

Governing Body

337th Session, Geneva, 24 October–7 November 2019

GB.337/INS/10

Institutional Section

INS

TENTH ITEM ON THE AGENDA

Committee on Freedom of Association

391st Report of the Committee on Freedom of Association

Contents

	<i>Paragraphs</i>
Introduction	1–73
Cases in follow-up	18–70
Case No. 3039 (Denmark) (closed)	19–23
Case No. 2086 (Paraguay)	24–27
Case No. 2488 (Philippines) (closed)	28–39
Case No. 2745 (Philippines)	40–62
Case No. 3196 (Thailand) (closed)	63–67
Case No. 3021 (Turkey) (closed).....	68–70
 <i>Case No. 3269 (Afghanistan): Interim report</i>	
Complaint against the Government of Afghanistan presented by the National Union of Afghanistan Workers and Employees (NUAWE) supported by the International Trade Union Confederation (ITUC)	74–83
The Committee's conclusions	78–82
The Committee's recommendations.....	83
 <i>Case No. 3259 (Brazil): Definitive report</i>	
Complaint against the Government of Brazil presented by the General Union of Workers (UGT) the State Federation of Workers in Physical Culture Establishments of the State of Rio Grande do Sul (FETECFERGS) and the Union of Workers in Sports Clubs and Sports Federations of the State of Rio Grande do Sul (SECEFERGS).....	84–95

The Committee's conclusions	91–94
The Committee's recommendation	95
<i>Case No. 2318 (Cambodia): Interim report</i>	
Complaint against the Government of Cambodia presented by the International Trade Union Confederation (ITUC)	96–114
The Committee's conclusions	105–113
The Committee's recommendations.....	114
<i>Case No. 3298 (Chile): Definitive report</i>	
Complaint against the Government of Chile presented by the National Union of Workers of Chile (UNT) and the Autonomous Central of Workers of Chile (CAT).....	115–132
The Committee's conclusions	127–131
The Committee's recommendation	132
<i>Case No. 3184 (China): Interim report</i>	
Complaint against the Government of China presented by the International Trade Union Confederation (ITUC).....	133–153
The Committee's conclusions	144–152
The Committee's recommendations.....	153
<i>Case No. 3091 (Colombia): Definitive report</i>	
Complaint against the Government of Colombia presented by the General Confederation of Labour (CGT).....	154–170
The Committee's conclusions	164–169
The Committee's recommendation	170
<i>Case No. 3243 (Costa Rica): Report in which the Committee requests to be kept informed of developments</i>	
Complaint against the Government of Costa Rica presented by UNI Global Union and the Banco Popular Employee's Union (SIBANPO).....	171–190
The Committee's conclusions	182–189
The Committee's recommendation	190
<i>Case No. 3271 (Cuba): Interim report</i>	
Complaint against the Government of Cuba presented by the Independent Trade Union Association of Cuba (ASIC)	191–224
The Committee's conclusions	210–223
The Committee's recommendations.....	224

Case No. 3148 (Ecuador): Interim report

Complaint against the Government of Ecuador presented by the Trade Union Association of Banana Plantation, Agricultural and Rural Workers (ASTAC) and the Trade Union Association of the fruit company Compañía Frutas Selectas SA (FRUTSESA).....	225–252
The Committee’s conclusions	242–251
The Committee’s recommendations.....	252

Case No. 3279 (Ecuador): Report in which the Committee requests to be kept informed of developments

Complaint against the Government of Ecuador presented by the National Union of Educators (UNE).....	253–269
The Committee’s conclusions	261–268
The Committee’s recommendation	269

Case No. 2609 (Guatemala): Interim report

Complaints against the Government of Guatemala presented by the Indigenous and Rural Workers’ Trade Union Movement of Guatemala (MSICG); the Autonomous Popular Trade Union Movement of Guatemala; Global Unions of Guatemala; the Trade Union Confederation of Guatemala (CUSG); the General Confederation of Workers of Guatemala (CGTG); the Trade Union of Workers of Guatemala (UNSITRAGUA); the Movement of Rural Workers of San Marcos (MTC); supported by the International Trade Union Confederation (ITUC).....	270–302
The Committee’s conclusions	285–301
The Committee’s recommendations.....	302

Case No. 3266 (Guatemala): Definitive report

Complaint against the Government of Guatemala presented by the Indigenous and Rural Workers’ Trade Union Movement of Guatemala (MSICG).....	303–317
The Committee’s conclusions	312–316
The Committee’s recommendation	317

