, dyeing and cloth finishing services to Topy Top SA. Sur Color Star SA is based in Zárate, San Juan de Lurigancho, and started operating in November 2007. The Union of Workers of Sur Color Star (SINSUCOS) was founded on 14 December 2007 and was recognized by registration as a trade union on 8 January 2008.

1200. On 29 December 2007, when the company became aware of the existence of the trade union, it began the collective dismissal of three officials and ten members; then, on 3 January it dismissed a further five officials and three members. Informal meetings were held between the company and the trade union in the Ministry of Labour and Employment Promotion on 7, 11 and 17 January 2008, and on 8 and 13 February 2008, without achieving the reinstatement of the dismissed trade union officials and workers, who are named as follows: (1) Omar Castro Julia, general secretary; (2) Juan Piscoya Díaz, legal secretary; (3) Pierre Ocas Meza, organization secretary; (4) Roberto Pisconte Romano, disciplinary secretary; (5) Alfredo Nery Soto, treasurer; (6) Willy Mejía Rodríguez, minutes and archive secretary; (7) César Meza Chacaliaza, press secretary; (8) Sandro Román Ureta, technical and statistics secretary; (9) Javier García Alva; (10) Jaime Yupanqui Iñigo; (11) José Torres Huamán; (12) Shady Quiroz Cornejo; (13) Elmer Pedro M.; (14) Miguel Gonzales Oré; (15) Randú Montalvo Huallca; (16) Wilder Arias Huaynate; (17) Manuel Santisteban M.; (18) José Rivadeneyra Vidal; (19) Segundo Peña L.; (20) Víctor Puente Vásquez; (21) José Cruzado Navarrete).

Star Print SA

1201. The clothing company Star Print SA engages in washing, printing, classifying and finishing services relating to weaving, dyeing and finishing of garments for Topy Top SA. Star Print SA is based at Av. Santuario 1350, Zárate – San Juan de Lurigancho, and started operating around May 2004. The Star Print SA Workers' Union was founded and duly recognized by registration as a trade union on 21 January 2008. On 17 January 2008, when the company became aware of the existence of the trade union, it began by dismissing six officials and 20 members, invoking alleged serious misconduct of the worker and an alleged termination of contract, and is still continuing with this policy of dismissals. Informal meetings were held between the company and the trade union in the Ministry of Labour and Employment Promotion on 5, 6 and 11 February 2008, without achieving the reinstatement of the dismissed trade union officials and workers (who are as follows: (1) Walter Chupillon Guerrero, general secretary; (2) Jorge Rafael Pariaton Almestar, organization secretary; (3) Jesler Cateriano Ramírez Giraldo, legal secretary; (4) Milton Sandoval Ruiz, press and publicity secretary; (5) Iván Narciso Gonzales Antaurco, treasurer; (6) Jakcson Tanca Chuquitapa, minutes secretary; (7) Jacqueline Daysi Alhuay Carrillo; (8) Diana Elizabeth Sánchez Rosales; (9) Jimmy Alberto Ulloa Condor; (10) Juan Orlando Retete Carhuapoma; (11) Ronald Serapio Amaro Leyva; (12) Isabel Gladys Calderón Anahua; (13) Jenny Jeanet Poma Sabarde; (14) Andrea Geri Porras; (15) José Feliciano Alvarado Villena; (16) Danny Lozada Santa María; (17) Carlos Chapoñan Sánchez; (18) Julio César Pisconte Rosales; (19) Manuel Rafael Lozada Varias; (20) Gustavo Díaz Mayta; (21) Jorge Taipe Paredes; (22) Miguel Alvarado Villena; (23) Mariela Fuentes Tafur; (24) Paulo René Badillo Cáceres; (25) Mercedes Hinostroza Valderrama; (26) Lisbeth Gina Pumarrumi Osorio).

1202. According to the CGTP, Topy Top SA, Sur Color Star SA and Star Print SA are systematically violating the right of freedom of association and other workers' rights.

B. The Government's reply

1203. In its communication of 3 March 2008, the Government states that, according to the information provided by the Ancash Regional Director of Labour and Employment Promotion on 20 February 2008, on 2 July last year, application No. 02496 was received for the registration of the Union of Workers of the Subcontractors and Agencies of the mining company Barrick Misquichilca SA, which was considered by a decision of 3 July of that year (notified on 26 July) as follows: the minute of the assembly constituting the trade union was not contained in a minute book authorized by the Labour Administrative Authority and the scheme did not state positions, professions or offices of the members, or the name of the company for which they worked.

1204. In order to remedy these omissions, they were granted a period of two working days (which expired definitively on 31 July 2007). However, the appellants submitted their document containing corrections on 1 August, for which reason the application was refused and deemed not to have been submitted. In the light of this, the interested parties submitted a time-barred appeal on 22 August 2008 (outside the time limit of three working days to appeal, which expired on 8 August of that year), and the appeal was declared inadmissible because it was time-barred. In consequence, the said pronouncement became final under administrative procedures.

1205. In its communication of 28 May 2008, the Government reports that the mining company Barrick Misquichilca SA, in a communication dated 22 February 2008 concerning the problem, indicated the following: (a) firstly, that the Huaraz Labour Zone granted the statutory time limit to the trade union to provide the additional documentation required, and that time limit was not respected by the interested parties; thus the application for registration was deemed not to have been submitted; (b) the requirements under the provisions of national legislation for the registration of a trade union are not barriers to the creation of trade unions, but are actually deigned to ensure that the process is transparent; (c) concerning the impediment to opening collective bargaining, they point out that, under ILO Conventions Nos 87 and 98, the obligation to register is a matter of the need to establish a system of recognition which allows the identification of the group as a legal entity with a status favourable to the exercise of its activity, and (d) additionally, the mining company concerned already has the Single Union of Employed Workers of the mining company Barrick Misquichilca SA (formed in 2004), with which it has to date signed two collective agreements, one which was in force up to June 2007 and the second which was signed on 29 October last year and will remain in force until June 2010.

1206. In the light of the foregoing, it is worth pointing out that, having analysed the substance of the complaint of the CGTP, the Government concludes that the Peruvian State has scrupulously observed current domestic and international labour legislation, and that there has been no violation of and/or detriment to the exercise of the rights contained in collective labour legislation or the Conventions of the International Labour Organization governing those rights. In short, the assertions formulated by the trade union have no basis in fact, given that the impossibility of collective bargaining and/or obtaining recognition from the Labour Administrative Authority arose as a consequence of the actions of the trade union itself when it submitted its application for registration, with omissions which should have been remedied by the applicants, in accordance with the provisions of the Collective Industrial Relations Act.

1207. The Government considers that responsibility for the refusal by the Labour Administrative Authority (Ancash region) should not be blamed on the Government, the mining company or

the Peruvian State, but solely and exclusively on the complainant organization which failed to fulfil the relevant legal requirements.

1208. In its communication of 22 February 2008, transmitted by the Government, the mining company Barrick Misquichilca SA refers, with regard to the refusal of trade union registration, to the requirements set out in the single text of administrative procedures of the Ministry of Labour and Employment Promotion, approved by Supreme Decree No. 16-2006-TR, in force at the time of the events, previously described by the Government. The company indicates that the trade union STCAMB, in its application for registration, did not comply with the requirements established in national legislation. Specifically, the trade union did not indicate the post, profession or special skill of the workers affiliated to the trade union, and the name of the company where they worked and the respective dates of entry. Furthermore, the minutes book containing the constitution of the trade union had not been stamped by the Ministry of Labour and Employment Promotion. In addition, it is important to note that the Huaraz labour zone granted a time limit to the trade union to complete the documentation submitted, a time limit which was not respected by the trade union, for which reasons the application for registration was deemed to have not been submitted.

1209. As regards the legitimacy of the requirements demanded by the Peruvian State for registration of trade unions and their application in this specific case, the company considers that they are consistent with the provisions of Conventions Nos 87 and 98, as well as the precedents set by the Committee on Freedom of Association of the International Labour Organization in previous cases, on the grounds that entry in the register is a mere formality and not in any way a matter left to the discretion of the Peruvian State.

1210. The company indicates that it is not an attack on freedom of association when States provide for compliance with certain requirements in order for trade unions to obtain registration. In this specific case, the requirements laid down by national legislation for registration of the trade union with the Labour Administrative Authority are minimal. They do not present any obstacles to the creation of a trade union and their sole purpose is to ensure that the process is made public. Thus, this procedure is a mere formality and does not imply any kind of prior authorization by the Peruvian State. On this question, the Peruvian State asks the Committee to take into consideration that these procedures are subject to a system of automatic approval, i.e. according to the provisions of article 31 of the General Administrative Procedures Act, No. 27444.

1211. The envisaged administrative procedure does not contain any impediment to registration, and is merely subject to subsequent control. This subsequent control is intended to avoid any detriment to the rights of the interested parties which might arise as a result of delay by the administration in checking the documents submitted. The legal order means that the rights of those administered may not be subject to any delay beyond the time necessary for the administration to check that the documents submitted comply with the legal requirements. This being the case, in accordance with the principle of presumption of veracity, the administrative authority automatically approves the application submitted, subjecting it to subsequent control, as expressly laid down by article 32 of Act No. 27444. As can be seen, far from containing impediments to the process of trade union registration, it has been designed to guarantee fully the rights of those concerned, in this specific case, the right of freedom of association.

1212. With regard to the supposed impediment to proposing collective bargaining, the company indicates that, as laid down in Conventions Nos 87 and 98, and by the Committee on Freedom of Association itself in previous cases, the obligation to register is a matter of the need to establish a system of recognition which allows the group to be identified as a single legal entity and granted specially favourable status for the exercise of its activities. It should

further be emphasized that the Peruvian State does not permit acts of discrimination in any form. Discrimination in access to employment is prohibited under the legal system and there are no claims pending against the company in any court or administrative body filed by any community member, community worker or rural community.

1213. The company states that its productive activities are carried on by personnel employed directly by the company, in accordance with the relevant legal provisions. Some specialist activities, such as drilling and blasting, construction and maintenance, have been outsourced, in accordance with the relevant legislation. In order to promote employment opportunities for the local population, in accordance with Supreme Decree No. 042-2003-EM, it was requested and recommended that, where possible, local labour should be given preference in hiring under the aforementioned contracts.

1214. In addition to the above and in order to help improve family incomes in the communities neighbouring the mine works, the Barrick mining company also set up a rotational employment programme for inhabitants of these communities. This programme involves complementary activities such as road-sweeping, control of erosion, handling stores, building communal premises, office cleaning, etc., and relies on the services of duly constituted employment agencies. The work under the rotational employment programme normally lasts three months which, in some cases, may be more or less, depending on the characteristics and requirements of the work, and it has always sought to involve as many local people as possible in the programme.

1215. Each community designates the people under its jurisdiction to allow them to participate in the programme. On the seventh day of each month a meeting is held in the company with the delegates nominated by each community, representatives of the employment agencies and company staff. The purpose of the meeting is to ensure transparency in the distribution of the number of workers of the various communities which take part in the rotational employment programme. It is also worth mentioning that, at the request of the communities themselves, subjects such as rotational employment and others are discussed directly with the respective officials or representatives designated by each community.

1216. The company indicates that in September 2007 it received an invitation from the National Directorate of Industrial Relations in the Ministry of Labour and Employment Promotion to an informal meeting with representatives of the trade union, who alleged that the company was engaging in anti-trade union practices against members of the union. As was stated in that informal meeting, the formation of the trade union in question was a matter belonging to the sphere of industrial relations between those workers and their respective employers. As the name of the trade union indicates, its members are workers who do not belong to the Barrick Misquichilca SA mining company.

1217. Furthermore, it would be hard to accuse the company of anti-trade union practices against workers who belong to other companies when the company itself has a union formed in 2004 called the Single Union of Workers of the mining company Barrick Misquichilca SA, Huaraz, with which at that time it concluded a collective agreement in force until 2007 and, on 29 October 2007, signed the subsequent agreement lasting until June 2010. It should further be indicated that there is no proceeding in which the company trade union has issued a summons or initiated a complaint of violation of the right of freedom of association, which clearly shows respect for the right of workers to organize.

1218. In conclusion, it states that it is the policy of Barrick Mining to comply scrupulously with each and every one of the country's laws, especially legislation specific to the sector and that referring to its obligations as employer, and it demands the same compliance from the companies that provide services to it.

1219. In its communication of 15 August 2008, the Government, referring to the alleged acts in violation of freedom of association by the companies Topy Top SA, Sur Color Star SA and Star Print SA, states the following with regard to the collective bargaining process and trade union registration:

– Topy Top SA: according to a certificate of automatic registration dated 5 March 2007, the Union of Workers of Topy Top SA was registered in the trade union register. The first and only set of claims submitted by this trade union to date was that set out in claim No. 242686-2007-MTPE/2/12.210, initiated on 10 October 2007. The details of the processing of this set of claims were sent by the Sub-directorate of Collective Bargaining to this Regional Directorate in report No. 060-2008-MTPE/2/12.210. It should also be mentioned that trade unionists Messrs Víctor Edmundo Tataje Castañeda and Delfín César Tadeo Gamarra informed the Sub-directorate of General Registers of the cancellation of the trade union registration, which was declared "inadmissible" on 11 May 2007, and confirmed on 27 July 2007 by the Directorate of Prevention and Settlement of Disputes in Directorate Order No. 054-2007-MTPE/2/12.2.

– Sur Color Star SA: according to a certificate of automatic registration dated 8 January 2008, the Union of Workers of Sur Color Star, Topy Top SA Textiles Division, SINSUCOS, was registered in the trade union register.

– Star Print SA: according to a certificate of automatic registration dated 21 January 2008 the Union of Workers of Star Print SA was registered in the trade union register.

1220. The Government adds that the Directorate of Labour Inspection, in letter No. 2393-2008-MTPE/2/12.3, dated 31 July 2008, forwarded letter No. 619-2008-MTPE/2/12.350, in which it stated that, with respect to various complaints of anti-trade union practices and claims concerning collective agreements, it issued inspection orders for inspections of the companies Topy Top SA, Star Print SA and Sur Color Star SA, as follows: (a) Topy Top SA: inspection order No. 5628-2007, inspection order No. 1503 2008 and inspection order No. 2576-2008; (b) Star Print SA: inspection order No. 1023-2008, inspection order No. 6495-2008 and inspection order No. 8167-2008; and (c) Sur Color Star SA: inspection order No. 168-2008, inspection order No. 603-2008, inspection order No. 4264-2008, and inspection order No. 6494-2008.

1221. In its communication of 29 August 2008, the Government states in relation to the companies Topy Top SA, Sur Color Star SA and Star Print SA that: it issued orders for inspections in relation to anti-trade union practices and matters relating to collective agreements.

1222. For the company Topy Top SA the following inspection orders were issued:

– Inspection order No. 5628-2007. Notice of violation No. 1538-2007-MTPE/2/12.3 was raised relating to the members of the Union of Workers of Topy Top SA, 130 in number, according to the list of members shown in the records. The following social and labour legislation was violated: the Political Constitution of Peru of 1993, article 28 of the Constitution, which recognizes that right to organize, collective bargaining and strike, and guarantees freedom of association; the Collective Industrial Relations Act, Supreme Decree No. 010-2003-TR, articles 3 and 4, which seek to guarantee freedom to join a trade union and protect freedom of association against those who seek to violate it, thus ensuring its effectiveness; the Universal Declaration of Human Rights; ILO Conventions Nos 87 and 98; Supreme Decree No. 019-2006-TR, article 46.1, for unjustified refusal or prevention of entry or stay in a workplace or in certain areas thereof of supervising inspectors, labour inspectors, assistant inspectors or officially appointed experts or engineers, to carry out an inspection; Supreme Decree No. 019-2006-TR, article 46.3, on refusal of the inspected company or its

representatives to provide supervising inspectors, labour inspectors, assistant inspectors with the information and documentation necessary to allow them to perform their tasks, by not providing the required documentation on 28 May 2007; Supreme Decree No. 019-2006-TR, article 46.5, on preventing the participation of the worker or his representative or workers or the trade union, by not allowing them to participate on 30 May 2007 in the inspection carried out on that date; Supreme Decree No. 019-2006-TR, article 46.7, for the fact that they did not comply in a timely manner with the order of 30 May 2007 to adopt measures to comply with social and labour legislation, having been ordered to refrain from acts which might obstruct, restrict and undermine the right to organize; in addition, not to continue intimidating workers to give up their membership under threat of dismissal, but it continued to do so, as on visiting the workplace on 1 June 2007, workers were found outside the company premises, having been locked out of the workplace, the majority of them union members according to the list of members.

– Qualification of the violation:

(a) Violation of social and labour legislation by directly encouraging workers to give up their union membership by sending 45 notarial letters and the payment and sending of a notarial letter as indicated in paragraphs 12 and 13 of the established facts, and statements by workers which refer to paragraphs 16 and 17 of the verified facts and which were not refuted, contradicted or clarified by the inspected subject, which lead to the inference of the existence of anti-trade union practices. This violation was qualified as very serious, in accordance with article 33 of the General Inspection of Labour Act, No. 28806,and paragraph 25.10 of its regulations approved by Supreme Decree No. 019-2006-TR, which expressly defines as a violation the commission of acts which prevent free affiliation to a trade union, such as the use of direct or indirect means to hinder or impede membership of a trade union or encourage giving up membership.

(b) Not having duly complied with the order dated 30 May 2007 on the adoption of measures to ensure compliance with social and labour legislation, this violation being qualified as a very serious violation, in accordance with article 31 of the General Inspection of Labour Act, No. 28806, and article 46.7 of its regulations approved by Supreme Decree No. 019-2006-TR, which states "The following failures of compliance are very serious violations: … 46.7 Failure to comply in a timely manner with an order to adopt measures to comply with social and labour legislation."

(c) The inspected company on 30 May 2007 refused to provided facilities for the conduct of the inspection, by refusing to show the required documentation on 28 May 2007, this violation being qualified as a very serious violation, in accordance with article 36 of the General Inspection of Labour Act, No. 28806, and article 46.3 of its regulations approved by Supreme Decree No. 019-2006-TR.

(d) Impeding the participation of representatives of the trade union on 30 May 2007, being qualified as a very serious violation, in accordance with article 36 of the General Inspection of Labour Act, No. 28806, and article 46.5 of its regulations approved by Supreme Decree No. 019-2006-TR.

(e) Not allowing entry of inspectors to the workplace on 1 June 2007, despite having been duly notified and, on 30 May 2007, preventing the inspectors from having access to the installations of the workplace, being qualified as a very serious violation relating to labour inspection, in accordance with article 36.1 of the General Inspection of Labour Act, No. 28806, and article 46.1 of its regulations approved by Supreme Decree No. 019-2006-TR.

– Proposed sanction: (1) a fine of 80 per cent of 20 tax units (UIT) equivalent to the sum of 55,200 new soles, for the violation of social and labour legislation relating to anti-trade union practices: (2) a fine of 80 per cent of 20 tax units (UIT) equivalent to the sum of 55,200 new soles, for the violation of failure to comply with the inspection order; (3) a fine of 80 per cent of 20 tax units (UIT) equivalent to the sum of 55,200 new soles, for the violation of failing to provide facilities for the conduct of the inspection; (4) a fine of 80 per cent of 20 tax units (UIT) equivalent to the sum of 55,200 new soles, for the violation of impeding the participation of the representatives of the trade union; (5) a fine of 80 per cent of 20 tax units (UIT) equivalent to the sum of 55,200 new soles, for the violation of failing to allow entry of inspectors to the workplace and preventing their access to the installations of the workplace. As the UIT for 2007 was the equivalent of 3,450 new soles, under Supreme Decree No. 213-2003-EF, the total amount of the fine comes to 276,000 new soles. However, bearing in mind article 39 of the General Inspection of Labour Act, No. 28806, which provides that the maximum fine for all violations in total may not exceed 30 UIT for the year in question, in consequence the amount of the fine proposed is 103,500 new soles. The amount of the proposed sanction takes into account the seriousness of the offences and the number of workers affected.

– Inspection order No. 1503-2008, under which notice of violation No. 731-2008 was issued, concerning the members of the Union of Workers of Topy Top SA. Social and labour legislation violated and workers affected: Legislative Decree No. 713, articles 10, 15, 16 and 17, and Supreme Decree No. 012-92-TR. This company has not paid the full amount of holiday remuneration for the last period due to each worker entitled to that pay based on date of recruitment and did not grant holiday to each of the workers entitled to it; Supreme Decree No. 003-97-TR and Supreme Decree No. 001-96-TR, article 83 of the regulations relating to failure to provide workers with a copy of the contract of employment within three working days from the date of its submission to the Labour Administrative Authority, or indeed outside that time limit, which affects 302 workers; Supreme Decree No. 010-2003-TR, article 55, and Supreme Decree No. 019-2006-TR for failure to provide the trade union with documentation relating to the economic, financial, social situation and other relevant matters, which affects 302 workers. Qualification of the violation: the proven facts in this act violate the provisions of Supreme Decree No. 019-2006-TR. Minor violation, article 23.2: failure to provide the worker, within the established time limits and in accordance with the requirements, of a copy of the contract of employment. Serious violation, article 24.9: failure to provide the trade union with documentation relating to the economic, financial, social situation and other relevant matters. Very serious violation, article 25.6: failure to pay holidays to all its workers entitled to it. These facts constitute three violations, under Supreme Decree No. 019-2006-TR. Proposed sanction: a fine is proposed, article 23.2: 81 per cent of 1 UIT = 2,835 new soles, for failure to provide copies of contracts of employment to unionized workers, which affects 302 workers; article 24.9: 81 per cent of 6 UIT = 17,010 new soles, for failure to provide the trade union with documentation relating to the economic, financial, social situation and other relevant matters, which affects 302 workers; article 25.6: 81 per cent of 11 UIT = 31,185 new soles, for failure to pay holiday accrued in the last period to all the workers entitled to it, which affects 675 workers. Total: 51,030 new soles.

– Inspection order No. 2576-2008. In relation to which Notice of Violation No. 1392-2008 was issued concerning members of the Union of Workers of Topy Top SA. Social and labour legislation violated and workers affected: the proven facts violate the following provisions: fraudulent use of contracts of employment subject to special conditions: article 73 of the Competitiveness and Productivity of Labour Act, affecting 105 workers (article 25.5, Supreme Decree No. 019-2006-TR); article 46.7 of Act No. 28806: failure to comply in a timely manner with the order to take measures to comply with social and labour legislation: Collective Industrial Relations Act relating to

the fact of dismissing workers for belonging to a trade union affecting 46 workers (article 4 of Supreme Decree No. 010-2003-TR). Qualification of the violation: these facts constitute the following violations: fraudulent use of contracts of employment subject to special conditions, qualified and classified as a very serious violation, as laid down in article 31 of the General Inspection of Labour Act No. 28806, and article 25.5 of Supreme Decree No. 019-2006-TR. Failure to comply in a timely manner with social and labour legislation, failure to comply with the duty to cooperate with labour inspectors, qualified and classified as a very serious violation, as laid down in article 31 of the General Inspection of Labour Act No. 28806, and article 46.7 of Supreme Decree No. 019-2006-TR. Commission of acts which affect the freedom of association of the worker or workers' organization … or any other act of interference in the organization of the trade union, qualified and classified as a very serious violation, as laid down in article 31 of the General Inspection of Labour Act No. 28806, and article 25.10 of Supreme Decree No. 019-2006-TR. Proposed sanction: a fine of 41 per cent of 11 UIT, amounting to 15,785 new soles for failing to provide contracts of employment as required by law; a fine of 41 per cent of 11 UIT, amounting to 15,785 new soles for failing to comply with the order to take measures; 41 per cent of 11 UIT, amounting to 8,085 new soles for acts affecting the freedom of association of workers. Total: 39,655 new soles.

1223. For the company Start Print SA the following inspection orders were issued:

– Inspection order No. 1023-2008, in relation to which notice of violation No. 777-2008 was issued, as members of the Union of Workers of Star Print SA were affected. Social and labour legislation violated and workers affected: article 19 of Supreme Decree No. 001-98-TR; article 23 of the Universal Declaration of Human Rights: on everyone's right to form and to join trade unions for the protection of his interests; article 28.1 of the Political Constitution which provides that the State shall guarantee freedom of association; ILO Conventions Nos 87 and 98; article 7 of the Non-Traditional Exports Act, Decree Law No. 22342; article 5 of the General Inspection of Labour Act No. 28806 and articles 9 and 15 of Supreme Decree No. 019-2006-TR. Qualification of the violation: the facts constitute the following violations: (1) not providing the worker with payslips with the required content is qualified as a minor violation in labour relations under article 23.2 of Supreme Decree No. 019-2006-TR; (2) failure to comply with the provisions relating to fixed-term contracts, irrespective of what the contracts are called, their perversion and fraudulent use is qualified as a very serious violation in relation to labour relations under article 25.5 of Supreme Decree No. 019-2006-TR; (3) the commission of acts which affect the worker's freedom of association is qualified as a very serious violation in relation to labour relations under article 25.10 of Supreme Decree No. 019-2006-TR; and (4) actions or omissions which disrupt, delay or impede the conduct of inspections by labour inspectors is qualified as a very serious violation against the work of inspection under article 45.2 of Supreme Decree No. 019-2006-TR. Proposed sanction. A fine was proposed for the following violations: for the first violation: 100 per cent of 5 UIT being the sum of 1,500 new soles; for the second violation, 90 per cent of 15 UIT equivalent to 47,250 new soles; for the third violation, 18 per cent of 15 UIT equivalent to 9,450 new soles; for the fourth violation, 81 per cent of 8 UIT equivalent to 22,680 new soles. The total proposed fine is therefore 96,880 new soles.

– Inspection order No. 6495-2008. In relation to which notice of violation No. 1398-2005-MTPE/2/12.3 was issued, as the members of the Union of Workers of Start Print SA were affected. Legislation violated and workers affected; (1) the verified facts concerning lack of collaboration affecting 16 workers of that company; (2) the facts verified in point 5 relating to the failure to attend a meeting duly and properly notified, affecting 16 clearly identified workers. Qualification of the violation: these facts

constitute the following violations: violations relating to inspection work: the fact of not providing labour inspectors with the information necessary for them to carry out their work. This violation is qualified as a very serious violation under article 31 of the General Labour Inspection Act No. 28806, and article 46.3 of Supreme Decree No. 019-2006-TR. The fact of not attending a proceeding fully notified in advance by the labour inspectors. This violation is qualified as a very serious violation under article 31 of the General Labour Inspection Act No. 28806, and article 46.10 of Supreme Decree No. 019-2006-TR. Proposed sanction: for the violation in relation to labour inspection: a fine of 13 per cent of 20 UIT equivalent to 9,100 new soles for lack of cooperation with the labour inspectorate, and a fine of 13 per cent of 20 UIT equivalent to 9,100 new soles for failure to attend a meeting duly notified in advance. These sums make a total of 18,200 new soles.

1224. For the company Sur Color Star SA the following inspection orders were issued:

– Inspection order No. 168-2008, resulting in notice of violation No. 925-2008-MTPE/2/12.3 concerning the members of the Union of Workers of Sur Color Star. Social and labour legislation violated and workers affected: (1) relating to contracting of personnel, Supreme Decree No. 003-97-TR: the inspected company was not accredited as an industrial company exporting non-traditional products, and was not entitled to conclude contracts with its workers under the special non-traditional exports scheme; (2) concerning freedom of association: the Political Constitution of Peru, the Universal Declaration of Human Rights, the American Declaration of the Rights and Duties of Man, the Additional Protocol to the American Convention on Human Rights (Protocol of San Salvador); Conventions Nos 87 and 98. The following facts were determined as a result of inspections of the company: (1) the link with the company Topy Top SA, in which the dismissed workers had worked (and that company had considerably exceeded the probationary period) and the company Sur Color Star SA. The probationary period is intended, for the employer, to ascertain whether the worker is able or not to perform the work for which he was hired and not, on the grounds that they are in a probationary period, to terminate the services of workers who have decided to form a trade union. The company's argument that the workers were terminated because they had not successfully completed their probationary period was spurious as, at the time when the company hired them, it already knew the qualification of these workers, especially as they continued to perform the same work in the Sur Color Star SA company as they had been doing in Topy Top SA. Furthermore, when it drew up the contracts of employment, the company expressly indicated that the workers were qualified to satisfy the needs of production; (2) the decision of the inspected company to terminate the services of the 11 workers who made up the executive committee of the Union of Workers of Sur Color Star, Topy Top SA Textiles Division, SINSUCOS, and other workers who were members of that union, conceals an anti-trade union practice on the part of the inspected company. These actions tend to impede, restrict and undermine freedom of association, since leaving only three members of the executive committee and dismissing many other members seriously affects the trade union activities that they can carry out as an organization and also has an adverse impact on workers who see their job at risk in the face of the threat of dismissal for joining the trade union; (3) The General Labour Inspection Act No. 28806; Supreme Decree No. 019-2006-TR. The failure of the inspected company to attend, when it did not appear at 4 p.m. on 22 February 2008, despite being duly notified of the planned meeting, constitutes a violation against the work of the inspectorate, as laid down in article 36.3 of the General Labour Inspection Act No. 28806 and article 46.10 of the regulations pursuant to the General Labour Inspection Act approved by Supreme Decree No. 019-2006-TR. In addition, the inspected company did not provide the information and documentation necessary for the conduct of the inspection work, and failed in its duty to cooperate with the labour inspectors, as laid down in paragraphs (a)

and (c) of article 9 of the General Labour Inspection Act No. 28806 and article 15.1 of the regulations pursuant to the General Labour Inspection Act approved by Supreme Decree No. 019-2006-TR, which constitutes a violation against the work of the labour inspectorate, as laid down in article 46.3 of the General Labour Inspection Act; (4) General Labour Inspection Act No. 28806 and Supreme Decree No. 019-2006-TR. The inspected company did not comply in due time with the requirement to adopt measures to comply with the applicable social and labour legislation, which constitutes a violation against the work of labour inspection under article 46.7 of the regulations pursuant to the General Labour Inspection Act approved by Supreme Decree No. 019-2006-TR.

1225. The qualification of the violations by the company Sur Color Star SA is as follows: the proven facts consisting of the following violations: (1) the failure to comply with the provisions on contracting of personnel is qualified and classified as a very serious violation concerning labour relations, under article 31 of the General Labour Inspection Act No. 28806 and article 25.5 of the regulations pursuant to the General Labour Inspection Act approved by Supreme Decree No. 019-2006-TR, amended by Supreme Decree No. 019-2007-TR; (2) the termination of the services of eight trade union officials and 13 unionized workers, with justified or proven cause, based on the arguments expressed and the observed facts, constitutes an assault on freedom of association and is therefore qualified and classified as a very serious violation concerning labour relations, under article 31 of the General Labour Inspection Act No. 28806 and article 25.10 of the regulations pursuant to the General Labour Inspection Act approved by Supreme Decree No. 019-2006-TR, amended by Supreme Decree No. 019-2007-TR; (3) violation against labour inspection, in that the inspected company, pursuant to the order dated 21 February 2007, did not duly adopt measures to comply with social and labour legislation, is qualified and classified as a very serious violation concerning labour relations, under article 31 of the General Labour Inspection Act No. 28806 and article 46.7 of the regulations pursuant to the General Labour Inspection Act approved by Supreme Decree No. 019-2006-TR, amended by Supreme Decree No. 019-2007-TR; (4) Violations against labour inspection: the failure of the inspected company to attend a meeting, when it did not appear at 4 p.m. on 22 February 2008, despite being duly notified, failure to provide the information and documentation necessary for the conduct of the inspection work, and failure to fulfil its duty to cooperate with the labour inspectors, are qualified and classified as a very serious violation against labour inspection, under article 46.7 of the regulations pursuant to the General Labour Inspection Act approved by Supreme Decree No. 019-2006-TR. Proposed sanction: according to the provisions of articles 38 and 39 of the General Labour Inspection Act No. 28806 and articles 47 and 48 of its regulations, the following is proposed: (1) a fine of 81 per cent of 11 UIT equivalent to the sum of 31,185 new soles for the very serious violation concerning contracting of personnel; (2). a fine of 16 per cent of 11 UIT equivalent to the sum of 6,160 new soles for the very serious violation concerning freedom of association; (3) a fine of 81 per cent of 11 UIT equivalent to the sum of 31,185 new soles for failure to comply in due time with the order of 21 February 2008 on the adoption of measures to comply with social and labour legislation. (4) a fine of 81 per cent of 11 UIT equivalent to the sum of 31,185 new soles concerning the very serious violations of failure to cooperate in providing information and documentation necessary for the work of the inspectors and failure to attend the meeting indicated for 22 February 2008 at 4 p.m. As the UIT in effect for the year 2008 is 3,500 new soles, under Supreme Decree No. 209-2007-EF, the total amount of the fine comes to 99,715 new soles. However, bearing in mind article 39 of the General Inspection of Labour Act, No. 28806, which provides that the maximum fine for all violations in total may not exceed 20 UIT for the year in which the offence occurred, in consequence the amount of the fine proposed is 70,000 new soles.

– Inspection order No. 6494-2008, under which notice of violation No. 1581-2008-MTPE/2/12.3 was raised concerning the members of the Union of the Workers of Sur Color Star SA. Legislation violated and workers affected: (1) an act was committed against the labour inspectorate to conceal information, for which it is proposed to sanction the inspected company as the workers of that company are affected; (2) the facts described above constitute an anti-trade union act for which reason it is proposed to impose a fine on the company, as its workers are affected. Qualification of the violation: these facts constitute the following violations: violations against the inspection of labour: the fact of not complying with the duty to cooperate with authorized labour inspectors in the exercise of their duties. This violation is qualified as serious under article 31 of General Labour Inspection Act No. 28806 and article 45.1 of the regulations pursuant to the General Labour Inspection Act approved by Supreme Decree No. 019-2006-TR. With respect to labour relations: concerning the acts which interfere with the freedom of association of the trade union consisting of interference in its economic life by not deducting trade union dues and paying the funds collected to the trade union, this violation is qualified as serious under article 31 of General Labour Inspection Act No. 28806 and article 25.10 of the regulations pursuant to the General Labour Inspection Act approved by Supreme Decree No. 019-2006-TR. Proposed sanction: according to the provisions of articles 38 and 39 of General Labour Inspection Act No. 28806 and articles 47 and 48 of its regulations, the following is proposed: violation of labour inspection: a fine of 52 per cent of 10 UIT equivalent to the sum of 18,200 new soles for failure to comply with its duty of cooperation; with respect to labour relations, a fine of 52 per cent of 20 UIT equivalent to the sum of 36,400 new soles for engaging in activities which interfere with the activity of the trade union. The two fines together make a total of 54,600 new soles.

C. The Committee's conclusions

1226. *The Committee notes that, in the present case, the CGTP complains of the refusal to register the STCAMB and consequently the impossibility of bargaining collectively, as well as anti-union acts by the mining enterprise Barrick Misquichilca SA and acts of anti-union discrimination, in particular mass dismissals of trade union officials and members in textile enterprises (Topy Top SA, Sur Color SA and Star Print SA) once they had been informed of the establishment of trade unions.*

Mining enterprise Barrick Misquichilca SA

1227. *As regards the refusal to register the STCAMB, the Committee takes note of the Government's and the company's statements to the effect that: (1) the administrative authority in an order dated 3 July 2007 objected to the application to register the union because the record of the union's constituent meeting was not included in a document registered by the authority and the list of members did not include the duties, occupations and trades of the union's members or the name of the company for which they worked; (2) in order to rectify these omissions, a period of two working days was allowed; that period elapsed on 31 July 2007, but the union provided written confirmation that the faults had been rectified only on 1 August and so its application was rejected; (3) the union presented an appeal at short notice, which was therefore overruled. The Committee notes that, according to the company, the requirements of national legislation for the registration of a trade union do not constitute impediments to the establishment of unions, but are in fact intended to ensure procedural transparency; they are consistent with the terms of Conventions Nos 87 and 98, and the fact that States may require compliance with certain formal conditions for unions to become registered is not an infringement of freedom of association. In this regard, the Committee regrets the short period of time (48 hours) given to the union to act on the observations made by the administrative authority as a condition of*

registration, and regrets the fact that the application, once submitted with the errors rectified, was rejected only one day after the period allowed had expired. Under these circumstances, the Committee requests the Government to register the STCAMB without delay if the legal requirements are met.

1228. *As regards the alleged impossibility of bargaining collectively owing to the union's non-registered status, the Committee notes that the Government has forwarded the company's comments according to which: (1) the requirement to register is due to the need to establish a system of formal recognition which will allow the group in question to be identified as a single subject of law and give it a status that will help it to operate; and (2) there is another union at the enterprise with which to date two collective agreements have been concluded; the most recent of these will be in force until June 2010. The Committee considers that the requirement to register a trade union as a condition of being able to bargain collectively, if this does not involve excessive delays and the competent authority does not have discretionary power in this regard, does not violate the principles of freedom of association. Under these circumstances, the Committee requests the Government to provide assurances that, as soon as the STCAMB is registered, it will be assured of the rights to carry out collective bargaining on the conditions of employment covered by the relevant legislation.*

1229. *As regards the alleged acts of anti-union discrimination following the establishment of STCAMB (the complainant organization mentions by name four union officials and 11 members allegedly laid off or prevented from working by non-renewal of their employment contracts), the Committee notes that the Government has communicated observations from the enterprise according to which: (1) the State does not allow acts of discrimination in any form, and discrimination in employment is prohibited by law; (2) there is no pending complaint against the enterprise currently before the courts or administrative authorities in connection with any alleged violation of freedom of association; (3) in September 2007, the enterprise was invited by the National Directorate for Labour Relations of the Ministry of Labour and Employment Promotion to support a meeting with STCAMB representatives who claimed that the company had been perpetrating anti-union practices against union members, and on that occasion the company stated that the establishment of STCAMB was a matter pertaining to labour relations between the workers and their respective employers; and (4) the mining enterprise cannot be accused of perpetrating anti-union practices against workers employed by other enterprises. Under these circumstances, the Committee requests the Government to send its observations on the allegations concerning the four union officials and 11 members of STCAMB mentioned by name in the complaint, who were allegedly dismissed or prevented from working and, according to the mining company, were employed by other enterprises.*

Enterprises Topy Top SA, Sur Color Star SA and Star Print SA

1230. *As regards the allegations of anti-union acts – mass dismissals of union officials and members mentioned by name in the complaint, as well as other anti-union practices – once these companies had been informed of the establishment of unions, the Committee notes the Government's information according to which: (1) numerous inspection orders were issued for inspections at the enterprises in question; (2) very serious infringements of trade union and workers' rights were found to have taken place; and (3) it was proposed that the companies in question should be fined. The Committee regrets the anti-union acts found by the administrative authority to have taken place. The Committee requests the Government: (1) to inform it if the fines proposed by the labour inspectorate for anti-union acts have been imposed on these three textile enterprises; (2) to inform it if the union officials and members of the Trade Union of Workers of Topy Top SA, the Trade Union of Workers of Color Star SA and the Trade Union of Workers of Star Print SA have instigated reinstatement proceedings; (3) to take the necessary measures, in the light of the anti-union acts found by*

the administrative authority to have taken place, to apply its good offices to bring about the reinstatement of the union officials and members dismissed for anti-union reasons; (4) to ensure that trade union rights are respected in the enterprises in question. The Committee requests the Government keep it informed in this regard.

The Committee's recommendations

1231. ***In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:***

(a) The Committee requests the Government, if the formal requirements are met, to register the STCAMB without delay, and to ensure that the rights of collective bargaining on conditions of employment as provided for by legislation are guaranteed.

(b) The Committee requests the Government to send its comments on the allegations concerning the four trade union officials and 11 members of the STCAMB mentioned by name in the complaint, who were allegedly dismissed or prevented from working (according to the mining company, the individuals concerned were employed by other enterprises).

(c) The Committee requests the Government: (1) to inform it if the fines proposed by the labour inspectorate for anti-union acts have been imposed on the three textile enterprises concerned; (2) to inform it if the union officials and members of the Trade Union of Workers of Topy Top SA, the Trade Union of Workers of Color Star SA and the Trade Union of Workers of Star Print SA have instigated reinstatement proceedings; (3) to take the necessary measures, in the light of the anti-union acts found by the administrative authority to have taken place, to apply its good offices to bring about the reinstatement of the union officials and members dismissed for anti-union reasons; (4) to ensure that trade union rights are respected in the enterprises in question. The Committee requests the Government to keep it informed in this regard.

CASE NO. 2624

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

Complaint against the Government of Peru presented by the National Federation of Public Workers of Peru (FENAOMP)

Allegations: Dismissal of 226 workers after setting up a trade union in the Municipality of Miraflores

1232. The complaint is contained in a communication from the National Federation of Public Workers of Peru (FENAOMP) dated 18 December 2007. The Government sent its observations in communications dated 26 and 30 May 2008.

1233. 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

1234. In its communication of 18 December 2007, the FENAOMP alleges that on 1 December 2007, the mayor of the municipality of Miraflores carried out the mass arbitrary dismissal of 226 workers (a list of names is provided) for setting up the Single Union of Workers of the municipality of Miraflores (SITRAOCMUN). The union was formally established on 25 September 2007 and the municipal authorities were informed of this on 23 November 2007. The workers in question were hired to work in areas including street sweeping, refuse collection and park maintenance for average periods of eight years. The complainant organization has provided a copy of a letter addressed to the mayor dated 28 November 2007 claiming that some municipal officials had harassed members of the union and threatened them with dismissal for setting up the trade union.

B. The Government's reply

1235. In its communications of 26 and 30 May 2008, the Government indicates that the complainant organization comprises 39 affiliated trade unions which do not, however, include SUTRAOCMUN. The latter was officially recognized by the Ministry of Labour on 21 November 2007.

1236. The Government adds that administrative proceedings were initiated at the Ministry of Labour on a list of claims put forward by SUTRAOCMUN for 2007, but were suspended on 15 October 2007 because another collective agreement, dated 6 July 2007, had already been registered in the municipality of Miraflores. There are no proceedings relating to alleged anti-union practices or violations of the trade union rights of the union in question, and there has therefore been no inspection.

1237. The Government states that it will nevertheless ensure that inspections are carried out in connection with the complaint presented to the ILO, and that it will inform the Freedom of Association Committee of the outcome.

1238. The Government communicates the position of the municipality of Miraflores, which is as follows:

– The complaint is based on inaccurate claims, which can be seen from the fact that the municipal administration has not been summonsed in connection with any administrative proceedings before the labour administration authority under the Productivity and Competitiveness Act (if that situation had arisen, it would have necessitated some form of response by SUTRAOCMUN).

– Specifically, what has occurred in the view of the local authorities is that the fixed-term employment contracts of the workers concerned expired, with the result that their employment with the municipality came to an end (copies of the employment contracts of the workers in question are supplied).

– It is therefore not the case that these 226 workers were dismissed because they formed the trade union SUTRAOCMUN, since other unions operate within the municipal corporation and collective talks have already been held with them.

– The labour rights of the 226 former workers have been respected as regard their social benefits and other entitlements due to them under labour legislation; with regard to the substance of the complaint to the ILO, no trade union rights have been infringed, and what in fact occurred was the normal termination of employment resulting from the expiry of the fixed-term employment contracts in question.