Case No. 3135 (Honduras): Definitive report

Complaint against the Government of Honduras presented by the Single Confederation of Workers of Honduras (CUTH)	318–328
The Committee’s conclusions	324–327
The Committee’s recommendation	328

Case No. 3261 (Luxembourg): Definitive report

Complaint against the Government of Luxembourg presented by the Confederation of Christian Trade Unions of Luxembourg (LCGB).....	329–348
The Committee’s conclusions	344–347
The Committee’s recommendation	348

Case No. 3334 (Malaysia): Report in which the Committee requests to be kept informed of developments

Complaint against the Government of Malaysia presented by the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF)	349–384
The Committee's conclusions	374–383
The Committee's recommendations	384

Case No. 3076 (Republic of Maldives): Interim report

Complaint against the Government of the Republic of Maldives presented by the Tourism Employees Association of Maldives (TEAM) supported by the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF)	385–412
The Committee's conclusions	397–411
The Committee's recommendations	412

Cases Nos 3328 and 3340 (Panama): Definitive report

Complaints against the Government of Panama presented by the Single National Union of Construction Industry and Allied Workers (SUNTRACS); the National Confederation of United Independent Unions (CONUSI) and Building and Wood Workers' International (ICM) (Case No. 3328): General Workers' Union Confederation of Panama (UGT) (Case No. 3340)	413–450
The Committee's conclusions	434–449
The Committee's recommendations	450

Case No. 3346 (Netherlands): Definitive report

Complaint against the Government of Netherlands presented by Landelijke Belangenvereniging (LBV)	451–485
The Committee's conclusions	474–484
The Committee's recommendation	485

Case No. 3197 (Peru): Definitive report

Complaint against the Government of Peru presented by the Autonomous Workers' Confederation of Peru (CATP)	486–506
The Committee's conclusions	498–505
The Committee's recommendation	506

Case No. 3119 (Philippines): Report in which the Committee requests to be kept informed of developments

Complaint against the Government of the Philippines presented by the Kilusang Mayo Uno (KMU)	507–522
The Committee's conclusions	517–521
The Committee's recommendations	522

Case No. 3185 (Philippines): Interim report

Complaint against the Government of the Philippines presented by the National Confederation of Transport Workers' Union of the Philippines (NCTU); the Center of United and Progressive Workers of the Philippines (SENTRO) and the International Transport Workers' Federation (ITF)	523–532
The Committee's conclusions	529–531
The Committee's recommendations.....	532

Case No. 3067 (Democratic Republic of the Congo): Interim report

Complaint against the Government of Democratic Republic of the Congo presented by the Congolese Labour Confederation (CCT); the Espoir Union (ESPOIR); the National Union of Teachers in Catholic Schools (SYNECAT); the Union of State Officials and Civil Servants (SYAPE); the National Trade Union of Mobilization of Officials and Civil Servants of the Congolese State (SYNAMAFEC); the Union of Workers – State Officials and Civil Servants (UTAFE); the National Union of Officials and Civil Servants in the Agri-rural Sector (SYNAFAR); the General Trade Union of the State and Para-State Finance Administration, and Banks (SYGEMIFIN); the Trade Union of Workers of the Congo (SYNTRACO); the State Civil Servants and Public Officials Trade Union (SYFAP) and the National Board of State Officials and Civil Servants (DINAFET)	533–544
The Committee's conclusions	541–543
The Committee's recommendations.....	544

Case No. 3314 (Zimbabwe): Report in which the Committee requests to be kept informed of developments

Complaint against the Government of Zimbabwe presented by the Zimbabwe Congress of Trade Unions (ZCTU)	545–577
The Committee's conclusions	568–576
The Committee's recommendations.....	577

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, from 24 to 26 and 31 October 2019 under the chairmanship of Professor Evance Kalula.
2. The following members participated in the meeting: Ms Valérie Berset Bircher (Switzerland), Mr Aniefiok Etim Essah (Nigeria), Mr Aurelio Linero Mendoza (Panama), Mr Mmari Mokoma (Lesotho), Mr Takanobu Teramoto (Japan); Employers' group Vice-Chairperson, Mr Alberto Echavarría and members, Ms Renate Hornung-Draus, Mr Juan Mailhos, Mr Hiroyuki Matsui and Ms Jacqueline Mugo; Workers' group Vice-Chairperson, Mr Yves Veyrier (substituting for Ms Catelene Passchier), and members Ms Amanda Brown, Mr Magnus Norddahl and Mr Ayuba Wabba. The members of Colombian and Panamanian nationalities were not present during the examination of the cases relating to Colombia (Case No. 3091) and to Panama (Cases Nos 3328 and 3340).