C. The Committee's conclusions

1239. *The Committee notes that the complaint concerns the dismissal of 226 workers two months after the establishment of the Single Union of Workers of the Municipality of Miraflores (SUTRAOCMUN). Some members of that union, according to the allegations, were harassed and threatened with dismissal for setting up the union.*

1240. *The Committee notes the Government's statement to the effect that the trade union in question is not affiliated to the complainant organization. The Committee nevertheless considers that the complainant federation has a direct interest in this case inasmuch as 39 public workers' organizations are affiliated to it, and its complaint must therefore be deemed admissible, given in particular the fact that the complainant federation has a general interest in the terms and conditions enjoyed by public workers and SITRAOCMUN is unlikely to be able to defend its members' interests effectively after their employment has been terminated.*

1241. *As regards the dismissal of 226 workers, the Committee takes note of the Government's statements to the effect that the union has not presented any complaint of violation of trade union rights. The Committee notes the statements of the municipality of Miraflores in which it: (1) denies that the dismissals were connected with the establishment of the union, and indicates that other trade unions (which have concluded collective agreements) operate in the municipality; (2) emphasizes that the version of events presented by the complainant is inaccurate, and that what actually happened was that the fixed-term employment contracts in question expired; (3) the 226 former workers have received all their social benefits and other entitlements provided for by the law in cases of termination; and (4) the employment contracts (copies are supplied by the municipal authorities) are for a period of one year.*

1242. *While noting that the workers whose employment contracts were not renewed have received the statutory benefits and entitlements that apply on termination of employment, the Committee notes that the Government has ordered an inspection in the municipality of Miraflores following the presentation of the complaint to the ILO, and requests the Government to keep it informed of the outcome.*

The Committee's recommendation

1243. ***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 labour inspection that has been ordered following the presentation of this complaint.

CASE NO. 2627

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

Complaint against the Government of Peru presented by the General Confederation of Workers of Peru (CGTP)

Allegations: Anti-union transfers and dismissals, attempts by the public utility SEDAPAL to obstruct collective bargaining, and practices intended to disadvantage one of the trade unions

1244. The complaint is contained in a communication of the General Confederation of Workers of Peru (CGTP) dated 14 January 2008. The CGTP sent additional information in a communication dated 7 February 2008. The Government sent its observations in communications dated 28 and 30 May 2008.

1245. 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

1246. In its communications of 14 January and 7 February 2008, the CGTP alleges various anti-union practices carried on by the Lima Drinking Water and Sewerage Service (SEDAPAL) that were prejudicial to the Union of Officials, Professional Employees and Technicians (SIFUSE). The CGTP explains that, in September 2006, the company dismissed Mr Luis Humberto Tori Gentille, the General Secretary of SIFUSE, who was removed from company premises by security personnel in a humiliating manner, despite the fact he was not violent and offered no resistance. An appeal against the dismissal was lodged with the court and is being examined. On the day before the dismissal, SIFUSE had written to the company's general manager drawing his attention to certain arbitrary decisions by the human resources director.

1247. The CGTP adds that the company refused to negotiate the list of claims presented by SIFUSE and that it did not even attend the conciliation hearings held by the administrative authority in November and December 2006. In February 2007, SIFUSE decided to resolve the dispute through arbitration. The company, disregarding a previous ruling by the Ministry of Labour and Employment Promotion on the mandate of SIFUSE, informed the union in writing that 66 of its members should belong to the other union, the Single Union of Drinking Water and Sewerage Service Workers (SUTESAL) operating at the company, rather than SIFUSE. The company also opposed the arbitration requested by SIFUSE on the grounds that a collective agreement had been concluded with the other union.

1248. The company transferred Mr José Toche Lora, cultural and sports activities secretary of SIFUSE, to another work area and dismissed him two months later. It also assigned new tasks to the legal affairs officer of SIFUSE, Mr Juan Herrera Liendo, who carried out specialized tasks in a collection group at the services centre of Villa El Salvador. Lastly, the company dismissed Mr Alvaro Jesús Torres Enríquez, a SIFUSE member. On 15 October 2007 the company suspended email communications between the SIFUSE

leaders and members. In January 2008, the question of the dismissals of the trade union officials and other members had still not been resolved, nor had the list of claims for 2006–07.

1249. Lastly, the CGTP alleges that the company privileged the other union (SUTESAL) which coexists at the company by refusing trade union leave to SIFUSE leaders, carrying out various promotions for SUTESAL members, and making the renewal of employment contracts conditional on leaving SIFUSE. As regards collective bargaining, the company continues to create delays and lodge appeals.

B. The Government's reply

1250. In its communications of 28 and 30 May 2008, the Government explains that the Labour Inspectorate noted that in July 2007, the utility company SEDAPAL employed 1,668 workers and had two registered trade unions. One is SUTESAL, with 1,486 members, and the other is SIFUSE, with 280 members. On the date of the inspections, SUTESAL had a collective agreement which the company has fully implemented (according to the General Secretary of the union).

1251. As regards the dismissals of union leaders Messrs José Toche Lora and Alvaro Jesús Torres Enríquez, the Government states that the labour authority, through an injunction dated 6 July 2007, instructed SEDAPAL to comply with the provisions of ILO Convention No. 98, as it had violated trade union immunity and freedom of association by dismissing the workers on the alleged grounds that it was revoking trust, although they had not in fact been employed in positions of trust and the real reasons for their dismissal were their trade union membership. The company's failure to comply with the injunction constituted a serious contravention which resulted in the issue of an infraction notice No. 2310-2007 and a proposed fine of 61,479 new soles (equivalent to US$21,575.58).

1252. As regards the lists of claims for 2006 and 2007, the first was opposed by SEDAPAL and declared invalid by Order No. 105-2006-MTPE/2/12.2. The situation at the moment is that SEDAPAL has not signed the arbitration agreement needed to allow SIFUSE to resolve the dispute through arbitration. As regards the 2007 list of claims, the document in question has been opposed by SEDAPAL and the case is still pending.

1253. The Government adds that the Ministry of Labour requested the Labour Inspectorate to take action in response to two communications from Congress (requests that led to the order for inspections in the areas of freedom of association and discrimination at work on grounds of union membership or for other reasons).

1254. In the course of the inspections it was found that in almost all cases the dismissals of SIFUSE members had given rise to court cases (of the 15 workers who were dismissed, 12 had initiated legal action).

1255. Finally, the labour authority cannot intervene in this matter because under the terms of the country's political Constitution, the administrative authority cannot rule on matters that are still before a court.

1256. As regards the list of claims for 2006 presented by SIFUSE, the Government reiterates that SEDAPAL opposed collective bargaining with SIFUSE on the grounds that it had been negotiating the list of claims for 2006 with SUTESAL, which represented an absolute majority of SEDAPAL workers and therefore had the right to represent the entire workforce. On 1 June 2006, the Subdirectorate for Collective Negotiations issued Order No. 016-2006-MTPE/2/12.210 upholding the company's opposition to collective bargaining. That ruling was set aside by Order No. 105-2006-MTPE/2/12.2 issued on

21 August 2006 by the Directorate for the Prevention and Resolution of Conflicts, mainly on the grounds that SUTESAL did not at that time have a registered and functioning executive body, which meant that SEDAPAL could not claim that SUTESAL represented a majority of workers as a reason for opposing collective bargaining with SIFUSE. Consequently, on 20 November 2006 the parties were instructed to begin collective bargaining. To that end conciliation meetings were planned for 9 and 21 November and 4 and 29 December 2006 (not attended by the employer) and 15 and 19 January 2007 (attended by both parties).

1257. The Office of Labour Economics and Productivity drew up the corresponding labour ruling which was delivered on 29 December 2006 to SIFUSE and on 15 January 2007 to SEDAPAL.

1258. In communication No. 43824-2007, SIFUSE announced its decision to resolve the dispute with the employer through arbitration. It nominated a co-arbitrator and requested that SEDAPAL also nominate one, and that the administrative authority appoint the chairperson of the arbitration tribunal.

1259. The Subdirectorate for Collective Negotiations instructed SIFUSE to submit the arbitration agreement concluded with SEDAPAL, as section 49 of Supreme Decree No. 011-92-TR (implementing regulations of the Collective Labour Relations Act) stipulates that a decision to refer a dispute to arbitration must involve both parties. SIFUSE, however, did not submit the arbitration agreement because SEDAPAL had not signed it.

1260. As regards the list of claims for 2006, the Government states that on 12 December 2006 the court ruled that an application to declare null and void SEDAPAL's administrative decision (Order No. 105-2006-MTPE/2/12.2, declaring the company's refusal to negotiate the claims to be without foundation) was admissible. With regard to the list of claims for 2007 presented by SIFUSE (subdirectorate Order No. 052-2007-MTPE/2/12.210 of 14 December 2007), the objection formulated by SEDAPAL was declared to be justified, and that decision was subsequently confirmed by Order No. 097-2007-MTPE/2/12.1 of 5 December 2007.

1261. With regard to trade union leave of absence, the Government states that the company on the occasion of the last labour inspection visit confirmed the leave granted to SIFUSE leaders. As regards the facilities made available to the trade union, the request for an email account for SIFUSE is being processed.

1262. The inspectors, despite having coordinated with the SIFUSE economic secretary to obtain any information with a bearing on the investigation, were unable to make contact with him or with any other representatives of the trade union in question.

1263. Consequently, according to the Government the labour administration authority (National Labour Inspection Directorate and Lima – Callao Regional Directorate for Labour and Employment Promotion) had complied with labour legislation; it has declined to examine certain situations currently being examined by the courts, because according to the approved text of the Organic Act on the Judiciary the administrative authority must refrain from pronouncing on cases that are sub judice in the courts because of the possible liability of officials in the event of contraventions. This is consistent with section 139(2) of the Basic Law, which is based on respect for the independence of the judiciary, a fundamental pillar of the rule of law in Peru.

1264. The Government has asked the judicial authority for information on the current status of judicial proceedings in connection with the complaint (this will in due course be communicated to the ILO) in order to ensure that the State, in judicial proceedings, has

complied with the relevant national and international labour standards and avoided any action that would violate or hinder the exercise of the rights set out in collective labour legislation or relevant ILO Conventions.

C. The Committee's conclusions

1265. *The Committee notes that in this case, the complainant organization alleges: (1) the arbitrary dismissal in September 2006 of Mr Luis Humberto Tori Gentille, General Secretary of SIFUSE, following the sending of a letter from the union to the company complaining of arbitrary decisions (the dismissal in question is being reviewed by the judicial authority); the dismissal of Mr José Toche Lora, sports activities secretary; the dismissal of Mr Alvaro Jesús Torres Enríquez and other members of SIFUSE; and the change in the job description of Mr Juan Herrera Liendo, legal affairs officer of SIFUSE; and (2) delays, appeals and other anti-union practices by the company SEDAPAL in the collective talks of 2006 and 2007 with SIFUSE; and various advantages granted to the other union (SUTESAL).*

1266. *With regard to the dismissal of trade union officers and members of SIFUSE, the Committee notes that the Government does not deny the dismissal of the SIFUSE General Secretary in September 2006, or that according to the complainant organizations no decision has yet been taken on that official's application to the court. The Committee notes that according to the administrative authority, the company refused to comply with its instruction to reinstate the union leaders Messrs José Toche Lora and Alvaro Jesús Torres Enríquez (dismissed, according to the administrative authority, because of their trade union membership and not, as the company maintained, because of any withdrawal of trust, because in reality they had not technically been employed in positions of trust); for this, the company was fined 61,479 new soles (US$21,575).*

1267. *The Committee also notes that according to the Government, a total of 15 SIFUSE members have been dismissed and 12 of them have initiated legal action. The Committee emphasizes that no one should be dismissed or suffer prejudice by reason of trade union membership or activities, and hopes that the court will give a ruling soon on the applications presented by the dismissed trade unionists in question. The Committee regrets the delay in these proceedings and requests the Government to keep it informed in this regard and, if the anti-union nature of the dismissals is confirmed, to take appropriate steps with a view to reinstating the trade unionists. The Committee requests the Government to respond to the allegation regarding the change in the duties of Mr Juan Herrera Liendo within the company.*

1268. *As regards the allegations regarding the measures to which the company resorted in order to avoid negotiating a list of claims submitted by SIFUSE in 2006, the Committee notes the Government's statements to the effect that: (1) on 20 January 2006, SIFUSE submitted its list of claims for the period 1 January 2006 to 31 December 2006 and an instruction was given to start collective bargaining on 23 January 2006; (2) SEDAPAL objected to this on the grounds that it had been negotiating the list of claims for 2006 with SUTESAL, which was the appropriate representative organization for all the company's workers; (3) on 1 June 2006, the Subdirectorate for Collective Negotiations upheld the company's objection; that ruling was quashed by an order issued on 21 August 2006 by the Directorate for the Prevention and Resolution of Conflicts, mainly on the grounds that SUTESAL did not at that time have a registered executive body, which meant that SEDAPAL could not claim that SUTESAL was the majority union in order to avoid engaging in collective bargaining with SIFUSE; (4) consequently, on 20 November 2006, the parties were instructed to begin collective bargaining and conciliation meetings were planned for 9 and 21 November and 4 and 29 December 2006, but these were not attended by the employer, and both parties met only on 15 and 19 January 2007; (5) in written*

communication No. 43824-2007, SIFUSE announced its decision to seek a settlement through arbitration, nominated a co-arbitrator, and requested that SEDAPAL be instructed to nominate a co-arbitrator and that the administrative authority be required to appoint a chairperson for the arbitration tribunal; and (6) to that end, the Subdirectorate for Collective Negotiations instructed SIFUSE to submit the arbitration agreement concluded with SEDAPAL since, according to section 49 of Supreme Decree No. 011-92-TR (implementing regulations for the Collective Labour Relations Act), the decision to refer a dispute to arbitration must involve both parties. The Government, however, has indicated that SIFUSE did not submit the agreement in question because SEDAPAL had not signed it. The Committee recalls its principles concerning arbitration, in particular the principle that the imposition of compulsory arbitration at the request of only one of the parties is contrary to Convention No. 98.

1269. *The Committee takes note of the Government's statement to the effect that on 12 December 2007, it was decided that the company's appeal (against the decision of the Ministry of Labour rejecting the company's decision to oppose negotiation of the list of claims for 2006) was admissible; the matter is still pending. The Committee regrets the delay in the proceedings and requests the Government to inform it of any ruling handed down.*

1270. *As regards the list of claims for 2007, the Committee takes note of the Government's statements to the effect that on 14 September 2007 the Ministry of Labour upheld the company's objection to collective bargaining. The Committee takes note of the Government's explanations, according to which SUTESAL, with 1,668 members (SIFUSE has, according to the Government, only 280 members) has concluded a collective agreement. The Government notes in this regard that according to legislation in force, if a trade union in a given area does not represent an absolute majority of the workers of that area, its representative authority is limited to its own members (section 34 of Regulation Supreme Decree DS 011-92-TR); on the other hand, a collective agreement concluded by a majority union is applicable to all workers at a given enterprise.*

1271. *As regards the advantages from which SUTESAL (the majority union) is alleged to have benefited, the Committee notes that, according to the complainant organization, those advantages lie in refusals of trade union leave for SIFUSE leaders, various forms of promotion for SUTESAL members, the withdrawal of electronic mail facilities used by the union to communicate with its members, and making renewal of temporary contracts conditional on resignation from SIFUSE.*

1272. *The Committee notes the Government's statements to the effect that the company on the occasion of the last inspection confirmed the trade union leave granted to SIFUSE members, and is processing a request by SIFUSE for an email account. The Committee requests the Government to carry out an inquiry into the various promotions which the company is alleged to have granted to two SUTESAL members in a manner that discriminates against SIFUSE members, and into the allegation that renewal of temporary contracts has been made conditional on resignation from SIFUSE. The Committee requests the Government to keep it informed of the outcome.*

The Committee's recommendations

1273. ***In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:***

(a) Regretting the large number of dismissals of SIFUSE members, the Committee emphasizes that no one should be dismissed or suffer prejudice

by reason of trade union membership or activities, and hopes that the court will give a ruling soon on the applications presented by the trade unionists in question. The Committee regrets the delay in these proceedings and requests the Government to keep it informed in this regard and, if the anti-union nature of the dismissals is confirmed, to take appropriate steps with a view to reinstating the trade unionists in question. The Committee requests the Government to respond to the allegation regarding the change in the duties of Mr Juan Herrera Liendo within the company.

(b) The Committee requests the Government to communicate any ruling handed down by the court following the application made by the company regarding the administrative decisions concerning negotiation of the list of claims for 2006 presented by SIFUSE.

(c) The Committee requests the Government to carry out an inquiry into the various types of promotion which the company is alleged to have given to SUTESAL members in a way that discriminates against SIFUSE members, and into the allegation that renewal of temporary contracts has been made conditional on resignation from SIFUSE. The Committee requests the Government to keep it informed of the outcome.

CASE NO. 2634

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

Complaint against the Government of Thailand presented by the Federation of Thailand Automobile Workers' Union (TAW)

Allegations: The complainant alleges that the Thai Summit Eastern Seaboard Autoparts Industry Co. Ltd (TSESA) has engaged in a systematic pattern of obstruction and violation of the right to organize and bargain collectively

1274. The complaint is set out in a communication of 7 March 2008 from the Federation of Thailand Automobile Workers' Unions (TAW). The TAW submitted additional information in a communication of 10 July 2008.

1275. The Government submitted its observations in communications of 18 June and 23 September 2008.

1276. Thailand has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

1277. In its communication of 7 March 2008, the complainant states that the Thai Summit Eastern Seaboard Autoparts Industry Co. Ltd. (TSESA) had engaged in a pattern of systematic obstruction and violation of the rights to freely join a union and engage in collective bargaining after discovering that its workers had joined one of the complainant's affiliates – the Ford and Mazda Thailand Workers' Union (FMTWU).

1278. According to the information provided by the complainant, on 17 August 2006, 400 workers among the total workforce of 795 employees at TSESA joined the FMTWU. On 16 September 2006, the FMTWU members employed by the TSESA held an Extraordinary Meeting and approved a formal resolution (as required by the Labour Relations Act (LRA), 1975) to put forward collective bargaining demands to the TSESA management; the said demands were submitted by the FMTWU to Mr Anek Atthajinda, TSESA's Human Resources Director and designated representative, on 6 November 2006.

1279. Bargaining sessions between TSESA management and the FMTWU took place on 8, 16, 24 and 29 November 2006, over the course of which demands and counter-demands were submitted by both parties. After the fifth bargaining session on 7 December 2006 failed to produce an agreement between the parties, the union decided to report a labour dispute (in accordance with section 21 of the LRA).

1280. On 13 December 2006 the labour dispute was mediated at the Provincial Labour Protection and Welfare Office in Rayong province. At the mediation, the company's representative agreed to transmit the union's demands concerning a bonus and additional wages of 5,000 baht (THB) to the company for consideration. A second mediation session was held on 15 December 2006, in which the company's representative presented a proposal comprising a bonus scheme, special additional money of THB2,000 deducted from the food allowance, and an annual wage increment; the union rejected this proposal.

1281. At the third mediation session, which took place on 21 December 2006, the union proposed new demands comprising a minimum bonus of 4 per cent plus THB5,000, a food allowance of THB45 per day, and varied annual wage increments proportional to the employee's performance; the company refused this proposal.

1282. On 26 December 2006, a Ministry of Labour (MoL) mediator attempted to mediate the labour dispute at the TSESA office. At the mediation session the union representative proposed a 4 per cent bonus and the sum of THB5,000, which was refused by the company. On that same day, the management ordered union members to stop working between 8.00 a.m. and 5.30 p.m. and announced an indefinite lockout as of 5.30 p.m. The employer partially lifted the lockout on 27 December 2007, by allowing only those union members who agreed not to involve themselves in the collective bargaining demands to return to work.

1283. Another mediation session was held on 9 January 2007, with both parties again failing to reach any agreement. On 10 January 2007, the union bargaining committee and several rank-and-file members travelled to Bangkok to seek the MoL's assistance, and camped in front of the MoL for two nights. On 12 January 2007 a union bargaining committee representative and several union members, locked out by the employer, moved their demonstration to the area in front of the Rayong provincial government office. The union and the employer also agreed to consider the suggestion, made by a labour mediator from the Labour Relations Committee that their dispute be submitted to arbitration in accordance with section 26 of the LRA.

1284. Mediation was again attempted on 15 and 17 January 2007 without producing any agreement between the parties; in the former session the union's suggestion that the dispute be submitted to arbitration was rejected by the company. On 19 January 2007, the parties reached an agreement on the following points:

(1) the appointment of the Labour Relations Committee as the arbitrator of the two sides' demands;

(2) that the company would pay THB2,000 as "assistance money" to each of those workers who had been locked out, and permit them to return to work between 1 and 3 February 2007;

(3) that the workers involved with the union's collective bargaining demands would not be victimized by the company.

1285. Subsequently however, several employees claimed that they had not received the assistance money, while the company insisted that they had been paid. Furthermore, upon returning to work the previously locked-out employees (249 persons, according to the list of names attached to the complaint) were required to attend special training sessions organized by the employer, held between 1 and 9 February 2007 and consisting of courses with such titles as "The etiquette of living together" and "consciousness building". The employer informed these workers that similar training sessions might possibly be organized, at its discretion. On 9 February 2007 the employer announced the termination of ten of the most active union members, claiming that they had deserted their duties and were therefore not entitled to severance pay under the Labour Protection Act of 1998. The unionists dismissed were: Detnarong Wiriya, Nop Wareepipat, Suchart Pitto, Phongsiri Khomkham, Phanomkorn Phandet, Jetsada Kaenjan, Wichai Jandaeng, Parichat Lekpo, Chanida Khunin and Napasawan Khongthong. The employer further announced that training sessions would continue until 23 February 2007 for the remaining union members.

1286. On 15 February 2007, Napasawan Khongthong and other union members filed a complaint against the company with the Labour Relations Committee (a tripartite body established under the LRA). The complaint requested the reinstatement of the ten dismissed trade unionists and a halt to the discriminatory acts being committed against the remaining 239 union members who had previously been locked out. On 19 February 2007, the company announced that the training sessions would continue until 28 February.

1287. On 20 February 2007, the union submitted a complaint to the Thailand National Human Rights Commission (NHRC), which was received and designated as case No. 86/2550. The NHRC's Subcommittee on Labour Rights was assigned to investigate the complaint. On 1 March 2007 union representatives and company management met at the Rayong Provincial Labour Protection and Welfare Office, where the MoL officer was informed that the company had agreed to pay remuneration of 1.5 times the wage rate of half an hour for both daily and monthly workers, which was to be wired to the workers' bank accounts by 22 March 2007, and would then submit the evidence of payment to the MoL officer by 23 March 2007. The company had also agreed to change the working hours back to the old schedule – from 8 a.m. to 5 p.m. – and provide weekly holidays on a regular basis.

1288. According to the union, the company continued to refuse to allow the union members to return to work, as earlier promised. Instead the latter were subject to training for another month, with the objective of eventually forcing them to leave in search of new jobs. On 14 March 2007, Somkiat Kanngam of the union subcommittee filed a statement with the Plaukdaeng Police Station accusing the company of not complying with the agreement of 19 January 2007. The FMTWU had also filed complaints with the following organizations and state agencies: the Pluakdaeng Chief of District Administration, the Rayong Provincial

Governor's Office, the Labour Protection and Welfare Department of the MoL, the Labour Minister, the National Security Council, the NHRC, the Prime Minister's Office, the Solidarity Centre – Thailand, the 14th Military Regiment (Eastern Region), and the TAW.

1289. On 30 March 2007, the employer declared 2 and 7 April 2007 to be holidays and stated that training sessions would resume on 16 April 2007. On that day, the company distributed leaflets offering money to union members wishing to resign, in amounts proportional to their years of service. The complainant asserts that this was tantamount to offering severance pay, and that the intent of the leaflets was to undermine workers' morale and give the impression that terminations were to commence. It further states that although the workers were ready to return to work after the collective bargaining process was finished, the employer did not wish to settle the dispute peacefully. As of 15 April 2007, the company had still not allowed the union members to return to their regular work, but continued to require them to attend training sessions while paying them a basic salary.

1290. On 9 May 2007, the NHRC Subcommittee on Labour Rights conducted a public hearing as part of its investigation and received evidence from the company's management, the union and other stakeholders.

1291. On 26 May 2007, the company moved several workers to a warehouse (factory 3) 3 kilometres away from the main factory. According to the complainant there is only one work shift at factory 3; the workers assigned there are divided into three groups and required to work one day while stopping for three days.

1292. The complainant indicates that the company again offered buyouts to employees on 6, 7, and 8 June and 17 August 2007. Those who had worked longer than one year received eight times as much as their basic salary; the resignation and payment was conducted at workers' homes. As of 23 October 2007, moreover, 25 union members continued to work at factory 3 and were unable to return to the main factory.

1293. Attached to the complaint is a list of names of trade unionists, comprised of the ten dismissed union leaders and 239 other union members whom the company had subjected to training or reassigned to factory 3.

1294. An order of the Labour Relations Committee (Pronouncement No. 329-577/2007), dated 15 May 2007, is attached to the complaint. The order was issued on the basis of the complaint filed by Napasawan Khongthong and the other trade unionists (249 in all) on 15 February 2007. The facts relating to the dispute, as recorded within the order, are as follows.

– Following the union's submission of demands to the employer in November 2006, five negotiations and ten mediation sessions were held without concluding an agreement. On 26 December 2006 the employer locked out only those employees involved with the collective bargaining demands; on the following day the employees concerned were allowed to return to work after signing a letter of consent.

– The 250 union members who refused to return to work gathered in front of the company and were subjected to various forms of harassment, including being chased away by company staff and being charged with intrusion. The employer attempted to persuade them to return to work by offering benefits and simultaneously threatened them with dismissal if they did not return; it also telephoned and sent postcards to the employees' parents in various provinces.

– An agreement was reached on 19 January 2007, under which the employer agreed to pay THB2,000 to the employees concerned and allow them to return to work from

1 to 3 February 2007. When the 249 employees returned to work on 1 February 2007, the employer issued a letter claiming to prepare the employees for returning to work and enhance labour relations by offering a training session to them, without specifying any timeframe for allowing the latter to resume normal employment. The employees concerned continued to receive compensation as if they were working on a regular basis. The employer furthermore prolonged the training sessions, claiming that the trainees had not demonstrated improvement as justification for this course of action, and had distributed forms for compensation in the event of resignation to the employees concerned during their training; approximately 50 of the trade union members decided to resign and accept the compensation offered by the employer.

– As concerns the ten trade unionists dismissed, they had initially given their consent to return to work and waived all collective bargaining demands on 27 December 2006. After doing so, however, they subsequently decided to stop working, as of 5 January 2007, and remain with the other employees who had refused to return. They issued a letter requesting cancellation of their consent to return to work forms and submitted this letter to the union; the union subsequently admitted that it did not forward the letter to the employer or inform the latter about the ten unionists' retraction of their consent. The latter were dismissed on 9 February 2007, with the employer claiming that after agreeing to return to work they had failed to do so during the period 5–31 January 2007, thus causing severe and wilful damage, violating company regulations, and constituting desertion of work for over three consecutive days without reasonable cause.

1295. The Labour Relations Committee found, on the basis of the facts above, that the ten workers had not been dismissed on the basis of their membership in the union but for having deserted work, as they had earlier given their consent to return but subsequently failed to appear to work. It also concluded that requiring the union members to attend training sessions with no specified end-period, instead of assigning them regular work, may have led to the resignation of some among their ranks and therefore constituted an unfair labour practice under the LRA. The Labour Relations Committee subsequently dismissed the ten unionists' claim for reinstatement and ordered the employer to assign regular work to the 239 other union members.

1296. A copy of the NHRC's investigation of the dispute at hand (report No. 101/2550) is also attached to the complaint. In addition to the facts set out in the complaint and the order of the Labour Relations Committee, the NHRC report makes reference to four men in military-like clothing – apparently members of the Royal Thai Navy – entering the company site during negotiations between the union and the company and being escorted around the premises by the company's human resources manager. Among the NHRC's findings were that the training sessions referred to by the complainant covered such topics as ethics on coexistence, unfair practices, leadership and followers, team work, organization conscience, and environmental awareness and safety at work. It also found that certain hardships were intentionally imposed upon the union members subject to these training sessions, as the training facility lacked water and was situated a considerable distance away from where the members could obtain meals. It concluded that the company's conduct, including the imposition of mandatory training sessions, violated the employees' right to organize or join a trade union and constituted an attempt to have the latter give up their rights to freedom of association and collective bargaining, in violation of the LRA.

1297. In respect of the ten dismissed trade unionists, the NHRC found, inter alia: (1) that they were informed by their supervisors that signing the consent to return to work forms did not entail any obligations, and that once they realized the potential consequences of their actions they had verbally cancelled their consent forms to their respective supervisors;

(2) that the MoL official who had acted as a mediator between the company and the union had informed the union that it was not necessary to cancel the signed consent forms, as the demands were submitted by the union and individual members were not entitled to withdraw them; and (3) that the union had nevertheless submitted the written cancellation of the ten unionists' consent forms to the MoL official on 10 January 2007. The NHRC concluded that the real reason for the dismissal of the ten trade unionists was their union membership, and was therefore unjustifiable. Finally, the NHRC also concluded that bringing military personnel into company premises during negotiations constituted an attempt to intimidate the union and frustrate its attempt to exercise its right to engage in collective bargaining.

1298. In its communication of 10 July 2008, the complainant attaches a translated version of the 19 January 2007 agreement referred to above.

B. The Government's reply

1299. In its communication of 18 June 2008, the Government confirms that in its Order No. 329-577/2007 the Labour Relations Committee dismissed the ten unionists' claim for reinstatement but ordered the employer to assign regular employment to the 239 other union members. Furthermore, the Department of Labour Protection and Welfare has followed up on the employer's compliance with the order and presently understands that 61 workers have been allowed to work in a new factory operated by the employer. As for the 178 other employees, they have resigned from their jobs and received severance pay, including a special payment of two months' wages for each worker in accordance with the provisions of the Labour Protection Law.

1300. The Government further states that on 25 July 2007, the Department of Labour Protection and Welfare assigned a workers' representative and an employers' representative from the Labour Relations Committee, together with an official from that body, to a fact-finding visit to the factory where the 61 union members had been reassigned. On the basis of this visit the Department of Labour Protection and Welfare concluded that the assignment of the 61 workers to the factory constituted compliance with Order No. 329-577/2007 of the Labour Relations Committee and informed the union of its decision. The union was free to appeal the said order to the Labour Court, if it so wished.

1301. In its communication of 23 September 2008, the Government indicates that although the 19 January 2007 agreement between the employer and the union stipulated that the union members concerned were to be reinstated in their previous jobs, some employees were assigned to a new factory with different working conditions from the previous one. Although Order No. 329-577/2007 of the Labour Relations Committee ordered the employer to assign jobs to all of the 239 members concerned, the employer has yet to comply with the order. Finally, the Government indicates that the union has brought an action before the 2nd Regional Labour Court, which was currently pending.

C. The Committee's conclusions

1302. *The Committee notes that the present case involves allegations of acts of anti-union discrimination, including dismissals, harassment and other acts intended to frustrate collective bargaining and prevent workers from exercising their right to organize and join unions. The Committee notes that the information at its disposal establishes the following.*

– *In August 2006, 400 workers out of the employer's total workforce of 795 joined the FMTWU, which subsequently submitted several collective bargaining demands to the employer on 6 November 2006. Several bargaining and mediation sessions were held*

in November and December 2006, without the parties concluding a collective agreement.

– *On 26 December 2006 the employer locked out those employees involved with the collective bargaining demands and allowed those agreeing not to involve themselves with the demands to return to work the next day, after signing a letter of consent to return to work. Two hundred and fifty union members refused to return to work and engaged in demonstrations in front of the company, where they were subject to various forms of harassment, including being chased away by company staff and being charged with intrusion. The employer also attempted to persuade them to return to work by offering benefits and simultaneously threatened them with dismissal if they did not return.*

– *On 19 January 2007 an agreement was reached, under which the employees who had refused to return to work would be paid THB2,000 each and allowed to return to work from 1 to 3 February 2007. When the 249 employees returned to work on 1 February 2007, the employer issued a letter stating that to prepare the employees for returning to work and enhance labour relations they would be offered a training session, without specifying any timeframe for allowing the latter to resume normal employment. The employees concerned continued to receive compensation as if they were working on a regular basis.*

– *On 9 February 2007 the employer dismissed the following trade unionists, claiming that they had deserted their duties and were therefore not entitled to severance pay under the Labour Protection Act of 1998: Detnarong Wiriya, Nop Wareepipat, Suchart Pitto, Phongsiri Khomkham, Phanomkorn Phandet, Jetsada Kaenjan, Wichai Jandaeng, Parichat Lekpo, Chanida Khunin and Napasawan Khongthong.*

– *The employer subsequently prolonged the training sessions for the 239 other trade union members, claiming that they had not demonstrated improvement as justification for this course of action. It also distributed in April, June and August 2007 forms for compensation, in the event of resignation, to the employees concerned.*

– *On 15 May 2007 the Labour Relations Committee issued Order No. 329-577/2007 dismissing the ten trade unionists' claim for reinstatement but ordering the employer to assign regular work to the 239 other trade union members. The Department of Labour Protection and Welfare, in following up on the employer's compliance with the order, determined that 61 workers had been allowed to work in a new factory operated by the employer, while the 178 other trade unionists had resigned from their jobs and received severance pay in accordance with the provisions of the Labour Protection Law.*

1303. *With respect to the allegations set out above, the Committee recalls, at the outset, 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. 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 edition, 2006, paras 769 and 771].*

1304. *As concerns the ten dismissed trade unionists, the Committee notes that in Order No. 329-577/2007 the Labour Relations Committee determined that they had not been dismissed on the basis of their membership in the union but for having deserted work, as they had earlier given their consent to return to work but subsequently failed to appear without notifying the employer of their cancellation of the consent forms. The Committee nonetheless also notes that, in its investigation of the matter, the NHRC Subcommittee on*

Labour Rights found that the dismissed trade unionists were informed by their supervisors that signing the consent to return to work forms did not entail any obligations, and that, once they realized the potential consequences of their actions, they had verbally cancelled their consent forms to their respective supervisors. The NHRC also found that the MoL official who had acted as a mediator between the company and the union had informed the latter that it was not necessary to cancel the signed consent forms, as the demands were submitted by the union and individual members were not entitled to withdraw them; it concluded that the real reason for the dismissal of the ten trade unionists was their union membership, and was therefore unjustifiable.

1305. *The Committee further observes that these dismissals occurred within the context of other alleged acts of anti-union discrimination by the employer. In particular, the Committee notes that after announcing a lockout on 26 December 2007, the employer had allowed only union members who agreed not to involve themselves with the collective bargaining demands to return to work. It subsequently assigned the returning union members to mandatory training sessions for several months in 2007, which the Labour Relations Committee and the NHRC both deemed to be an unfair labour practice. In view of the information before it, then, the Committee considers not only that the assignment of the 239 returning trade union members to training sessions constitutes anti-union discrimination, but is also inclined to consider the dismissals of the ten trade unionists to be discriminatory in nature as well.*

1306. *The Committee further notes that, although the Labour Relations Committee had ordered the employer to end the training sessions and assign regular work to the trade unionists concerned, the Department of Labour Protection and Welfare had subsequently determined that of the 239 trade unionists, 61 had been allowed to work in a new factory operated by the employer, while the 178 other trade unionists had resigned from their jobs and received severance pay. Recalling the complainant's allegation that the employer had distributed leaflets offering money to union members wishing to resign, and had offered similar buyouts to the latter on several occasions throughout the training sessions, the Committee regrets that this development comes on the heels of a series of acts it considers to be of an anti-union nature, and which were found by the NHRC to constitute an attempt to have the trade unionists concerned give up their rights to freedom of association and collective bargaining. It recalls that, where a government has undertaken to ensure that the right to associate shall be guaranteed by appropriate measures, that guarantee, in order to be effective, should, when necessary, be accompanied by measures which include the protection of workers against anti-union discrimination in their employment [see* ***Digest****, op. cit., para. 814]. In light of the principle mentioned above, and bearing in mind that some of these matters may be before the Court, the Committee requests the Government to review the situation of these workers and, if the allegations are found to be true, to take the necessary measures for their reinstatement, should they still so desire. If the competent court finds that reinstatement is not possible, the Committee requests the Government to ensure that they are provided with adequate compensation so as to constitute sufficiently dissuasive sanctions against anti-union discrimination.*

1307. *With respect to the ten dismissed trade unionists, the Committee recalls that no one should be subjected to anti-union discrimination because of legitimate trade union activities and the remedy of reinstatement should be available to those who are victims of anti-union discrimination [see* ***Digest****, op. cit., para. 837]. Noting that the union has brought an action before the Labour Court, the Committee requests the Government to ensure that the Labour Court, in its hearing of this matter, is in full possession of all the material facts referred to above, including the report of the NHRC. It trusts that the Court will take due account of the Committee's conclusions, particularly as concerns the need for effective protection – including the remedy of reinstatement – against acts of anti-union*

discrimination, and requests the Government to transmit a copy of the judgement once it is handed down.

1308. *Finally, the Committee notes the complainant's allegation that the acts discussed above were intended to obstruct the collective bargaining process, as they occurred shortly after the union had submitted collective bargaining demands and engaged in several negotiation and mediation sessions with the employer. Recalling the importance which it attaches to the obligation to negotiate in good faith for the maintenance of the harmonious development of labour relations [see* ***Digest****, op. cit., para. 934] the Committee requests the Government to take the necessary measures to ensure that the union and the employer engage in good faith negotiations, with a view to concluding a collective agreement on terms and conditions of employment, and to keep it informed of the progress made in this regard.*

The Committee's recommendations

1309. ***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 review the situation of the 178 trade unionists who had resigned from their jobs and, if the allegations are found to be true, to take the necessary measures for their reinstatement, should they still so desire. If the competent court finds that reinstatement is not possible, the Committee requests the Government to ensure that they are provided with adequate compensation, so as to constitute sufficiently dissuasive sanctions against anti-union discrimination.

(b) The Committee requests the Government to ensure that the Labour Court, in its hearing of the dismissal of the ten trade unionists, is in full possession of all the material facts referred to above, including the report of the NHRC. It trusts that the Court will take due account of the Committee's conclusions, particularly as concerns the need for effective protection – including the remedy of reinstatement – against acts of anti-union discrimination, and requests the Government to transmit a copy of the judgement once it is handed down.

(c) The Committee requests the Government to take the necessary measures to ensure that the union and the employer engage in good faith negotiations, with a view to concluding a collective agreement on terms and conditions of employment, and to keep it informed of the progress made in this regard.

CASE NO. 2592

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

Complaint against the Government of Tunisia presented by — Education International (EI) and — the General Federation of Higher Education and Scientific Research (FGESRS)

Allegations: Refusal to recognize the General Federation of Higher Education and Scientific Research (FGESRS), anti-union discrimination against union leaders and violations of the right to collective bargaining

1310. The Committee last examined this case at its June 2008 meeting, when it presented an interim report to the Governing Body [see 350th Report, paras 1540 to 1588, approved by the Governing Body at its 302nd Session].

1311. The complainant organizations transmitted additional information in a communication of 16 February 2009. The Government sent information and observations in communications dated 14 August 2008 and 6 March 2009.

1312. Tunisia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Workers' Representatives Convention, 1971 (No. 135).

A. Previous examination of the case

1313. In its previous examination of the case in June 2008, the Committee made the following recommendations [see 350th Report, para. 1588]:

(a) The Committee requests the Government to provide a copy of the court ruling of first instance revoking the dissolution of the general trade unions by the unification congress of July 15, 2006 and to keep it informed of the outcome of proceedings that are under way.

(b) The Committee expects that a final court ruling will be handed down very soon concerning the legitimate representation of the SGESRS and requests the Government to keep it informed in this respect.

(c) In view of the contradictory information provided by the complainants and the Government, the recent history of the trade union movement in the higher education and scientific research sector, the legal proceedings under way, the process currently under way which appears to involve individual negotiations with various trade union structures of the sector and, lastly, the alleged favouritism shown by the Government towards non-representative trade union organizations, the Committee considers that, once the court rulings have been handed down and if it proves necessary, with the agreement of the FGESRS and the other trade union structures concerned, the Government should put in place an independent mechanism for the objective determination of the representativeness of the social partners in the sector. The Committee expects that the procedures for determining such representativeness, particularly the designation of an independent body for this purpose, will be established quickly by mutual agreement, and requests the Government to take all the appropriate measures to recognize the trade union structures whose representativeness in the sector has been objectively demonstrated and to formally recognize their right to conclude collective agreements. The Government is requested to indicate any developments in this respect. The Committee reminds the Government that it can avail itself of ILO technical assistance if it so wishes.

(d) The Committee expects that the Government will ensure protection against anti-union discrimination and, deploring the assault on union member Moez Ben Jabeur, requests the Government to keep it informed of any court rulings handed down in this respect.

(e) The Committee requests the Government to hold negotiations with the FGESRS and requests that the latter's wage demands be included in these negotiations and to keep it informed of any agreements concluded.

B. The complainants' new allegations

1314. In a communication of February 16, 2009, the complainant organizations provided further information concerning their legal actions instituted against the UGTT's 15 July 2006 decision to, through the FGESRS, constitute in a single structure the various bodies and categories of teachers and university researchers. They indicate, in particular, that it is unfounded to state, as the Government claims, that the Trade Union of Higher Education Lecturers and Professors was able to obtain a court decision quashing the unifying congress of 15 July 2006 during which the FGESRS was constituted. The complainant organizations specify that it was in fact a summary motion introduced by the Trade Union of Higher Education Lecturers and Professors on 27 July 2006 before the Court of First Instance of Tunis that rendered its decision on 10 May 2008. The summary judgement issued by the Court, a copy of which has been provided by the complainant organizations, declared inadmissible the request to suspend the 15 July 2006 decision of the UGTT to dissolve the Trade Union of Higher Education Lecturers and Professors. Moreover, the complainant organizations denounce this as a dilatory action (a judgement handed down on 10 May 2008 following a summary motion introduced 27 July2006), even though the procedure was urgent, and they consider it a manoeuvre intended to create the belief that there is a crisis in union representation within the higher education and scientific research sector. The complainant organizations recall that a further example of such manoeuvres by the Government is the fact that the courts have not yet definitively pronounced on the case dating from 2003 in which certain members of the SGESRS 2001 committee oppose the UGTT's decision to dissolve the union's committee in 2002.

C. The Government's observations

1315. In communications dated 14 August 2008 and 6 March 2009, the Government sent its observations on the follow-up to the Committee's recommendations.

1316. Firstly, the Government reaffirms its commitment to guarantee the rights and well-being of workers in accordance with the international labour standards, including the 58 Conventions it has ratified. It also recalls that the right to organize is guaranteed and enshrined in the national Constitution as well as in the labour legislation.