* * *

3. Currently, there are **157** cases before the Committee in which complaints have been submitted to the governments concerned for their observations. At its present meeting, the Committee examined **24** cases on the merits, reaching definitive conclusions in **15** cases (**10** definitive reports and **5** reports in which the Committee requested to be kept informed of developments) and interim conclusions in **9** cases; the remaining cases were adjourned for the reasons set out in the following paragraphs. The Committee recalls that it issues "definitive reports" when it determines that the matters do not call for further examination by the Committee beyond its recommendations (which may include follow-up by government at national level) and the case is effectively closed for the Committee, "interim" reports where it requires further information from the parties to the complaint and "reports in which it requests to be kept informed of developments" in order to examine later the follow-up given to its recommendations.

Examination of cases

4. The Committee appreciates the efforts made by governments to provide their observations on time for their examination at the Committee's meeting. This effective cooperation with its procedures has continued to improve the efficiency of the Committee's work and enabled it to carry out its examination in the fullest knowledge of the circumstances in question. The Committee would therefore once again remind governments to send information relating to cases in paragraph 7, and any additional observations in relation to cases in paragraph 9, as soon as possible to enable their treatment in the most effective manner. Communications received after **2 February 2020** will not be able to be taken into account when the Committee examines the case at its next session.

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 2318 (Cambodia), 2609 (Guatemala) and 3185 (Philippines) because of the extreme seriousness and urgency of the matters dealt with therein.

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

6. The Committee deeply regrets that it was obliged to examine the following cases without a response from the Government: Nos 3076 (Republic of Maldives) and 3269 (Afghanistan).

Urgent appeals: Delays in replies

7. As regards Case No. 3081 (Liberia), the Committee observes that despite the time which has elapsed since the submission of the complaint or the issuance of its recommendations on at least two occasions, it has not received the observations of the Government. The Committee draws the attention of the Government 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 this case at its next meeting if their observations or information have not been received in due time. The Committee accordingly requests this Government to transmit or complete its observations or information as a matter of urgency.

Observations requested from governments

8. The Committee is still awaiting observations or information from the governments concerned in the following cases: 3018 (Pakistan), 3074 (Colombia), 3183 (Burundi), 3249 (Haiti), 3258 (El Salvador), 3275 (Madagascar), 3350 (El Salvador), 3351 (Paraguay), 3352 and 3354 (Costa Rica). If these observations are not received by its next meeting, the Committee will be obliged to issue an urgent appeal in these cases.

Partial information received from governments

9. In Cases Nos 2254 (Bolivarian Republic of Venezuela), 2265 (Switzerland), 2508 (Iran, Islamic Republic of), 2761 (Colombia), 3023 (Switzerland), 3042 and 3089 (Guatemala), 3141 (Argentina), 3161 (El Salvador), 3178 (Bolivarian Republic of Venezuela), 3192 (Argentina), 3221 (Guatemala), 3232 (Argentina), 3242 (Paraguay), 3251 and 3252 (Guatemala), 3277 (Bolivarian Republic of Venezuela), 3282 (Colombia), 3293 (Brazil), 3300 (Paraguay), 3313 (Russian Federation), 3323 (Romania), 3325 (Argentina), 3332 and 3335 (Dominican Republic), 3337 (Jordan), 3363 (Guatemala) and 3368 (Honduras), the governments have sent partial information on the allegations made. The Committee requests all these governments to send the remaining information without delay so that it can examine these cases in full knowledge of the facts.