1317. Furthermore, the Government indicates that in Tunisia social dialogue and collective bargaining are well established and rooted in tradition. Collective bargaining therefore takes place in both the public and private sectors. It mentions as an example the various rounds of negotiations on wages and on the improvement of working conditions, including the seventh round launched in March 2008. The Government also indicates that the protection of trade union representatives has been further strengthened by the ratification of the Workers' Representatives Convention, 1971 (No. 135), and that trade union representatives may be dismissed only with the approval of the Director General of the Labour Inspection and Conciliation Directorate and may appeal to the competent judicial body in the event of a dispute.

1318. With regard to the recommendations made by the Committee when it last examined the case, the Government indicates that a copy of the court ruling of first instance revoking the dissolution of the general trade unions by the unification congress of 15 July 2006 requested by the Committee (recommendation (a)) was already sent to the Office in 2007. In its communication of 6 March 2009, the Government adds, concerning the judgement of 10 May 2008 by the Court of First Instance of Tunis, that it was an order handed down following a summary motion by one of the unions herein below. However, the case is ongoing and a decision on the substance will be handed down by the Court of First Instance of Tunis which adjourned until 8 April 2009 for exchange of pleadings (case No. 71409/28).

1319. With regard to the Committee's recommendation expressing the firm hope that a final court ruling will be handed down very soon concerning the legitimate representation of the General Trade Union of Higher Education and Scientific Research (SGESRS) (recommendation (b)), the Government may not intervene in the court proceedings to speed up the ruling.

1320. With regard to the recommendation concerning the establishment of an independent mechanism for the objective determination of the representativeness of the social partners in the higher education and scientific research sector (recommendation (c)), section 39 of the Labour Code already establishes a mechanism for determining the representativeness of the social partners by providing that, in the event of a dispute concerning the representativeness of one or more trade union organizations, an order issued by the Secretary of State for Youth, Sport and Social Affairs, following consultation with the National Social Dialogue Committee, shall determine those which, in the context of the branch of activity and territory concerned, shall be called upon to conclude the collective agreement. In the present case, since the dispute has been referred to the courts, the Minister of Social Affairs, Solidarity and Tunisians Abroad, who is now competent to issue orders of this kind, may issue an order only after the final ruling has been handed down.

1321. With regard to the issue of ensuring protection against anti-union discrimination (recommendation (d)), this principle will be respected, including in the case of the trade unionist Mr Moez Ben Jabeur, who suffered an assault. In this regard, since the Government is not a party to the case brought before the criminal court by Mr Moez Ben Jabeur against one of his colleagues, it will not be able to provide the court ruling on that case, as requested by the Committee, since the documents are communicated only to the parties in accordance with the provisions of the Code of Criminal Procedure.

1322. With regard to the Committee's recommendations concerning the negotiations to be held with the General Federation of Higher Education and Scientific Research (FGESRS) on matters including wages demands (recommendation (e)), the FGESRS is part of the delegation of the Tunisian General Labour Union (UGTT) which is currently negotiating with government representatives on the improvement of the financial and occupational conditions of public employees in the context of the seventh round of collective bargaining that led to salary increases for 2008 to 2010. Moreover, all the trade union bodies were consulted when the Higher Education Act was being drawn up.

1323. Finally, the Committee will be kept informed of any developments relating to all the points raised.

C. The Committee's conclusions

1324. *The Committee recalls that, in the present case, Education International (IE) and the FGESRS alleged refusal by the authorities to recognize the FGESRS, anti-union discriminatory measures against trade union leaders and violations of the right to collective bargaining.*

1325. *In its previous examination of the present case, the Committee noted the information provided on a dispute that had existed within the SGESRS since 2002. The trade union concerned had appointed an executive committee in 2001 but, following the UGTT's decision of 2 April 2002 to dissolve this committee, a new one was appointed in 2003. However, some members of the 2001 committee filed an appeal before the courts to challenge the dissolution decision taken by the UGTT and obtained a court of first instance ruling that revoked the dissolution decision of 2002 (ruling of 7 June 2003 of the Court of First Instance of Tunis provided by the Government).*

1326. *Furthermore, the Committee noted that the FGESRS was established as the result of a unification congress organized by the UGTT on 15 July 2006 in order to represent, under a single structure, the various bodies and categories of university teachers and researchers and that this congress also decided to dissolve the unions affiliated to the UGTT which had until then represented these bodies, namely, the SGESRS and the Trade Union of Higher Education Lecturers and Professors. The Committee noted that, according to the complainant organizations, the procedure followed to organize the unification congress of 15 July 2006 complied with Circular No. 67 of 8 March 2004 concerning the organization of unification congresses at the university level, as well as the internal regulations of the UGTT in terms of the consent of the unions affected by the unification. However, the Committee also noted the Government's indication that some general unions, namely the Trade Union of Higher Education Lecturers and Professors and the dissident executive committee (elected in 2001) of the SGESRS, were opposed to this unification process and challenged their dissolution before the national courts, winning their case before the courts of first instance. It therefore requested the Government to provide a copy of the ruling in question. The Committee takes note of the summary judgement handed down by the Court of First Instance of Tunis on 10 May 2008, provided by the complainant organizations, by which the Trade Union of Higher Education Lecturers and Professors undertook its request to suspend the UGTT decision of 15 July 2006 to dissolve the aforementioned union. The Committee notes that the complainant organizations, although indicating that the court decision confirms that the creation of the FGESRS was legal and legitimate, denounce it as a dilatory action although it was an urgent proceeding; they consider it is a manoeuvre intended to create the belief that there is a crisis in union representation within the higher education and scientific research sector. The Committee notes the Government's indication that a copy of this court ruling of the first instance revoking the decision to dissolve the general unions made by the unification congress of 15 July 2006 has already been sent to the Office. The Committee notes furthermore that, according to the Government, the judgement issued on 10 May 2008 by the Court of First Instance of Tunis is an order following a preventative summary recourse by one of the unions herein below, but the case is still ongoing and a decision on the substance will be issued by the Court of First Instance of Tunis which adjourned until 8 April 2009 for exchange of pleadings (case No. 71409/28).*

1327. *The Committee notes that the court ruling provided by the Government in its 2007 reply concerns the ruling of the Court of First Instance of Tunis of 7 June 2003 revoking the UGTT's decision of April 2002 to dissolve the executive committee of the SGESRS. The Committee requests the Government to provide all useful information to support its affirmation concerning a legal decision that quashed the dissolution of the general unions by the UGTT unifying congress of 15 July 2006, to provide if need be the pertinent documents and to indicate, further to the most recent information provided by the complainant organizations, any follow-up to the summary judgement handed down by the Court of First Instance of Tunis on 10 May 2008 and any other decision issued in case No. 71409/28 that it cited.*

1328. *With regard to the matter of the legitimate representation of the SGESRS, the Committee noted the indication that legal proceedings are still under way following a ruling of 7 June 2003 by the Court of First Instance of Tunis revoking the UGTT's decision of April 2002 to dissolve the executive committee of the SGESRS. The Committee noted that, according to the complainant organizations, this court appeal was at odds with the UGTT's internal regulations. The Committee also noted that Education International recognized the committee elected in 2003, with Mr Kaddour as General Secretary, as legitimately representing the SGESRS and that the UGTT instructed Mr Béchir Hamrouni, whose union mandate had been suspended in April 2002, to stop using the official stamp and documents of the SGESRS and to return them immediately or face disciplinary measures. The*

Committee expressed concern at the length of the proceedings and the firm hope that a final court ruling would be handed down very soon.

1329. *In this regard, the Committee notes the complainant organizations' statement that no definitive legal decision has yet been handed down in this case. The Committee also notes the Government's indication that it may not intervene in court proceedings to speed up the process of handing down a ruling, in accordance with the principle of the separation of powers. The Committee would once again recall that justice delayed is justice denied [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth edition, 2006, para. 105] and that in this case, the absence of a swift court ruling handed down by an impartial and independent authority has created uncertainty with regard to the trade union representation in the sector. The Committee trusts that the Government will be able very soon to send a final court ruling on the legitimate representation of the SGESRS and that it will indicate any action taken following that ruling.*

1330. *Furthermore, with regard to the complainants' allegations concerning the difficulties encountered in establishing normal relations between the FGESRS and the public authorities, as well as the establishment of parallel trade union organizations which the responsible ministry was consulting rather than negotiating with the most representative organization in the sector, namely the FGESRS, the Committee noted that neither the establishment of the FGESRS nor the activities carried out by it as a representative of the various bodies and categories of university teachers and researchers appeared to be contested by the Ministry of Higher Education, Scientific Research and Technology or by the other trade union organizations of the sector. The Committee also noted the Government's indication that there were other higher education unions not affiliated to the UGTT and trade union organizations dissolved by the UGTT which had challenged the dissolution decision before the courts and won their case. Hence, pending a final court ruling, the Government was continuing to consult all trade union organizations of the sector. Taking into account the contradictory information provided by the complainant organizations and the Government, the Committee recommended that, once the court rulings had been handed down and where necessary, the Government should carry out an objective determination, with the agreement of the trade union organizations concerned, of the representativeness of the social partners consulted by the Ministry of Higher Education, Scientific Research and Technology.*

1331. *In this regard, the Committee notes the Government's reply to its recommendation. It notes the indication that section 39 of the Labour Code already establishes a mechanism for determining the representativeness of the social partners by providing that, in the event of a dispute concerning the representativeness of one or more trade union organizations, an order issued by the Secretary of State for Youth, Sport and Social Affairs, following consultation with the National Social Dialogue Committee (the Government indicates that this power is currently held by the Minister for Social Affairs, Solidarity and Tunisians Abroad), shall determine those which, in the context of the branch of activity and territory concerned, shall be called upon to conclude the collective agreement. Furthermore, according to the Government, since the dispute has been referred to the courts, the ministerial order may be issued only after the final ruling has been handed down.*

1332. *The Committee reiterates that it is not competent at this stage to form an opinion on the representativeness of any trade union organization in the sector. However, if that proves necessary, the determination of the most representative trade union should be based on objective and pre-established criteria so as to avoid any opportunity for partiality or abuse.*

1333. *Since it has not received specific information from the Government on such criteria, the Committee requests the Government to indicate the objective and pre-established criteria*

which have been set for determining the representativeness of the social partners in accordance with section 39 of the Labour Code, in particular in the higher education and scientific research sector. If such criteria have not yet been established, the Committee hopes that the Government will take all the necessary steps to establish such criteria in consultation with the social partners and that it will keep the Committee informed of developments in this regard.

1334. *The Committee notes the Government's statement that protection against anti-union discrimination is guaranteed and that this principle will be respected, including in the case of the trade unionist Mr Moez Ben Jabeur who was the victim of an assault. The Committee also notes the indication that as the Government is not a party to the case brought before the criminal court by Mr Moez Ben Jabeur against one of his colleagues, it will not be able to provide a copy of the court ruling on this case, as requested by the Committee, since the documents are communicated only to the parties to the dispute, in accordance with the provisions of the Code of Criminal Procedure. In this regard, the Committee recalls that it makes a point of requesting the most precise information possible so that it may examine the allegations before it in full knowledge of the facts. Hence, when legal proceedings are instituted, it asks the governments concerned to communicate the texts of any judgements that have been delivered together with the grounds adduced therefore. The Committee has emphasized that when it requests a government to furnish judgements in judicial proceedings, such a request does not reflect in any way on the integrity or independence of the judiciary. The very essence of judicial procedure is that its results are known, and confidence in its impartiality rests on their being known [see* ***Digest****, op. cit., para. 113]. The Committee emphasizes that in the present case it is competent to express an opinion, following an examination of all the information available and above all the texts of rulings, on the allegations of anti-union violence and to determine whether the assault on the trade unionist Mr Moez Ben Jabeur is a matter which relates to the exercise of his trade union rights. Consequently, the Committee requests the Government or the complainant organizations to keep it informed of any court ruling handed down in the case of the assault on the trade unionist Mr Moez Ben Jabeur.*

1335. *The Committee notes the Government's indication that the FGESRS forms part of the UGTT delegation which is currently negotiating with government representatives on the improvement of the financial and occupational conditions of public employees in the context of the seventh round of collective bargaining that resulted in salary increases for 2008 to 2010 and that all trade union bodies were consulted when drawing up the Higher Education Act. The Committee requests the Government to provide, as intended based on its reply, any collective agreement concluded with the participation of the FGESRS.*

The Committee's recommendations

1336. ***In the light of its foregoing conclusions, the Committee requests the Governing Body to approve the following recommendations:***

(a) The Committee requests the Government to provide all useful information to support its affirmation concerning a legal decision that quashed the dissolution of the general unions by the UGTT unifying congress of 15 July 2006, to provide the pertinent documents as necessary and to indicate further on the most recent information provided by the complainant organizations, any follow-up to the summary judgement handed down by the Court of First Instance of Tunis on 10 May 2008 and any judgement issued on case No. 71409/28 that it cited.

(b) The Committee trusts that the Government will be able very soon to submit a final court ruling concerning the legitimate representation of the SGESRS and that it will indicate any action taken following that ruling.

(c) The Committee requests the Government to indicate the objective and pre-established criteria which have been set for determining the representativeness of the social partners in accordance with section 39 of the Labour Code, particularly in the higher education and scientific research sector. If such criteria have not yet been established, the Committee hopes that the Government will take all the necessary steps to establish such criteria in consultation with the social partners and that it will keep the Committee informed.

(d) The Committee requests the Government or the complainant organizations to keep it informed of any court ruling handed down in the case of the assault on the trade unionist Mr Moez Ben Jabeur.

(e) The Committee requests the Government to provide any collective agreement concluded with the participation of the FGESRS.

CASE NO. 2631

DEFINITIVE REPORT

Complaint against the Government of Uruguay presented by the Confederation of Civil Service Trade Unions (COFE)

Allegations: The complainant organization challenges the Ministry of Labour and Social Security resolution declaring air traffic control to be an essential service and ruling that the services to be provided during a strike should be decided upon by the Ministry of National Defence

1337. The complaint is contained in a communication from the Confederation of Civil Service Trade Unions (COFE) dated 28 January 2008. COFE sent further information in a communication dated June 2008.

1338. The Government sent its observations in a communication dated 26 August 2008.

1339. Uruguay 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

1340. In its communication dated 28 January 2008, COFE states that Uruguay is one of the few exceptions to the system of codification of labour law, both individually and collectively.

Collective labour law in Uruguay constitutes a genuine edifice of both doctrine and case law. That edifice is based on a number of specific legislative components which provide foundations in terms of standards, programmes and principles. Thus, the most important legal standards are article 57 of the Constitution of the Republic, which provides that the law shall promote the organization of trade unions, granting them certain exemptions and establishing regulations for giving them legal personality, and ILO Conventions Nos 87, 98, 151 and 154 on freedom of association and on the right to organize and collective bargaining, ratified by Act No. 12030 of 27 November 1953 and Act No. 16039 of 8 May 1989, respectively.

1341. With regard to freedom of association for public employees, reference should be made to the importance for Uruguayan law of the provisions of Convention No. 151, particularly Article 4 thereof, which states that they must enjoy protection against anti-union discrimination. At national level, the Parliament of the Republic recently approved Act No. 17940 of 2 January 2006 concerning protection of freedom of association, according to which actions or omissions that breach the terms of the abovementioned law are deemed null and void and specific procedures are laid down to safeguard the exercise of freedom of association. The complainant alleges that it is precisely these standards which have been violated by anti-union administrative acts issued by the Ministry of Labour and Social Security and the Ministry of National Defence.

1342. COFE indicates that, on 28 April 2007, the Uruguayan Air Traffic Controllers' Association (ACTAU) issued a statement concerning the resolution passed by the general assembly the previous day, whereby it decided "to endorse the measures adopted by COFE to carry out a work stoppage on 23 May 2007". It also declared that "services will be provided for flights in the areas of health care, search and rescue operations and humanitarian assistance". On 17 May ACTAU and COFE, the latter represented by its President Mr Pablo Cabrera and organizational secretary Mr Ricardo Barboza, participated in a meeting at the Labour and Social Security Ministry convened by the national labour director and attended by the Ministry's Under-Secretary for Defence and its human resources director. An offer was made to ACTAU at the meeting to open negotiations relating to their set of demands in exchange for calling off the stoppage planned for 23 May. On 21 May the Government's proposal was put to the ACTAU general assembly, which decided to go ahead with the stoppage as planned.

1343. On 22 May 2007, the Labour and Social Security Ministry, with the signature of the labour and defence ministers, issued Resolution No. 70/007 declaring air traffic control to be an essential service. It also stated that it was for the National Defence Ministry to decide what services were to be provided during the strike period. The National Defence Ministry resolution declared the following to be essential services: air traffic control services, aeronautical operation and information services, aeronautical police services, and electrical/electronic system operation and maintenance services.

1344. COFE asserts that such resolutions constitute an unlawful restriction of one of the fundamental rights of freedom of association, namely the right to strike, on the following grounds. Firstly, COFE members ACTAU (the Uruguayan Air Traffic Controllers' Association) and AFAC (the Association of Civil Aviation Officials) made provision for the work stoppage called by the unions to include coverage of the services required for flights of a humanitarian nature (health care and technical emergencies). In other words, the confederation itself imposed limits on the exercise of its own right to strike, precisely by establishing minimum coverage of the essential needs of the service. COFE therefore considers it to be clear that the essential services imposed by law were absolutely unnecessary. Hence, and also because of the form in which the above resolutions were drafted, COFE considers that the Government's objective was to limit exercise of the right to strike to a specific category of public servants.

1345. ACTAU considers that analysis of the various elements involved can only lead to this conclusion. Indeed, a causal link can be seen between the Government's objective and the methods and grounds invoked in the unlawful limitation of this fundamental right. If the workers themselves had guaranteed to provide specific emergency services to cover humanitarian flights, the authorities can have had no other objective than to impose limits on the right to strike of a particular category of public employees. According to COFE, all services were declared to be essential without distinguishing between categories of duties or officials, and the declaration of their essential nature was not made in conjunction with any specific dispute.

1346. COFE points out that the resolution issued by the labour and defence ministers is based on Freedom of Association Committee principles which have been used to justify limitation of the strike by the Government but have been taken out of context without the analysis required under the fundamental principles on which all case law is based.

1347. COFE asserts that the declaration of the essential nature of a service depends on the criteria used to define it, i.e. whether or not there is a danger to life, safety or health. Defining a service as essential cannot be done without an in-depth analysis of these determining factors. The cases referred to by the Government highlight precisely the need for a case-by-case analysis, since use of the term "may" indicates the existence of possibilities. In other words, it is on the basis of a case-by-case analysis using the criteria deriving from the principles of the Freedom of Association Committee that the services in question may or may not be declared essential. Analysis always leads to a specific, factual situation, and herein lies the violation of freedom of association by the Government. COFE asserts that the specific situation showed that the declaration of the services concerned as essential was not necessary and hence the Government's declaration was aimed simply at limiting a fundamental right of all public or private sector workers.

1348. In its communication of June 2008, COFE alleges that the defence minister, by means of a new resolution dated 24 December 2007, declared air traffic control, aeronautical operations and information, aeronautical police operations and electric/electronic systems operation and maintenance, to be essential services. COFE asserts that this resolution, which is identical in tone to the one which gave rise to the complaint, is proof of the fact that the Government is obstructing the exercise of the right to strike in air traffic control.

B. The Government's reply

1349. In its communication of 26 August 2008, the Government declares that, as regards the trade union's self-regulation with respect to the right to strike, the argument used is unacceptable. The Government states that, with respect to essential services, there is a delicate balance between the rights of the workers concerned and the rights of the community as a whole. Under Uruguayan law, the Constitution of the Republic (article 65) imposes the principle of the continuity of public services and in a democratic State only the public authority can decide what constitutes essential services (in the present case, these were technically determined by the competent ministry, namely the National Defence Ministry). The case of the air traffic controllers is perhaps the most visible example of essential services, since human life is at stake in a stark and immediate form. In case of doubt, the right to life has to take priority.

1350. The Government states that the complaint also argues that paragraph 587 of the *Digest of decisions and principles of the Freedom of Association Committee* indicates that various services, including "transport generally", "do not constitute essential services in the strict sense of the term". Even accepting the dubious inclusion of air traffic controllers under the heading of "transport generally", the definition would be generic and hence the specific provision concerning air traffic controllers would prevail. The Government finds it strange

that the complaint does not refer to "compensatory guarantees" or to the specific means of dispute resolution which have been established by the Freedom of Association Committee.

1351. The Government points out in this case that it is well known that both the Labour Ministry and the National Defence Ministry have maintained, and still maintain, mechanisms for dialogue and bargaining at the highest political level. Under the labour relations system in Uruguay, it is difficult to resolve a dispute by arbitration where the latter has not been promoted by the trade union. Furthermore, dialogue is in progress regarding the possibility of concluding a bilateral agreement on minimum services, which, in the Government's view, complies with the criteria of the Freedom of Association Committee. As regards COFE's claim that the Government's objective was simply to limit a fundamental right of all workers in the public and private sectors, the Government points out that it is necessary to define the legal and institutional parameters which determine its action in this matter. Three constitutional provisions lay down guidelines which must be considered together when resolving specific cases.

1352. Article 57 of the Constitution of the Republic states: "Striking is a union right. The exercise and effectiveness thereof shall be regulated on this basis". It should be understood here that the legislative provision, in recognizing a general legal principle, establishes a right which is not absolute. The legal system of a State specifies the legal entitlements which it wishes to safeguard. Government administration must be aligned to this and therefore it is not a question of protecting a solitary legal entitlement but of effectively safeguarding them all. The first paragraph of article 59 of the Constitution states that the law shall establish public service regulations on the basis that the public servant exists for the service and not vice versa. Article 65 of the Constitution states that the law may prescribe, inter alia, the means and procedures which the public authority may use for maintaining the continuity of services.