Observations received from governments

10. As regards Cases Nos 2177 and 2183 (Japan), 2869 (Guatemala), 2923 (El Salvador), 2967 (Guatemala), 3027 (Colombia), 3062 (Guatemala), 3133 (Colombia), 3139 (Guatemala), 3149 and 3157 (Colombia), 3179 (Guatemala), 3193, 3199 and 3200 (Peru), 3203 (Bangladesh), 3207 (Mexico), 3208 (Colombia), 3210 (Algeria), 3211 (Costa Rica), 3213 (Colombia), 3215 (El Salvador), 3216, 3217 and 3218 (Colombia), 3219 (Brazil), 3223 (Colombia), 3224 (Peru), 3225 (Argentina), 3228 (Peru), 3230 (Colombia), 3233 (Argentina), 3234 (Colombia), 3239 and 3245 (Peru), 3260 (Colombia), 3263 (Bangladesh), 3265 and 3267 (Peru), 3280 and 3281 (Colombia), 3291 (Mexico), 3292 (Costa Rica), 3294 (Argentina), 3295 (Colombia), 3302 (Argentina), 3303 (Guatemala), 3306 (Peru), 3307 (Paraguay), 3308 (Argentina), 3309 (Colombia), 3310 (Peru), 3311 (Argentina), 3312 (Costa

Rica), 3315 (Argentina), 3316 (Colombia), 3318 (El Salvador), 3319 (Panama), 3320 (Argentina), 3321 (El Salvador), 3322 (Peru), 3324 (Argentina), 3326 (Guatemala), 3327 (Brazil), 3329 (Colombia), 3330 (El Salvador), 3331 (Argentina), 3333 and 3336 (Colombia), 3338 (Argentina), 3339 (Zimbabwe), 3341 (Ukraine), 3342 (Peru), 3343 (Myanmar), 3344 (Brazil), 3345 (Poland), 3347 (Ecuador), 3348 (Canada), 3349 (El Salvador), 3353 (Ireland), 3355 (Brazil), 3359 (Peru), 3360 (Argentina) and 3367 (Ecuador) the Committee has received the governments' observations and intends to examine the substance of these cases as swiftly as possible.

New cases

- 11.** The Committee adjourned until its next meeting the examination of the following new cases which it has received since its last meeting: Cases Nos 3356 (Argentina), 3357 (Montenegro), 3358 (Argentina), 3361 (Chile), 3362 (Canada), 3364 (Dominican Republic), 3365 (Costa Rica) and 3366 (Honduras) 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.

Withdrawal of complaints

- 12.** The Committee takes due note of the request of the complainant organizations, the Federation of Somali Trade Unions (FESTU) and the National Union of Somali Journalists (NUSOJ), to withdraw their complaint in Case No. 3113 (Somalia). In their communication dated 23 September 2019, the complainants refer to a series of positive discussions with the relevant Somali authorities on the implementation of the Committee's conclusions and recommendations in this case, as well as on other issues related to workers and union rights. The complainants reported that social dialogue, as well as the general environment of labour relations in the country, have improved considerably and refer, in particular, to a tripartite agreement on the revised draft Labour Code, the development of the National Employment Policy, the endorsement by the Cabinet of a comprehensive social protection policy and the establishment of the Somali National Tripartite Consultative Committee (SNTCC) with a mandate to deal with all labour issues, which held its inaugural meeting in September 2019. The Committee notes that the complainants' request concords with the Government's call for the closure of this case transmitted in a communication dated 22 September 2019 wherein it confirms its acceptance of the Committee's outstanding recommendations. Noting this information with interest, and observing that the Government of Somalia has recently 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), the Committee considers this case to be closed.
- 13.** The Committee also takes note of the request of the complainant organization, the Union of Private Universities of Paraguay (SUPP), to withdraw its complaint in Case No. 3307 (Paraguay). In its communication dated 19 June 2019, the complainant indicates that the matters that gave rise to the complaint have been resolved within the national tripartite social dialogue. In light of this information, the Committee considers this case to be closed.

Article 24 representations

- 14.** The Committee has received certain information from the following governments with respect to the article 24 representations that were referred to it: Brazil (3264), Costa Rica (3241), France (3270) and Turkey and intends to examine them as swiftly as possible.

15. The Committee takes note of the request of the complainant organization, the Central de Trabajadores de la Argentina Autonoma (CTA-A) to withdraw its representation (Case No. 3165 (Argentina)). On the basis of the indication of the CTA-A in its communication dated 18 July 2019, the Committee considers this representation to be closed.

Article 26 complaint

16. 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.

Transmission of cases to the Committee of Experts

17. The Committee draws the legislative aspects of Cases Nos 3021 (Turkey) and 3076 (Republic of Maldives) as a result of the ratification of Conventions Nos 87 and 98, to the attention of the Committee of Experts on the Application of Conventions and Recommendations.