1353. Specific facts must be analysed according to the contexts and processes of which they form a part. It should be emphasized that the Government has been scrupulous in its compliance with Article 4 of Convention No. 151 regarding freedom of association for public employees. The Government has also been one of the parties backing the adoption of Act No. 17940 of 2 January 2006 on the protection of freedom of association, referred to by the complainants in the present case. In Uruguay the regulations applicable to disputes in essential services have a legislative basis, Resolution No. 70/007 of 22 May 2007 declaring air traffic control to be an essential service having been adopted in accordance with section 4 of Act No. 13720 of 16 December 1968 and section 9(2) of Legislative Decree No. 14791 of 8 June 1978.

1354. The decision made by the National Defence Ministry, in exercise of its powers, regarding the services to be provided was based on the definition of the duty of ensuring operational safety laid down in the bipartite agreement of 12 November 2007 negotiated between the National Defence Ministry (MDN), on the one hand, and the Confederation of Civil Service Trade Unions (COFE), the Uruguayan Air Traffic Controllers' Association (ACTAU) and the Association of Civil Aviation Officials (AFAC), on the other. As regards the measures on strike limitation in the essential services, it should be noted that a meeting was convened by the national labour director on 17 May 2007 which was attended by the National Defence Ministry authorities and representatives of ACTAU and COFE and at which the former proposed the launch of negotiations to deal with the officials' claims, in return for an undertaking to call off the stoppage announced for 23 May 2007. This proposal was rejected by the ACTAU general assembly. However, negotiations took place subsequently which resulted in agreements such as the MDN/COFE–ACTAU–AFAC bipartite bargaining agreement of 12 November 2007.

C. The Committee's conclusions

1355. *The Committee observes that in the present case the complainant organization objects to Ministry of Labour and Social Security Resolution No. 70/007 of 22 May 2007 declaring air traffic control to be an essential service and that the Ministry of Defence had to decide which services were to be provided during the strike period (the complainant alleges that the Defence Ministry again declared air traffic control an essential service in December 2007). The Committee also observes that the complainant states that the Government's objective was to limit the right to strike of a specific category of public servants and that declaring air traffic control services essential was not necessary in view of the fact that COFE, AFAC stated that the stoppage would include coverage of services of a humanitarian nature (health care and technical emergencies).*

1356. *The Committee notes the Government's statement to the effect that: (1) as far as essential services are concerned, there is a delicate balance between the rights of the workers and the rights of the community; (2) article 65 of the Constitution of Uruguay imposes the principle of the continuity of public services and only the public authority can decide what those services are; (3) the case of the air traffic controllers is possibly the most visible example of essential services since human life may be at stake; (4) the Constitution of Uruguay establishes the right to strike but this is not absolute; (5) the determination by the National Defence Ministry of the services to be provided was based on the definition of the duty of ensuring operational safety; (6) on 17 May 2007 a meeting convened by the national labour director took place between the authorities, the National Defence Ministry and representatives of ACTAU and COFE, at which it was proposed to launch negotiations to deal with the officials' claims, in return for an undertaking to call off the stoppage announced for 23 May 2007, but this proposal was rejected by ACTAU, and (7) since then negotiations took place, however, which resulted in agreements such as the bipartite bargaining agreement of 12 November 2007 between the National Defence Ministry, COFE, ACTAU and AFAC.*

1357. *The Committee recalls that "the right to strike may be restricted or prohibited: (1) in the public service only for public servants exercising authority in the name of the State; or (2) in essential services in the strict sense of the term (that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population)", and includes "air traffic control" in the list of services that "may be considered to be essential" [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth edition, 2006, paras 576 and 585]. The Committee also recalls 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., para. 596].*

1358. *Accordingly, the Committee considers that the challenged resolution (Ministry of Labour and Social Security Resolution No. 70/007 of 22 May 2007) declaring air traffic control to be an essential service does not violate the principles of freedom of association as regards the right to strike. Furthermore, the Committee notes with interest that workers in the sector enjoy the right to collective bargaining and that they have reached an agreement with the Defence Ministry. Under these circumstances, the Committee considers that this case does not call for further examination.*

The Committee's recommendation

1359. ***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. 2254

INTERIM REPORT

Complaint against the Government of the Bolivarian Republic of Venezuela presented by — the International Organisation of Employers (IOE) and — the Venezuelan Federation of Chambers of Commerce and Manufacturers' Associations (FEDECAMARAS)

Allegations: Marginalization and exclusion of employers' associations from the decision-making process, thereby excluding them from social dialogue, tripartism and consultations in general (particularly in relation to key legislation that directly affects employers) and failing to comply with the recommendations of the Committee on Freedom of Association; arrest and prosecution of Mr Carlos Fernández in retaliation for his activities as president of FEDECAMARAS; acts of discrimination and intimidation against employers' leaders and their organizations; legislation at odds with civil liberties and the rights of employers' organizations and their members; violent assault on the FEDECAMARAS headquarters by pro-government mobs, who caused damage and threatened employers; bomb attack on the FEDECAMARAS headquarters; acts of favouritism by the authorities with respect to non-independent employers' organizations

1360. The Committee last examined this case at its June 2008 meeting and presented an interim report to the Governing Body [see 350th Report, paras 1589–1678, approved by the Governing Body at its 302nd Session (June 2008)].

1361. Subsequently, the Government sent new observations in communications dated 10 June and 17 October 2008.

1362. The Bolivarian Republic of Venezuela has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

1363. At its June 2008 meeting, the Committee considered it necessary to draw the special attention of the Governing Body to this case due to the extreme seriousness and urgency of the matters dealt with herein and made the following recommendations on the matters still pending [see 350th Report, paras 4 and 1678]:

(a) The Committee again urges the Government to establish a national, high-level joint committee in the Bolivarian Republic of Venezuela with the assistance of the ILO, to examine each and every one of the allegations and issues in this case in order to resolve problems through direct dialogue. The Committee expects that the Government will not again postpone the adoption of the necessary measures and urges the Government to keep it informed in this regard.

(b) With regard to the allegations of violence and intimidation against employers' organizations and their leaders, the Committee draws attention to the seriousness of the allegations made by the IOE and must express its profound concern. The Committee deplores that, months after the attacks and threats against the FEDECAMARAS headquarters and the considerable damage caused, the Government has not communicated any results in terms of identifying the names of the perpetrators of the attacks on the FEDECAMARAS headquarters, and that it indirectly casts doubt on the May and November 2007 and February 2008 attacks and has not clarified the alleged involvement of individuals or groups close to the regime.

(c) Given that the present situation is incompatible with the requirements of Convention No. 87, the Committee once again requests the Government to effectively ensure the security of the FEDECAMARAS headquarters and its leaders and to take measures to step up investigations into the bomb attack of 28 February 2008 at the FEDECAMARAS headquarters and if it has not been done to report the May and November 2007 attacks on the FEDECAMARAS headquarters to the competent authorities in order to establish the facts, prosecute those responsible and punish them severely, to ensure that such crimes are not repeated. The Committee urges the Government to keep it informed in this regard.

(d) With regard to the allegations of: violations of the private property of several employers' leaders in the agricultural and livestock sector; victims of invasions; the confiscation of land or expropriation without fair compensation, frequently in spite of rulings made by the judicial authorities regarding the restitution of lands to their owners, the Committee once again requests the Government to respond precisely to the specific allegations made by the IOE, including those relating to the measures taken against employers' leaders Mr Mario José Oropeza and Mr Luis Bernardo Meléndez, and the serious allegations regarding the abduction of three sugar producers in 2006 and the death of six producers following an assault.

(e) With regard to the alleged harassment of employers' leaders through hostile speeches given by the President of the Republic in which he makes damaging remarks and disparages employers' leaders, threatening to confiscate their property on supposed grounds of social interest, the Committee once again requests the Government to provide its observations in this regard without delay.

(f) Given the seriousness of the various allegations above, which show a climate of intimidation surrounding leaders of employers' organizations and their members, the Committee stresses its concern and emphasizes that freedom of association can only be exercised in conditions in which fundamental rights are fully respected and guaranteed, and that the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and that it is for governments to ensure that this principle is respected.

(g) The Committee once more recalls that the right of workers' and employers' organizations to express their opinions through the press or other social communication media is a fundamental element of freedom of association and that the authorities should abstain from unduly impeding its lawful exercise, and should fully guarantee freedom of expression in general and that of employers' organizations. The Committee requests the Government to guarantee that this principle is respected, in particular with regard to the communications media used by FEDECAMARAS. The Committee also requests the Government to guarantee, through the existence of independent means of expression, the free flow of ideas, essential to the life and well-being of employers' and workers' organizations and to ensure that the authorities do not threaten or intimidate media enterprises.

(h) The Committee requests the Government to send information regarding the prohibition from leaving the country imposed on 15 employers' leaders and to annul the arrest order against former FEDECAMARAS president Mr Carlos Fernández, so that he may return to the country without risk of reprisals.

(i) The Committee expects that a forum for social dialogue will be established in accordance with the principles of the ILO, having a tripartite composition which duly respects the representativeness of workers' and employers' organizations. The Committee requests the Government to keep it informed in this regard and invites it to request technical assistance from the ILO. The Committee also requests it again to convene the tripartite commission on minimum wages provided for in the Organic Labour Act.

(j) Observing that there are still no structured bodies for tripartite social dialogue, the Committee emphasizes once more the importance that should be attached to full and frank consultation taking place on any questions or proposed legislation affecting trade union rights and that it is essential that the introduction of draft legislation affecting collective bargaining or conditions of employment should be preceded by full and detailed consultations with the appropriate independent and most representative organizations of workers and employers. The Committee once again requests the Government to keep it informed with regard to any bipartite and tripartite consultations with FEDECAMARAS and any negotiations or agreements with this central organization or its regional structures and to transmit the corresponding texts. The Committee also requests the Government to ensure that any legislation adopted concerning labour, social and economic issues within the framework of the Enabling Act be subject to real, in-depth consultations with the independent and most representative employers' and workers' organizations, while attempting as far as possible to find shared solutions.

(k) The Committee must reiterate the recommendations made at its November 2007 meeting, and, in particular, its request for information from the IOE and its request for action from the Government with regard to examining directly, with FEDECAMARAS, mechanisms ensuring that "labour solvency" certification is granted in an impartial manner. The Committee requests the Government to keep it informed in this regard.

(l) The Committee notes the Government's statement denying any interference in CONSEVEN, but observes that it has not responded in detail to the IOE's allegations concerning the presence in CONSEVEN of two prominent government figures, who even have responsibility for customs and taxation and the preferential treatment given to the employers' organization, FEDEINDUSTRIA, (privileges in obtaining foreign currency) by comparison with independent enterprises. The Committee requests the Government to send its observations on these allegations and reiterates the importance of ensuring that the Government adopts a neutral attitude when dealing with any workers' or employers' organizations, and to examine all the above areas of potential discrimination against employers or organizations belonging to FEDECAMARAS and to keep it informed in this regard, including with respect to the passage of the draft act on international cooperation, the final version of which it trusts will contain provisions on rapid action in the event of discrimination.

(m) With regard to the IOE's allegations concerning social production enterprises, with privileges bestowed upon them by the State, the Committee once again invites the IOE to provide new information and clarification on these allegations, and requests the

Government to ensure a neutral attitude in treatment of and relations with all employers' organizations and their members.

(n) The Committee notes the allegations of the IOE that the recent organic act creating the Central Planning Commission severely restricts the rights of employers' and workers' organizations and requests the Government to respond to these allegations.

B. The Government's new observations

1364. In its communication dated 10 June 2008, the Government declares with regard to the Venezuelan Federation of Chambers of Commerce and Manufacturers' Associations (FEDECAMARAS) former president Ms Albis Muñoz that Control Court of First Instance No. 25 of the criminal judicial circuit of the Caracas metropolitan area, by means of a ruling of 20 February 2008, ordered the dismissal of the criminal proceedings instituted on the charge of civil rebellion, an offence penalized by section 143(2) of the Penal Code, pursuant to the decree having the rank, value and force of the Special Amnesty Act, published in the *Special Official Gazette* of the Bolivarian Republic of Venezuela No. 5870 of 31 December 2007.

1365. With regard to the attack on the FEDECAMARAS headquarters using a home-made explosive device, the Government states that a statutory investigation was duly launched and is currently in progress, under the responsibility of the Attorney-General's Office. The case (No. 01F20000120-08), which is being dealt with by the 20th Prosecutor's Office, under the responsibility of prosecutor Harrison González, and Control Court No. 34 of the Caracas metropolitan area, is currently in the investigation phase. Various persons have been interviewed and warrants for the arrest of citizens Mr Juan Montoya González and Mr Ivon Burgos have been issued and registered with the National Division for Arrests and Criminal Investigations, which has already undertaken a number of searches. The suspects are wanted on charges of criminal conspiracy and terrorism.

1366. In its communication dated 17 October 2008, the Government voices its dismay and concern at the change in the classification of the case from "active" to "serious and urgent" since it considers that there are insufficient grounds to justify such a classification by the Committee. The Government also states categorically that it has sent replies in due form which are sufficient to dismiss the complainants' allegations and considers that its communications have not been given sufficient validity. It therefore repeats the content of its previous communications, especially those dated 14 September 2007 and 29 February, 3 March and 10 June 2008, and takes this opportunity to request that they be given the valuation they deserve.

1367. With regard to the allegations relating to the Confederation of Socialist Entrepreneurs and the Government's supposed intervention in the constitution and sponsorship thereof, the Government reiterates that Venezuelan citizens have full freedom of association for legitimate purposes and the primary object of national institutions is to guarantee the full exercise of this right without distinction or restriction.

1368. The Government notes with great concern that the information it sent regarding "labour solvency" certification has not been handled with due consideration either. The procedure in question is one of the mechanisms used by the Venezuelan State to guarantee the effective application of workers' human, labour and social rights. As regards labour solvency certification, processes and procedures have been made simpler and easier through computerization, and this constitutes a mechanism whereby the Venezuelan State is adjusting the functions of its institutions, protecting and guaranteeing the observance of labour and social rights by employers, particularly those who wish to conclude contracts with the State.

1369. With regard to the supposed violation of the freedom of expression and information by the withdrawal of the *Canal 2*, *Radio Caracas Televisión (RCTV)* licence, the Government states that administration of the radio frequency spectrum is a matter for the State and it therefore has the power – in accordance with legally established procedures and regulations – to decide whether or not to renew licences issued to individuals. It therefore requests that the allegation of state interference in the activities of the communication media be dismissed, since it is unacceptable for a link to be claimed between an administrative procedure and the exercise of such an important human right as freedom of expression, especially when the TV channel in question continues to offer its services on a subscription basis.

1370. The Government also sends information relating to: economic measures and policies; meetings held with various productive sectors; promotion and staging of business fairs; greater flexibility regarding foreign currency exchange; incentives and facilities for agriculture; and greater participation of the private sector; in order to add weight to its statements made above and to demonstrate its wish to promote and strengthen relations and communication with the various sectors involved in the sociological phenomenon of labour, from a broad and inclusive perspective. In particular, the Government has sent the following information from the press:

– *Announcement of the allocation of funds for strategic producers:*

Caracas, 11 June 2008. In a meeting this evening with some 500 national business leaders at the Hotel Alba, the President of the Republic, Hugo Chávez, invited the private sector of the economy to establish an alliance for constructing "our socialism". …

Economic measures. The first of the measures announced by Chávez is the creation of a fund for strategic productive sectors to which 1,000 million dollars will be assigned for investment purposes, half in the remainder of 2008 and the rest in 2009. Accordingly, he called on the private sector to draw up projects for sectors downstream from production.

He went on to announce the abolition of the 1.5 per cent tax on financial transactions, in recognition of its inflationary nature. …

He also announced a new development in currency controls, whereby registered companies placing requests for up to 50,000 dollars would no longer be required to complete the formalities imposed by CADIVI.

The idea of this measure, he stressed, is to speed up imports of capital goods (plant, components, spare parts and supplies for production).

The President also referred to the revival of business fairs, which he considered to have fulfilled "a very important role in past years". He also said that the *Fábrica Adentro* [literally: inside the factory] programme, already involving more than 1,000 companies, would be given a fresh boost and the special public procurement plan would be revived. A network of social production companies will also be formed and Chávez hopes that these will be connected with the private sector.

In agriculture, he described various initiatives to give stability to producers. Firstly, the "Secure Harvest" support plan involving increased agricultural subsidies; the fixing of a minimum reference price for soya and sunflowers; the "Zero Debt Plan" for writing off the debts of 25,149 small producers who had received resources from the Venezuelan Oil Corporation for the 2004 "Special Sowing Plan" for rice, maize and coffee and who had lost their capacity to pay; the drafting of a law on debt relief for producers facing difficulties in paying private or public banks; and the "Coffee Plan: Stage Two", involving subsidies for primary producers but with no increase in prices for this commodity.

– *Opinion of FEDECAMARAS president Luis Medina on the Government's economic policies, in connection with the invitation issued by the President of the Republic to Venezuelan entrepreneurs to create a national strategic alliance for production:*

In Anzoátegui state on 12 June 2008, FEDECAMARAS president Luis Medina described as positive the economic measures announced this Wednesday by the President of

the Republic, Hugo Chávez, mentioning in particular the greater flexibility in currency exchange controls, the abolition of the tax on financial transactions and the creation of a 1,000 million dollar investment fund.

"We can only welcome such positive announcements from the President of the Republic because we are businessmen and want to strengthen national production," said Medina.

In Anzoátegui the FEDECAMARAS president applauded the invitation of the Head of State, Hugo Chávez, to Venezuelan business leaders to create a national strategic alliance for production in order to tackle inflation, while suggesting the setting up of forums for dialogue with the productive sector in each region.

"Any one of these measures is beneficial and helps us all," he concluded.

– *Economic measures announced by the President of the Bolivarian Republic of Venezuela:*

Hugo Chávez, President of Venezuela, announced new economic measures designed to turn Venezuela into a "medium-sized" power in the long term while seeking in the short term to reverse the stagnation in the economy and reduce inflation.

The meeting was attended by executive cabinet ministers, presidents of state companies and representatives of the private sector such as Lorenzo Mendoza from Empresas Polar, Oswaldo Cisneros from Digitel and Juan Carlos Escotet from Banesco, who the president referred to several times in his speech.

The measures announced to boost the Venezuelan economy can be summarized as follows:

Industrial policy

– Creation of a programme to boost industrial production with a development fund for productive sectors which will comprise 1,000 million dollars for new private sector investment projects, specifically in strategic sectors for the country such as foodstuffs, housing, energy and manufacturing.

– Revival of business and investment fairs.

– Fresh boost for the *Fábrica Adentro* programme in its third stage to form joint State-private sector enterprises.

– Revamping of the public procurement plan designed to call on the country's means of production to supply the State's needs in goods and services.

– Formation of networks of social capital enterprises to ensure connections with networks of private enterprises.

Agricultural policy

– In order to give stability and security to agricultural producers, the "**Secure Harvest**" support plan is being set up to increase subsidies which will guarantee producers the elimination of losses incurred before the harvest as a result of increases in production costs. A minimum reference price is also established for soya (Bs. 1.38 per kilo) and sunflowers (Bs. 2.10 per kilo) to improve the quality of life of more than 5,000 producers of these commodities.

– **Zero debt**. The debts of more than 25,000 small producers of maize, rice and coffee who received credits from FONDAFA are written off.

– **Debt relief** plan for producers facing difficulties paying private banks for agricultural credits through refinancing designed to increase national production.

– "**Coffee Plan: Stage Two**" increases subsidies to primary producers but without stopping price regulation in this category.

Currency exchange policy

– **New developments** are announced in **currency controls**. For requests for up to 50,000 dollars for the importation of capital goods or supplies, companies are released from the obligation to present documentation required by CADIVI for foreign currency

so as to make the allocation of dollars to these categories more flexible and reduce response times to 48 hours for authorization of the request and 72 hours for payment.

Finally, President Hugo Chávez announced the **abolition of the tax on financial transactions**. He called for efficiency in investment and greater efforts to make savings and stop wastage. No measures were announced at the meeting for lowering interest rates.

– *Announcements by the Executive Vice-President of the Republic, indicating his intention to maintain an open dialogue with agricultural producers:*

On 16 October 2008, the Executive Vice-President, Ramón Carrizalez, gave assurances that there were plentiful supplies of all food categories in the country, after the meeting this Thursday with representatives of the food production sector at the Office of the Vice-President of the Republic.

Ramón Carrizalez emphasized the intention of maintaining an open dialogue with food producers and recalled the successes achieved throughout the year, "such as streamlining and abolishing certain procedures, improving access to foreign currency for imports and, above all, providing support for national production".

As a strategy for ensuring adequate food supplies to the public, "a food reserve has been built up over recent months to cover contingencies," he said.

He also emphasized the work of the Institute for the Protection of Access to Goods and Services (INDEPABIS) with regard to the monitoring and control of the whole food chain, ensuring that the end users, the consumers, have access to food.

Finally, he said that by focusing on the subject of food security "we want to give people peace of mind".

The Government cuts duties on livestock imports by nearly 4 per cent

Gustavo Llamozas, representing the Venezuelan Meat Council (CONVECARNES) at the meeting, assured people that there were no supply shortages and in any case the problem reportedly affects only a few specific cuts of meat which are not "available in the volumes required by regulation, since they are not so profitable for retailers and there is probably a slight time lag in supplies." He made it clear, however, that there was no discussion of any price increases at the meeting. He expressed his satisfaction and willingness to continue participating in this type of meeting at which the problems affecting the private sector are discussed openly. Gonzalo Azuaje, president of the Venezuelan Association of Industrial Meat Processing Plants and Abattoirs (ASOFRIGO), added that supply levels and the observance of price regulations were evaluated at the meeting. He put particular emphasis on the reduction in duties on imported animals in order to cover the production deficit in live animals for abattoirs. "We were informed today that the decree will be published tomorrow which cuts duties by nearly 4 per cent specifically for animals imported from Brazil."

FEPORCINA and PDVAL guarantee ham supplies for the Christmas season and throughout the year

The president of the Venezuelan Pig Farming Association (FEPORCINA), Alberto Cudemus, gave assurances that "there is enough meat in the country, sufficient supplies of ham to cover not only the Christmas demand but also the future". Cudemus pointed out that traditional ham is available in most supermarkets in the country and that the prices agreed with the National Government – between 14 and 16 *bolívares fuertes* per kilo – will be respected. "Shopkeepers are obliged to abide by these prices and FEPORCINA will work with INDEPABIS, the Ministry of Light Industry and the Ministry of Agriculture and Land to ensure that they do."

He commented that agreements are being drawn up regarding presentation and prices with a number of establishments which want to have premium-category ham.

He explained that the National Executive, through the Venezuelan Food Production and Distribution Board (PDVAL) and the Agriculture Supply and Services Corporation (CASA), imported 2,000 tonnes of ham "and we have backed this decision so that the State can meet demand from a section of the public which requires this kind of service."

He stressed that FEPORCINA is also making offers to the Government to sell to MERCAL and PDVAL as they have done with the private sector.

– *Import duty exemptions announced in a meeting between the productive sectors and the National Executive:*

On 16 October 2008, the president of the Venezuelan Association of Industrial Meat Processing Plants and Abattoirs (ASOFRIGO), Gonzalo Azuaje, said that the decree announcing a cut of nearly 4 per cent in duties on livestock imports would be published in the Official Gazette this Friday.

This information came out of a meeting between the productive sectors and the National Executive at the Office of the Vice-President of the Republic.

"Supply levels and observance of price regulations were evaluated at the meeting. Duty exemptions with regard to animals imported from other countries such as Brazil to cover the deficit in the supply of livestock for slaughter were also discussed," he said.

He added that all sectors represented at the meeting will guarantee supplies in this category.

"Monthly imports total some 25,000 animals for slaughter in abattoirs across the country. Total national production amounts to between 80,000 and 100,000 animals, depending on the month," Azuaje explained.

At the end of the meeting, the Vice-President of the Republic, Ramón Carrizalez, said that the country had sufficient supplies of meat (beef), ham and cereals.

– *Declaration by the Venezuelan Federation of Craft, Micro, Small and Medium-sized Business Associations (FEDEINDUSTRIA) that the national economy is showing signs of systematic recovery:*

17 October 2008. For the president of the Venezuelan Federation of Craft, Micro, Small and Medium-Sized Business Associations (FEDEINDUSTRIA), Miguel Pérez Abad, "the country is showing signs of a strong and sustained economic recovery, as observed in consumption and improvements to the quality of life. I believe it is a special time for productive investment on a national scale." This statement was made by the employers' representative at the end of a meeting held with Executive Vice-President Jorge Rodríguez Gómez to discuss the current economic climate and national economic revival, as well as plans and projects of importance to FEDEINDUSTRIA and other subjects of national and international interest.

Pérez Abad urged Venezuelan employers to move forward and "take a lot more risks than we are doing at present, because the Government is confirming its support for the economic and social growth of the country".

He commented that Vice-President Rodríguez is backing this sector which is "so important for the country, giving us full political support and promoting venues for meetings between small and medium-sized enterprises".

He also pointed out that the meeting included an evaluation of the setting up of the Russia-Venezuela Enterprise Council and that FEDEINDUSTRIA wished to give its support and participate in order to strengthen commercial and industrial relations and promote integration between the two countries.

With the aim of consolidating the foundations of the national business sector, he presented the Vice-President with the plans for setting up the Bank for Small and Medium-Sized Industry so that he could collaborate in the consolidation of this idea in the context of the country's development.

Abad indicated that once the formalization of the plans had been finalized with the Banking Supervisory Commission, they aim to present the promotion phase for the new banking entity before the end of the year.

The FEDEINDUSTRIA president took the opportunity to invite the Vice-President to the 36th annual congress of the organization, which will take place in Caracas on 1 and 2 October.

Discussions at the congress will focus on the Bolivarian Alternative for the Peoples of America (ALBA) "which we call the '*Alba Productiva*' [literally: productive dawn]." Abad

requested support from the Government to invite Cuba, Bolivia and Nicaragua, which are signatories to the agreement.

"We're going to discuss the vision of integration of Venezuelan business, in relation to Latin American integration," he emphasized.

1371. Finally, the Government again underlines the need for a fair appraisal of the statements and documentary evidence which it has supplied, inasmuch as unequivocal credibility has been lent to the arguments put forward by the complainants, with absolute authenticity and legitimacy being credited to them, even though it is common knowledge that their actions were such as to undermine the institutionalism of the State founded on democracy, law and social justice.

C. The Committee's conclusions

1372. *The Committee observes that the allegations and matters pending in relation to the present case are as follows:*

- *violence and intimidation with respect to employers' organizations and their leaders;*
- *violations of the private property rights of numerous employers' leaders in the agriculture and livestock sector, including invasions, confiscations and expropriations of land without due compensation;*
- *harassment of employers' leaders through hostile speeches made by the President of the Republic;*
- *warrant issued for the arrest of former FEDECAMARAS president Mr Carlos Fernández and ban on leaving the country imposed on 15 employers' leaders;*
- *serious shortcomings in social dialogue;*
- *interference from the Government in promoting a Confederation of Socialist Entrepreneurs and preferential treatment for the employers' organization FEDEINDUSTRIA; privileges granted by the State to social protection enterprises;*
- *recent Organic Labour Act for the creation of the Central Planning Commission which would restrict the rights of employers' and workers' organizations and draft act relating to international cooperation.*

1373. *The Committee notes the Government's general statements in which, firstly, it expresses its deep concern at the decision to include the present case in the category of "serious and urgent" cases without sufficient grounds for doing so and, secondly, it points out that the statements and evidence furnished in previous replies were sufficient to dismiss the allegations and have not been given due validity, whereas the complainants' arguments have been credited with absolute authenticity and legitimacy.*

1374. *The Committee wishes to draw the Government's attention to the fact that the inclusion of a case in the category of "serious and urgent" cases is because the problems in question are ongoing (discrimination and harassment with regard to the most representative national employers' organization and its representatives, the Government's refusal to comply with the Committee's main recommendations concerning social dialogue, violations of company law and the private property rights of employers' leaders, violent assaults including a bomb attack on the FEDECAMARAS headquarters, etc.). As regards the Government's claim that the Committee has not given due weight to its previous replies, lending authenticity and legitimacy to the complainants' arguments, the*

Committee stresses that this claim is of a general nature and does not refer to any specific "valuation" by the Committee and emphasizes that the Government's previous replies were duly transcribed and examined. Hence, the inclusion of the present case in the category of "serious and urgent" cases – something which, moreover, was decided upon by consensus – constitutes, in the Committee's view, a response to the situation facing FEDECAMARAS and many of its member organizations.

Need for regular dialogue with the employers' organization FEDECAMARAS

1375. *In its previous examinations of the case, the Committee urged the Government to establish a high-level joint national committee in the Bolivarian Republic of Venezuela with the assistance of the ILO, to examine each and every one of the allegations and issues presented to the Committee so that the problems could be solved through direct dialogue. The Committee trusted that the Government would not postpone the adoption of the necessary measures any further and urged the Government to keep it informed in this regard.*

1376. *The Committee notes with regret that the Government has again failed to adopt this recommendation. Furthermore, in its last examination of the case, the Committee also made the following recommendations:*

- *The Committee expects that a forum for social dialogue will be established in accordance with the principles of the ILO, having a tripartite composition which duly respects the representativeness of workers' and employers' organizations. The Committee requests the Government to keep it informed in this regard and invites it to request technical assistance from the ILO. The Committee also requests it again to convene the tripartite commission on minimum wages provided for in the Organic Labour Act.*
- *Observing that there are still no structured bodies for tripartite social dialogue, the Committee emphasizes once more the importance that should be attached to full and frank consultation taking place on any questions or proposed legislation affecting trade union rights and that it is essential that the introduction of draft legislation affecting collective bargaining or conditions of employment should be preceded by full and detailed consultations with the appropriate independent and most representative organizations of workers and employers. The Committee once again requests the Government to keep it informed with regard to any bipartite and tripartite consultations with FEDECAMARAS and any negotiations or agreements with this central organization or its regional structures and to transmit the corresponding texts. The Committee also requests the Government to ensure that any legislation adopted concerning labour, social and economic issues within the framework of the Enabling Act be subject to real, in-depth consultations with the independent and most representative employers' and workers' organizations, while attempting as far as possible to find shared solutions.*

1377. *The Committee notes with deep regret that on this point too the Government has still not established the national forum for dialogue which it had requested after noting the absence of structured bodies for social dialogue and has not convened the tripartite committee on minimum wages provided for in the Organic Labour Act.*

1378. *The Committee regrets the lack of cooperation on the part of the Government, repeats its previous conclusions and recommendations and urges it to put them into practice and to keep it informed in this respect.*

1379. *With regard to the Committee's request to the Government to keep it informed of any bipartite or tripartite consultations held with FEDECAMARAS and any negotiations or agreement with this confederation or its regional structures and to send the corresponding texts, the Committee observes that the Government indicates in its communication of*

17 October 2008 that it encloses information on: economic measures and policies; meetings held with various productive sectors; promotion and staging of business fairs; greater flexibility regarding foreign currency exchange; incentives and facilities for agriculture; and greater participation of the private sector, in order to add weight to its statements made above and to demonstrate its wish to promote and strengthen relations and communication with the various sectors involved in the sociological phenomenon of labour, from a broad and inclusive perspective. In particular, the Government sends information from the press relating to: (1) a meeting in June 2008 between the President of the Republic and some 500 national employers, at which he announced various economic measures such as the abolition of the 1.5 per cent tax on financial transactions, an exemption from the Commission of Foreign Exchange Administration (CADIVI) foreign exchange rules for companies whose requests for currency do not exceed 50,000 dollars, the revival of business fairs, initiatives for granting subsidies to agricultural producers or reducing their debts, etc.; (2) statements by a FEDECAMARAS regional president welcoming these measures and the setting up of a 1,000 million dollar investment fund, as well as the idea of creating forums for dialogue with the productive sector in each region; (3) statements by the Executive Vice-President of the Republic at a meeting with employers in the food sector, emphasizing the intention of maintaining an open dialogue with food producers, and by a representative of the Venezuelan Meat Council, stating his satisfaction and willingness to continue participating in such meetings where problems affecting the private sector are discussed openly; statements by the president of the Venezuelan Pig Farming Federation referring to discussions with the authorities and indicating that agreements are being drawn up regarding presentation and prices with a number of establishments (it is unclear whether these are public or private), and also referring to Government measures which he endorses and to offers which the Government is making. Moreover, a press article states that, following a meeting between the productive sectors and the National Executive at the Office of the Vice-President of the Republic, a decree was announced cutting duties on livestock imports by 4 per cent; the Government refers to a meeting between the Executive Vice-President of the Republic with FEDEINDUSTRIA involving discussions of FEDEINDUSTRIA plans and other subjects of national and international interest (economic situation and revival, etc.); the president of FEDEINDUSTRIA underlined the political support given to the sector by the Executive Vice-President and the promotion of venues for meetings between small and medium-sized enterprises.

1380. *The Committee concludes that the Government's dialogue with FEDEINDUSTRIA is satisfactory for this employers' organization (a minority organization which does not belong to FEDECAMARAS) and that certain Government economic measures (greater flexibility in banking controls, abolition of the tax on financial transactions, creation of a 1,000 million dollar fund for investment) have been welcomed by the FEDECAMARAS president. However, the Committee emphasizes that the Government has only referred to meetings, discussions and agreements with the food and agriculture/livestock industries. The Committee observes, however, that the Government does not provide any information on social dialogue in other sectors or on the social dialogue with FEDECAMARAS, the most representative employers' organization. The Committee points out that the fact that certain Government measures have been welcomed by FEDECAMARAS does not necessarily imply that they have been the subject of discussions with this organization.*

1381. *The Committee requests the Government to keep it informed with regard to social dialogue and any bipartite or tripartite consultations in sectors other than food and agriculture, and also with regard to social dialogue with FEDECAMARAS and its regional structures in connection with the various sectors of activity, the formulation of economic and social policy and the drafting of laws which affect the interests of the employers and their organizations. The Committee again requests the Government to ensure that any legislation concerning labour, social and economic issues adopted in the context of the*

Enabling Act be first subject to genuine, in-depth consultations with the most representative independent employers' and workers' organizations, while endeavouring to find shared solutions wherever possible.

Allegations of violence, intimidation and harassment with respect to employers' organizations and their leaders

1382. *The Committee refers to its previous recommendations:*

...

(b) With regard to the allegations of violence and intimidation against employers' organizations and their leaders, the Committee draws attention to the seriousness of the allegations made by the IOE and must express its profound concern. The Committee deplores that, months after the attacks and threats against the FEDECAMARAS headquarters and the considerable damage caused, the Government has not communicated any results in terms of identifying the names of the perpetrators of the attacks on the FEDECAMARAS headquarters, and that it indirectly casts doubt on the May and November 2007 and February 2008 attacks and has not clarified the alleged involvement of individuals or groups close to the regime.

(c) Given that the present situation is incompatible with the requirements of Convention No. 87, the Committee once again requests the Government to effectively ensure the security of the FEDECAMARAS headquarters and its leaders and to take measures to step up investigations into the bomb attack of 28 February 2008 at the FEDECAMARAS headquarters and if it has not been done to report the May and November 2007 attacks on the FEDECAMARAS headquarters to the competent authorities in order to establish the facts, prosecute those responsible and punish them severely, to ensure that such crimes are not repeated. The Committee urges the Government to keep it informed in this regard.

...

1383. *The Committee notes the Government's statement to the effect that, as regards the attack on the FEDECAMARAS headquarters using a home-made explosive device, a statutory investigation duly launched by the Attorney-General's Office is currently in progress; the case is being dealt with by the 20th Prosecutor's Office and Control Court No. 34 of the Caracas metropolitan area; the case is currently in the investigation phase; various persons have been interviewed and warrants for the arrest of citizens Mr Juan Montoya González and Mr Ivon Burgos have been issued and registered with the National Division for Arrests and Criminal Investigations, which has already undertaken a number of searches; the suspects are wanted on charges of criminal conspiracy and terrorism.*

1384. *The Committee understands that the two suspects wanted for the bomb attack on the FEDECAMARAS headquarters (28 February 2008) have still not been arrested, despite the time that has elapsed. The Committee expresses its deep concern at the fact that the case relating to this attack has still not been resolved. The Committee requests the Government to take measures to step up the investigations, to ensure that they are truly independent, clarify the facts, arrest the perpetrators and impose severe penalties on them to prevent any recurrence of such crimes. The Committee requests the Government also to step up the investigations into the attacks on the FEDECAMARAS headquarters which occurred in May and November 2007 and conclude these investigations as a matter of urgency. The Committee requests the Government to keep it informed in this respect. The Committee again deeply deplores these attacks and recalls that the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence.*

1385. *The Committee regrets that the Government has not sent the information which it requested concerning other acts of violence against employers' leaders and allegations of violations of the private property of employers' leaders in the agriculture/livestock sector and repeats its previous recommendations, which were as follows:*

> *With regard to the allegations of: violations of the private property of several employers' leaders in the agricultural and livestock sector; victims of invasions; the confiscation of land or expropriation without fair compensation, frequently in spite of rulings made by the judicial authorities regarding the restitution of lands to their owners, the Committee once again requests the Government to respond precisely to the specific allegations made by the IOE, including those relating to the measures taken against employers' leaders Mr Mario José Oropeza and Mr Luis Bernardo Meléndez, and the serious allegations regarding the abduction of three sugar producers in 2006 and the death of six producers following an assault.*

1386. *Furthermore, with regard to the alleged harassment of employers' leaders through hostile speeches given by the President of the Republic in which he discredits and disparages employers' leaders, threatening to confiscate their property on supposed grounds of social interest, the Committee once again requests the Government to provide its observations in this regard without delay.*

1387. *Finally, the Committee underlines the fact that all these alleged occurrences produce a climate of intimidation against the employers' organizations and their leaders which is incompatible with the requirements of Convention No. 87.*

Allegations regarding the application of the Labour Solvency Act

1388. *The Committee notes the Government's statements to the effect that: (1) the "labour solvency" declaration procedure is one of the mechanisms used by the Venezuelan State to guarantee the effective application of workers' human, labour and social rights; (2) as regards labour solvency certification, processes and procedures have been made simpler and easier through computerization, and this constitutes a mechanism whereby the Venezuelan State is adjusting the functions of its institutions, protecting and guaranteeing the observance of labour and social rights by employers, particularly those who wish to conclude contracts with the State.*

1389. *The Committee underlines its approval of the existence of mechanisms for guaranteeing the observance of workers' rights. However, the Committee stresses that the complainant has highlighted the risks of discrimination that can arise from the legislation in question, and it therefore requests the Government once again to examine directly with FEDECAMARAS how to ensure that the application of this legislation is accompanied by adequate guarantees of impartiality and avoids all forms of discrimination with respect to employers or their organizations that do not endorse the economic and social policy of the Government.*

Allegations regarding restrictions on employers' freedom of expression and information

1390. *The Committee notes the Government's statement that, with regard to the supposed violation of the freedom of expression and information by the withdrawal of the Canal 2, Radio Caracas Televisión (RCTV) licence, the administration of the radio frequency spectrum is a matter for the State and it therefore has the power – in accordance with legally established procedures and regulations – to decide whether or not to renew licences issued to individuals; it therefore requests that the allegation of state interference*

in the actual activities of the communication media be dismissed, since it is unacceptable for a link to be claimed between an administrative procedure and the exercise of such an important human right as freedom of expression, especially when the TV channel in question continues to offer its services on a subscription basis.

1391. *The Committee wishes to recall that the above TV channel was critical of the Government's policy and was frequently used by FEDECAMARAS representatives and the Committee therefore maintains its previous conclusions and recommendations.*

Ban on leaving the country imposed on 15 employers' leaders

1392. *The Committee notes the Government's statement that, with regard to former FEDECAMARAS president Ms Albis Muñoz, the Control Court of First Instance No. 25 of the criminal judicial circuit of the Caracas metropolitan area, by means of a ruling of 20 February 2008, ordered the dismissal of the criminal proceedings instituted on charges of civil rebellion, an offence penalized by section 143(2) of the Penal Code, pursuant to the decree having the rank, value and force of the Special Amnesty Act, published in the* Special Official Gazette *of the Bolivarian Republic of Venezuela No. 5870 of 31 December 2007.*

1393. *The Committee reminds the Government that it already stated in its previous replies that criminal charges against Ms Albis had been dropped by the judicial authority pursuant to the Special Amnesty Act. The Committee notes with interest that the dropping of the charges has taken effect in practice, according to the Government. The Committee reiterates its previous recommendation concerning restrictions on the freedom of movement of other employers' leaders, as follows:*

> *The Committee requests the Government to send information regarding the prohibition from leaving the country imposed on 15 employers' leaders and to annul the arrest order against former FEDECAMARAS president Mr Carlos Fernández, so that he may return to the country without risk of reprisals.*

Allegations of Government interference in the establishment of the Venezuelan Confederation of Socialist Entrepreneurs (CONSEVEN) and allegations of favouritism towards organizations or enterprises supporting the regime

1394. *The Committee previously made the following recommendations:*

- *The Committee notes the Government's statement denying any interference in CONSEVEN but observes that it has not responded in detail to the IOE's allegations concerning the presence in CONSEVEN of two prominent government figures, who even have responsibility for customs and taxation, and the preferential treatment given to the employers' organization FEDEINDUSTRIA (privileges in obtaining foreign currency) by comparison with independent enterprises. The Committee requests the Government to send its observations on these allegations and reiterates the importance of ensuring that the Government adopts a neutral attitude when dealing with any workers' or employers' organizations, and to examine all the above areas of potential discrimination against employers or organizations belonging to FEDECAMARAS and to keep it informed in this regard, including with respect to the passage of the draft act on international cooperation, the final version of which it trusts will contain provisions on rapid action in the event of discrimination.*

– *With regard to the IOE's allegations concerning social production enterprises, with privileges bestowed upon them by the State, the Committee once again invites the IOE to provide new information and clarification on these allegations, and requests the Government to ensure a neutral attitude in treatment of and relations with all employers' organizations and their members.*

– *The Committee notes the allegations of the IOE that the recent organic act creating the Central Planning Commission severely restricts the rights of employers' and workers' organizations and requests the Government to respond to these allegations.*

1395. *The Committee notes that, with regard to the allegations relating to CONSEVEN and the Government's supposed intervention in the constitution and sponsorship thereof, the Government reiterates that Venezuelan citizens have full freedom of association for legitimate purposes and the primary object of national institutions is to guarantee the full exercise of this right without distinction or restriction. The Committee notes with regret that the Government has merely made a statement regarding one of the allegations but has not replied to the issues raised by the complainants.*

1396. *The Committee therefore repeats its previous recommendations and requests the Government to supply detailed and accurate information. The Committee again requests the International Organisation of Employers (IOE) to send the information which it had requested relating to the allegations regarding social production enterprises. The Committee considers that the provision of this information is critical if it is to pursue examination of this aspect of the case.*

1397. *Finally, in view of the lack of information from the Government, the Committee again requests the Government to reply to the allegations of the IOE to the effect that the recent Organic Labour Act on the establishment of the Central Planning Commission severely restricts the rights of employers' and workers' organizations and requests the Government to reply to these allegations.*

The Committee's recommendations

1398. ***In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:***

(a) Deeply deploring that the Government has ignored its recommendations, the Committee urges the Government to establish a high-level joint national committee in the country with the assistance of the ILO, to examine each and every one of the allegations and issues in this case so that the problems can be solved through direct dialogue. The Committee trusts that the Government will not postpone the adoption of the necessary measures any further and urges the Government to keep it informed in this regard.