Cases in follow-up

18. The Committee examined 6 cases in paragraphs 19 to 70 concerning the follow-up given to its recommendations and concluded its examination with respect to and therefore closed 4 Cases Nos: 2488 (Philippines); 3021 (Turkey); 3039 (Denmark) and 3196 (Thailand).

Case No. 3039 (Denmark)

19. The Committee last examined this case, in which the complainants – the Danish Union of Teachers (DLF) and the Salaried Employees' and Civil Servants' Confederation (FTF) – alleged that the Government had violated the principle of bargaining in good faith, and extended and renewed the collective agreement through legislation without consulting the workers' associations concerned, at its June 2016 meeting [see 378th Report, paras 27–37]. On that occasion, the Committee urged the Government to take the necessary measures to allow collective bargaining at the local level, including on working time, and trusted that in all future collective bargaining rounds between the parties, the Government would endeavour to promote and give priority to free and voluntary good-faith collective bargaining as the means of determining employment conditions in the education sector, including working time, and would ensure that the authorities refrained from any substantial intervention in such collective bargaining. The Committee also expected that the Government would take the necessary measures to ensure that workers' organizations were consulted in relation to the implementation of Act No. 409 (Act on working hours in the education sector) and in respect of other initiatives that affected their interests and requested to keep it informed of any developments in this regard.

20. In their communication dated 6 April 2018, the complainants indicate that the Government did not implement the Committee's recommendations as it did not allow genuine and fair negotiations on working hours in the education sector and did not ensure that workers' organizations are consulted in connection with the implementation of Act No. 409. In another communication dated 31 May 2018, the complainants inform that DLF and the Local Government Denmark (KL) have concluded an agreement in connection with the collective bargaining for 2018. As a consequence of this new cooperation, KL has withdrawn from the monitoring group on the implementation of Act No. 409, which has led to the closing of the group.

21. In their communication dated 17 January 2019, the complainants inform that the Danish Confederation of Trade Unions (LO) and the FTF have merged on 1 January 2019 to create “FH – Danish Trade Union Confederation”. The FH indicates that during the collective agreement negotiations between the LC (the Confederation of teachers’ unions), DLF and KL in spring 2018, the parties had to accept the fact that no negotiated agreement could be reached on working hours of teachers covered by Act No. 409. Thus, working hours of these teachers continue to be regulated by the legislation introduced by the Government in 2013. The collective agreement negotiations were completed in June 2018. Shortly after, the parties pledged to cooperate on an analysis work and subsequent binding negotiations on working hours for teachers covered by Act. No. 409. The complainant indicates in this regard that the parties agreed to initiate an analysis to be carried out by an investigative commission chaired by a person appointed jointly by the parties. The FH indicates that on the basis of the commission’s analysis, the Chairperson will submit recommendations and proposals for solutions, which will form part of the subsequent binding negotiations on working hours to be completed by 31 March 2021. The complainant indicates that it wants to be consulted on matters that affect the interests of its members and emphasizes that it will approach the upcoming negotiation with an open and constructive mind.
22. In its communication dated 24 October 2018, the Government indicates that the negotiations in 2018 resulted in new collective agreements for all areas of the public sector. The new collective agreements were concluded without the parties resorting to industrial action and without any legislative involvement from the Parliament. The Government further indicates that negotiations were not easy and the assistance of the conciliator was necessary in order to complete a draft settlement of the dispute. With regard to the collective agreement covering teachers, the Government indicates that approximately 75 per cent of the votes among teachers were in favour of the draft settlement. The Government adds that in its view, the collective bargaining process in 2018 has been conducted in a free and fair manner within the established framework. With reference to the complainants’ communication dated 31 May 2018, the Government expresses its satisfaction with regard to the improved cooperation and general relations between the parties to the collective agreement covering teachers.
23. *The Committee welcomes the signing of the collective agreement in June 2018 and the stated renewed cooperation between the parties. The Committee further welcomes the agreement between the parties to initiate an analysis on a basis of which recommendations and proposals for solutions will be prepared to form part of the subsequent binding negotiations on working hours of teachers, currently regulated by Act No. 409. In these circumstances, the Committee will not pursue the examination of this case.*

Case No. 2086 (Paraguay)

24. The Committee last examined this case, relating to the trial and sentencing for “breach of trust” of the three presidents of the trade union confederations, the Paraguayan Confederation of Workers (CPT), the United Confederation of Workers (CUT) and the Trade Union Confederation of State Employees of Paraguay (CESITEP), Mr Gerónimo López, Mr Alan Flores and Mr Reinaldo Barreto Medina, at its March 2017 meeting [see 381st Report, paras 69–72]. On that occasion, the Committee lamented Mr Gerónimo López’s death while in hiding and as a fugitive from justice, and expressed its regret that Mr Alan Flores continued to reside abroad as a fugitive from justice and that the Public Prosecutor’s Office had appealed against the decisions granting Mr Reinaldo Barreto Medina conditional release and quashing his sentence. The Committee requested the Government to keep it informed of the status of the proceedings against the union leaders,

including the outcome of the appeal of the Public Prosecutor's Office against the decision quashing Mr Barreto Medina's sentence.

25. The Committee notes that, by communications of 27 May 2018 and 9 June 2019, CESITEP indicates that the proceedings against the three presidents of the trade union confederations, which had commenced 22 years ago, had not yet concluded, and that since 2012 the Public Prosecutor's Office had been appealing against the decisions granting conditional release and quashing the sentence of Mr Barreto Medina. CESITEP emphasizes that, without prejudice to the fact that Mr Barreto Medina was convicted in 2001 and received a four-year custodial sentence, since 2001 Mr Barreto Medina has spent: (i) two years and two months under house arrest at the CESITEP premises; (ii) eight years on parole with strict rules of conduct; (iii) eight months as a political prisoner in the Tacumbú prison; and (iv) the last seven years on conditional release with drastic rules of conduct, including not being able to leave the country unless authorized by the judge.
26. *The Committee expresses its regret at the fact that the Government has not sent any communications on the case since it was last examined. It also notes with concern that, according to the information provided by the complainant organization, the judicial proceedings concerning Mr Barreto Medina, which commenced two decades ago, have not yet been concluded. The Committee notes that this situation has reportedly arisen as a result of the appeals lodged by the Public Prosecutor's Office against the decisions ordering his conditional release and quashing the sentence.*
27. *The Committee considers that, when appeals are lodged against decisions ordering conditional release and quashing a sentence, as is the case with Mr Barreto Medina, the proceedings must be conducted without delay. Noting with concern the 20-year delay in the judicial proceedings, the Committee recalls that justice delayed is justice denied [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 170]. In these circumstances, the Committee firmly expects the judicial proceedings to be concluded shortly and requests the Government to inform it of the outcome.*

Case No. 2488 (Philippines)

28. The Committee last examined this case, in which the complainant alleged anti-union dismissal of 15 union officers of the University of San Agustin Employees' Union – FFW (USAEU) in retaliation for the staging of a strike, as well as partiality of the judicial authorities, at its June 2011 meeting [see 360th Report, approved by the Governing Body at its 311th Session, paras 105–115]. On that occasion, the Committee expressed its expectation that adequate livelihood assistance would be granted without delay to the dismissed workers, requested the Government to continue to take active steps to intercede with the parties for the purpose of conciliating a solution and urged the Government to take all necessary measures to conduct an independent inquiry into the allegations of anti-union discrimination in the Eon Philippines Industries Corporation (enterprise A) and the Capiz Emmanuel Hospital in Roxas City (enterprise B).
29. The complainant provides additional information in communications dated 12 January and 1 October 2012, 3 May 2013 and 10 May 2014. With regard to the Government's commitment to facilitate employment of the dismissed workers, the complainant alleges that even though many vacancies were posted by different Government agencies and the workers submitted application letters and complied with qualification requirements, the Government refused to hire any of the terminated workers. In one instance, the Government instructed some of the workers to take exams and interviews, only to be told later that the said position was already reserved for another candidate.