(b) The Committee expects that a forum for social dialogue will be established in accordance with the principles of the ILO, having a tripartite composition which duly respects the representativeness of workers' and employers' organizations. The Committee requests the Government to keep it informed in this regard and invites it to request technical assistance from the ILO. The Committee also requests it once again to convene the tripartite commission on minimum wages provided for in the Organic Labour Act.

(c) Observing that there are still no structured bodies for tripartite social dialogue, the Committee emphasizes once more the importance that should be attached to full and frank consultation taking place on any questions or proposed legislation affecting trade union rights and that it is essential that the introduction of draft legislation affecting collective bargaining or conditions of employment should be preceded by detailed consultations with the most representative independent workers' and employers' organizations. The Committee once again requests the Government to ensure that any legislation concerning labour, social and economic issues adopted in the context of the Enabling Act be first subject to genuine, in-depth consultations with the most representative independent employers' and workers' organizations, while endeavouring to find shared solutions wherever possible.

(d) The Committee requests the Government to keep it informed with regard to social dialogue and any bipartite or tripartite consultations in sectors other than food and agriculture, and also with regard to social dialogue with FEDECAMARAS and its regional structures in connection with the various sectors of activity, the formulation of economic and social policy and the drafting of laws which affect the interests of the employers and their organizations.

(e) The Committee understands that the two suspects wanted for the bomb attack on the FEDECAMARAS headquarters (28 February 2008) have still not been arrested despite the time that has elapsed. The Committee expresses its deep concern at the fact that the case relating to this attack has still not been resolved. The Committee requests the Government to take measures to step up the investigations, ensure that they are independent, clarify the facts, arrest the perpetrators and impose severe penalties on them to prevent any recurrence of such crimes. The Committee requests the Government also to step up the investigations into the attacks on the FEDECAMARAS headquarters which occurred in May and November 2007, and conclude those investigations as a matter of urgency. The Committee requests the Government to keep it informed in this respect. The Committee again deeply deplores these attacks and recalls that the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence.

(f) The Committee regrets that the Government has not sent the information which it requested concerning other acts of violence against employers' leaders and allegations of violations of the private property of employers' leaders in the agriculture/livestock sector and repeats its previous recommendations, as follows:

> *With regard to the allegations of: violations of the private property of several employers' leaders in the agricultural and livestock sector; victims of invasions; the confiscation of land or expropriation without fair compensation, frequently in spite of rulings made by the judicial authorities regarding the restitution of lands to their owners, the Committee once again requests the Government to respond precisely to the specific allegations made by the IOE, including those relating to the measures taken against employers' leaders Mr Mario José Oropeza and*

Mr Luis Bernardo Meléndez, and the serious allegations regarding the abduction of three sugar producers in 2006 and the death of six producers following an assault.

(g) Furthermore, with regard to the alleged harassment of employers' leaders through hostile speeches given by the President of the Republic in which he discredits and disparages employers' leaders, threatening to confiscate their property on supposed grounds of social interest, the Committee once again requests the Government to provide its observations in this regard without delay.

(h) The Committee once again requests the Government to examine directly with FEDECAMARAS how to ensure that the application of legislation relating to "labour solvency" is accompanied by adequate guarantees of impartiality and avoids all forms of discrimination with respect to employers or their organizations that do not endorse the economic and social policy of the Government.

(i) The Committee once again requests the Government to send information regarding the ban on leaving the country imposed on 15 employers' leaders and to revoke the warrant for the arrest of former FEDECAMARAS president Mr Carlos Fernández, so that he may return to the country without risk of reprisals.

(j) The Committee notes the Government's statements denying any interference in the CONSEVEN but observes that those statements do not respond in detail to the allegations made by the IOE concerning the presence in the CONSEVEN of two prominent government figures, who even have responsibility for customs and taxation, and the preferential treatment given to the employers' organization FEDEINDUSTRIA (privileges in obtaining foreign currency) by comparison with independent enterprises. The Committee once again requests the Government to send precise and detailed observations on these allegations and reiterates the importance of the adoption by the Government of a neutral attitude when dealing with any workers' or employers' organizations, and to examine all the above areas of potential discrimination against employers or organizations belonging to FEDECAMARAS and to keep it informed in this regard, including with respect to the adoption of the draft act on international cooperation, the final version of which it trusts will contain provisions on rapid action in the event of discrimination.

(k) With regard to the IOE's allegations concerning social production enterprises, with privileges granted to them by the State, the Committee once again invites the IOE to provide new information and clarification with respect to these allegations. The Committee considers that the provision of this information is critical if it is to pursue examination of this aspect of the case and requests the Government to ensure that it adopts a neutral attitude in its treatment of and relations with all employers' organizations and their members.

(l) The Committee notes the IOE's allegations to the effect that the recent Organic Labour Act establishing the Central Planning Commission severely

restricts the rights of employers' and workers' organizations and again requests the Government to respond to these allegations.

(m) The Committee draws the Governing Body's attention to this case due to the extreme seriousness and urgency of the matters raised therein.

CASE NO. 2422

INTERIM REPORT

Complaint against the Government of the Bolivian Republic of Venezuela presented by the Single National Union of Public, Professional, Technical and Administrative Employees of the Ministry of Health and Social Development (SUNEP-SAS) supported by Public Services International (PSI)

Allegations: Refusal of the authorities to negotiate a draft collective agreement or lists of demands with SUNEP-SAS; refusal to grant trade union leave to SUNEP-SAS officials, dismissal proceedings against trade unionists and other anti-trade union measures

1399. The Committee last examined this case at its May–June 2006 meeting and presented an interim report to the Governing Body [see 342nd Report, paras 1020–1039, approved by the Governing Body at its 296th Session (June 2006)]. It also examined the case at its November 2007 meeting, at which it presented another interim report to the Governing Body [see 348th Report, paras 1326–1348, approved by the Governing Body at its 300th Session (November 2007)].

1400. Subsequently, the Single National Union of Public, Professional, Technical and Administrative Employees of the Ministry of Health and Social Development (SUNEP-SAS) presented additional information in communications dated 17 April and 14 October 2008. The Government communicated its observations in a letter dated 7 October 2008.

1401. The Bolivarian Republic of Venezuela has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

1402. In its previous examination of the case in November 2007, the Committee made the following recommendations on the matters still pending [see 348th Report, para. 1348]:

(a) The Committee emphasizes the seriousness of the allegations and urges the Government to put an end to the acts of discrimination against SUNEP-SAS and its officials, to guarantee its rights to trade union leave and to collective bargaining and to ensure that its

trade union premises are not confiscated and that its officials are not dismissed or prejudiced for reasons relating to the exercise of their trade union rights (trade union official Yuri Giradot Salas Moreno has been dismissed; dismissal proceedings are currently under way against trade union officials Francisco Atagua, Nieves Paz, Arminda Mejías and Thamara Tovar; and the pay of 11 officials of the Miranda section of the complainant trade union has been illegally suspended). The Committee asks the Government to keep it informed in this regard.

(b) The Committee requests the Government to send the decision on the dismissal of trade union official Yuri Girardot Salas Moreno, specifying the grounds for dismissal, and the outcome of the appeal for review lodged with the Ministry of Health, so that it can examine the case while in full knowledge of the facts.

(c) The Committee requests the Government to send its observations on the additional information and new allegations presented by SUNEP–SAS in a communication dated 10 August 2007.

B The complainant's allegations

1403. The allegations presented by SUNEP-SAS in its communication of 10 August 2007 are summarized below.

1404. SUNEP-SAS denounces the violations committed with regard to members of the executive committee of the Miranda section of SUNEP-SAS by the government authorities of the State of Miranda. Disregard for their status as legitimate representatives of the workers in the sector has worsened, as the situation is currently being examined by the Administrative Disputes Tribunal of the Capital Region but harassment by the employers is continuing. This is borne out not only by the illegal suspension of wages but also by the seizure of the union headquarters by the employer, resulting in the immediate eviction of the union.

1405. Furthermore, Miranda section executive committee members Francisco Atagua, Thamara Tovar, Arminda Mejías, Nieves Paz, María Tortoza and Jesús Alberto Verdu went to the labour inspectorate offices on several occasions since November 2001 in order to request *amparo* (protection of constitutional rights) relating to trade union immunity as provided for in the Organic Labour Act. As inspectorate records show, they came to the inspectorate offices to present the aforementioned *amparo* request so that the administrative proceedings provided for by the Organic Labour Act could be launched. The labour inspector at the Los Teques headquarters verbally indicated the aforementioned offices' refusal to even take receipt of any written request designed to launch the abovementioned proceedings. In view of the repeated refusal by the said headquarters to take receipt of the request and meet their formal obligations under the Constitution and national law, they presented a written communication setting out the grounds in law and in fact for requesting *amparo* in relation to trade union immunity at the offices concerned. Faced with the constitutional and legal obligation to respond to such a request, the inspector did not grant *amparo* with respect to the right in question. Nor did the inspector give any reply with regard to the initiation of administrative proceedings or regarding a negative or affirmative decision in relation to the immunity of these trade union officials and the corresponding union leave.

1406. Accordingly, court proceedings were instituted and by a ruling of 22 January 2007 the Third High Court for Civil Administrative Disputes ordered the payment of wages and other economic, labour-related and contractual benefits which had been outstanding since October 2005. In order to guarantee due process and the right of defence, it also ordered the Miranda State Health Corporation administration to refrain from any legal or physical action which would violate the fundamental rights of the parties concerned. The ruling judge also highlighted the negative attitude of the human resources director of the Miranda State Health Corporation, describing such conduct as inconsistent with the duties of loyalty

and probity laid down in national law. The authorities and representatives of the Miranda State Health Corporation were therefore called upon to act in accordance with the standards of rectitude required by Venezuelan law. Nevertheless, the fundamental and labour rights of the union officials concerned are still being violated inasmuch as the administration has not complied with the above ruling and the Miranda State Health Corporation withholds recognition of the SUNEP-SAS Miranda section executive committee and continues to violate its rights with an unauthorized suspension of wages.

1407. As regards the union leave of the members of the executive committee of the Falcón section of the complainant union, the section requested that the union leave be clearly defined. The Legal Advisory Office stated that on 12 May the "labour regulations agreement" (sectoral bargaining) concluded with a number of other trade unions for employees in the health sector of the national public administration was legally registered, and under these regulations trade union leave is denied to organizations which are not formally participating in the agreement (i.e. SUNEP-SAS).

1408. This constitutes a blatant violation of both the legislation and Constitution of the Bolivarian Republic of Venezuela, and so intervention by the regional inspectorate was requested. The same situation has existed since 2006 in the Mérida section of the complainant union despite the said violation having been reported to the regional inspectorate.

1409. With regard to the La Portuguesa section of the complainant union, even though a communication dated 27 July 2007 from the Legal Advisory Office stated that "trade union benefits" were being maintained, in reality union officials' rights with respect to leave for union events and union mobilization allowances are being violated. As regards collective bargaining, SUNEP-SAS is suffering discrimination as a result of legal stratagems and obstruction through "administrative silence" of the right to discuss the Draft V Collective Employment Agreement, despite having requested collective bargaining in this regard at multiple hearings with the labour and health ministers, who have failed to accept such requests. The authorities have implemented presidential guidelines according to which the unions have to be done away with, no matter what, unless they submit to being part of the political plans of the head of the regime.

1410. Against this background, a communication was sent on 20 July 2007 to the director of the National Inspectorate and Public Sector Collective Labour Office in order to present various points arising from the work of the national secretariat and to request the revival of the Draft V Collective Employment Agreement. With the general secretaries of the 27 union sections in attendance, they were obliged to lodge a serious protest since the inspector refused to receive them, blocking the right to submit claims and be heard by the official responsible, and in the end they were received by a junior officer, Ms Fanny Duran. The relevant claims were presented and a document was drawn up in which it was agreed that any proceedings arising from the refusal to grant hearings would be the responsibility of the aforementioned labour body.

1411. The authorities stress the fact that SUNEP-SAS is obliged to have recourse to the administrative dispute bodies of the judiciary, and this, apart from being costly and complicated, is useless because all the authorities are well known to be subject to the dictates of the Executive.

1412. SUNEP-SAS points out that a simple examination of the payrolls shows that SUNEP-SAS members form an overwhelming majority within the Ministry of Health.

1413. In its communication of 17 April 2008, SUNEP-SAS states that the authorities of the People's Ministry of Labour and Social Security (formerly the Ministry of Health and Social Development) refuse to bargain collectively. The Ministry refuses, however, to accept the financial management report of 25 May 2007 stating that the management of union funds was approved by the general assembly of union members. The Ministry also refuses to accept amendments made to the SUNEP-SAS statutes. Appeals made to the administration have received no reply.

1414. There is continuing harassment of members of the Miranda section executive committee, who are still being refused union leave despite a judicial ruling prohibiting the denial of this right to trade union officials.

1415. In its communication of 14 October 2008, SUNEP-SAS alleges that the administrative authority has declared the amended version of the union's financial management report invalid despite the incorporation of the observations made. The union was therefore obliged to lodge an administrative appeal on 26 May 2008 but no reply was received. However, on 25 April 2008 the union presented the new financial management report for 2007 to the Ministry and ratified the amendments to the union statutes. The Ministry replied with a request to rectify various errors and defects. The Ministry decided to terminate proceedings on the grounds that it considered the rectifications to be invalid, and this in turn led to the union's appeal for review.

1416. On 9 May 2008 the Ministry refused to accept the list of demands from the union, without respecting the right of defence. The union therefore applied to the Ministry to subscribe to the "labour regulations agreement" which had been requested by a trade union federation. A reply has still not been received. Furthermore, disregarding the representativeness of the trade union, the Ministry denied it the possibility of appointing representatives for the negotiations concerning the draft model agreement introduced by another federation. The union received no reply here either.

1417. Moreover, in January 2008, the procedures for granting union leave as requested by SUNEP-SAS were suspended throughout the country.

1418. Finally, in order to undermine SUNEP-SAS, the Ministry has not paid the union the funding (139,954,264 bolivars in the old currency) due for workers' social and educational programmes in 2008 (despite having paid the corresponding dues for 2000, 2001 and 2005).

C. The Government's reply

1419. In its communication of 7 October 2008, referring to the case of SUNEP-SAS, the Government declares that replies have been made in due and adequate form to each of the observations made by the Committee. It therefore repeats the content thereof, especially communication No. 362/2007 dated 24 October 2007 in which – according to the Government – detailed information was presented concerning the development and status of the case before the administrative authorities.

1420. The Government again draws the Committee's attention to the appraisal of the replies sent by the Government, given that it considers the complainants' arguments to have been found completely groundless and therefore requests that they be dismissed and the present case closed.

D. The Committee's conclusions

1421. *The Committee notes that the matters pending in the present case refer to acts of discrimination by the authorities against the public health sector trade union SUNEP-SAS, its sections and its officials, including: (1) dismissals or proceedings for the dismissal of union officials (Yuri Girardot Salas Moreno, Francisco Atagua, Nieves Paz, Arminda Mejías and Thamara Tovar); (2) suspension of pay for other persons; (3) refusal to grant trade union leave; (4) refusal of the authorities to negotiate with SUNEP-SAS; and (5) eviction of a section of SUNEP-SAS from its headquarters. SUNEP-SAS emphasizes its defencelessness in many cases because of the administrative authorities' delayed or non-existent response to their communications and appeals, the discriminatory attitude towards SUNEP-SAS in administrative decisions, even including the authorities' refusal to comply with rulings in favour of SUNEP-SAS concerning the anti-union dismissal of its officials. SUNEP-SAS refers to the authorities' statements to the effect that SUNEP-SAS must go before the judicial bodies dealing with administrative disputes but points out that such proceedings, apart from being costly and complicated, are generally useless because all state authorities are well known to be subject to the dictates of the Executive.*

1422. *The Committee notes that SUNEP-SAS alleges that the problems which had been dealt with in the previous examination of the case remain and have worsened inasmuch as the authorities have not accepted amendments to the SUNEP-SAS statutes and have not accepted the financial management report for 2007, obliging the union to lodge a series of appeals which systematically give rise to new requests for rectification from the authorities. Furthermore, according to SUNEP-SAS, trade unionists María Tortoza and Jesús Alberto Verdu have been dismissed. While disregarding the majority representation of the union at the Ministry of Health and rejecting negotiations with regard to its demands, the authorities have not replied to SUNEP-SAS's request to subscribe to the "labour regulations agreement" (sectoral collective bargaining) requested by a health federation and have denied it the possibility of appointing a representative for the negotiations concerning the draft model agreement presented by another federation. Finally, according to SUNEP-SAS, the Government has not paid it the funding due for its social and education programmes for 2008, unlike in previous years.*

1423. *The Committee notes the Government's observations dated 7 October 2008 to the effect that it has replied in due and adequate form to each of the observations made by the Committee, it therefore repeats the content thereof, especially the communication dated 24 October 2007 in which detailed information was presented concerning the development and status of the case before the administrative authorities. The Government again draws the Committee's attention to the appraisal of the replies sent by the Government, given that it considers the complainants' arguments to have been found completely groundless and therefore requests that they be dismissed and the present case closed.*

1424. *The Committee deeply regrets the lack of cooperation by the Government with respect to its procedures, in view of the Government's disregard for the specific requests for information addressed to it by the Committee at its November 2007 meeting, and draws the Government's attention to the fact that the communication dated 24 October 2007 to which it refers was duly examined at its November 2007 meeting [see 348th Report, paras 1335–1342 and 1343–1348].*

1425. *The Committee observes that despite the seriousness of the problems which were pending in November 2007 and the fact that the National Electoral Council recognized the elections to the SUNEP-SAS executive committee, those issues are still unresolved and in some respects have worsened. The Committee notes with regret the administrative silence, obstacles and delays in procedures highlighted by the complainant and the authorities'*

refusal to hold a constructive dialogue with the complainant to find a speedy solution to the discrimination which it has been suffering for a number of years.

1426. *Under these circumstances, the Committee repeats its recommendations of November 2007 and again urges the authorities to open a constructive dialogue with SUNEP-SAS to resolve the major issues raised in this case. The Committee requests the Government to reply in detail and without delay to the SUNEP-SAS allegations of 10 August 2007 and 17 April and 14 October 2008.*

The Committee's recommendations

1427. ***In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:***

(a) The Committee deeply regrets the lack of cooperation by the Government with respect to procedures, in view of the Government's disregard for the specific requests for information addressed to it by the Committee in its previous examination of the case and observes that the issues raised by the complainant are still unresolved and in some respects have worsened.

(b) The Committee urges the health sector authorities to open a constructive dialogue with SUNEP-SAS to resolve the issues raised in the present case and to keep it informed in this regard.

(c) Repeating its previous recommendations, the Committee emphasizes once again the seriousness of the allegations and urges the Government to stop the acts of discrimination against SUNEP-SAS and its officials, to guarantee its rights to trade union leave and to collective bargaining and to ensure that its trade union premises are not confiscated and that its officials are not dismissed or prejudiced for reasons relating to the exercise of their trade union rights (union official Yuri Giradot Salas Moreno has been dismissed; dismissal proceedings are currently under way against union officials Francisco Atagua, Nieves Paz, Arminda Mejías and Thamara Tovar; and the pay of 11 officials of the Miranda section of the complainant trade union has been illegally suspended). The Committee again urges the Government to keep it informed without delay in this regard.

(d) The Committee requests the Government to send the decision on the dismissal of trade union official Yuri Girardot Salas Moreno, specifying the grounds for dismissal, and the outcome of the appeal for review lodged with the Ministry of Health, so that it can examine the case in full knowledge of the facts.

(e) The Committee urges the Government to send a detailed reply without delay with respect to the allegations presented by the complainant on 10 August 2007 and 17 April and 14 October 2008, particularly the following:

- ***dismissals, dismissal proceedings against union officials (including María Tortoza and Jesús Alberto Verdu), non-payment of outstanding wages, refusal to grant union leave;***

– ***the refusal by the authorities to accept the amendments to the SUNEP-SAS statutes and the union's financial management report for 2007;***

– ***the persistent refusal by the health authorities to engage in collective bargaining with SUNEP-SAS, the authorities' failure to reply to the union's request to subscribe to the "labour standards agreement" (sectoral collective bargaining) requested by a health federation and the refusal to appoint a representative for the negotiations concerning the draft model agreement presented by another federation; and***

– ***the failure to pay SUNEP-SAS the funding due for its social and education programmes for 2008, unlike in previous years.***

Geneva, 16 March 2008. *(Signed)* Professor van der Heijden
Chairperson

Points for decision: Paragraph 344; Paragraph 402; Paragraph 422: Paragraph 434; Paragraph 451; Paragraph 468; Paragraph 521; Paragraph 543; Paragraph 561; Paragraph 583; Paragraph 749; Paragraph 795; Paragraph 828; Paragraph 841; Paragraph 872; Paragraph 898; Paragraph 916; Paragraph 967; Paragraph 1010; Paragraph 1027; Paragraph 1038; Paragraph 1053; Paragraph 1090; Paragraph 1110; Paragraph 1142; Paragraph 1176; Paragraph 1231; Paragraph 1243; Paragraph 1273; Paragraph 1309; Paragraph 1336; Paragraph 1359; Paragraph 1398; Paragraph 1427.