30. Concerning the livelihood assistance grant for the dismissed union officers and departmental representatives, the complainant informs that in February 2012, the Government offered to grant a one-time amount of 10,000 Philippine pesos (PHP) (US\$238) as an individual livelihood project. The complainant considers this amount outrageous, especially since it was supposed to be the Government's out-of-the-box solution in exchange for the Committee's recommendations for the immediate reinstatement with full back wages and benefits, and suggests that the terminated workers should each be receiving around PHP2,000,000 (US\$47,960) representing back wages (without benefits) and reinstatement. The complainant further states that this sham offer was accompanied by a Government letter containing several falsehoods on the follow-up given to the February 2012 meeting. In a response dated 2 March 2012, the complainant underlined these fabricated facts and conveyed the workers' out-of-the-box counter proposal consisting of accepting full back wages from the time of dismissals in April 2005 until the final decision of the Supreme Court on the dismissal case, accompanied by a separation pay of one month per year of service. The complainant requested the Government to forward this proposal to the new set of administrators at the University but has not received any reply. At the same time, two of the terminated workers – Mr Rudante Dolar and Ms Ma Luz Calzado – were contacted by the Department of Labor and Employment (DOLE) and asked to sign a document stating that they were withdrawing their complaint before the ILO but the workers refused to do so.
31. As to the judicial proceedings concerning dismissals, the complainant indicates that: (i) the Court of Appeals denied the complainant's January 2011 motion for reconsideration of its previous decision ruling that the dismissal of USAEU committee members was legal; (ii) on 25 August 2011, the complainant filed a petition for review on certiorari before the Supreme Court, illustrating in more than 100 pages the complete circumstances surrounding the massive dismissal of USAEU officers, the continuing clear interference in purely union affairs and union-busting by the University management, as well as the questionable decisions and resolutions by the Court of Appeals and the National Labour Relations Commission (NLRC) on the matter of dismissal; (iii) the Supreme Court denied the petition for late filing and for failing to sufficiently show that the Court of Appeals committed any reversible error in the challenged decision; (iv) on 9 December 2012, the complainant filed a motion for reconsideration of the decision arguing that petitions filed with a one-day delay have been previously accepted by the Supreme Court and that several constitutional issues needed to be authoritatively explained and resolved by the Supreme Court, which has exclusive jurisdiction in this regard; and (v) the motion for reconsideration was denied by the Supreme Court, ruling that there was no compelling reason nor any substantial argument to warrant a modification of the Court's resolution and the complainant filed a second motion for reconsideration. The complainant adds that the Government did not make the necessary intervention with the courts on the pending illegal dismissal case and still refuses to investigate union-busting activities by the University, which installed a new set of union officers who simply do the bidding of the management. Furthermore, there is still no re-negotiation of the collective bargaining agreement at the University and the last negotiations date back to April 2003.
32. Concerning the allegations of partiality of the judicial authorities, the complainant reiterates that it has been submitting arguments and documents about corruption in the judiciary since 2006 but that these have been ignored by the Government. Furthermore, in 2014, the Chief Justice of the Supreme Court was impeached and removed from office due to corruption. The complainant explains that the concerned judge was part of the Second Division of the Supreme Court which had overturned the initial decision of the Secretary of Labour by declaring the complainant's 2003 strike illegal and was also part of the former First Division of the Supreme Court which had dismissed the union's case for illegal dismissal and unfair labour practices, as well as its motion for reconsideration.

33. Finally, with regard to the allegations of anti-union discrimination at enterprises A and B, the complainant alleges that the Government still refuses to investigate these allegations and that there are no trade unions since all members were dismissed from their jobs.
34. The Government provides its observations on several of the pending issues in communications dated 5 March 2012, 2 May 2013, 26 May 2014 and 1 October 2019. With regard to the dismissal case, the Government recalls the proceedings before the Court of Appeals and the Supreme Court and clarifies that the so-called intervention from the executive cannot go beyond a request to the judiciary to expedite the resolution of the case based on the merits, which has already been done. The Government adds that the persistent use of legal proceedings has made it difficult to broker an out-of-the-box solution. Given the finality of the Supreme Court decision, the management's refusal to reinstate the workers and the lack of legal basis to compel it to accept a settlement package or re-employment, the DOLE negotiations are mainly anchored on humanitarian consideration. These negotiations thus represent an out-of-the-box approach, before working on other schemes, such as a livelihood grant or employment assistance.
35. Concerning employment assistance, the Government informs that the group of workers submitted their resumes and a list of workers with pending applications in Government agencies. In response, the DOLE sent endorsement letters to help facilitate their application and the DOLE Regional Office received instructions to consider the qualifications of the dismissed union members in case of vacancies. However, employment in Government agencies has to conform to set qualification standards based on merits and promotion and selection boards, as well as the appointing authorities of Government agencies, have discretion to choose applicants they deem better suited to the needs of the organization or agency. The Government further indicates that the Regional coordinator of the Federation of Free Workers (FFW) informed the DOLE Regional Office that some of the terminated workers – Mr Theodore Neil Lasola, Mr Ramon Vacante, Ms Ma Luz Calzado and Mr Rene Caballum – were again employed. As to the allegations that two dismissed workers were asked to withdraw their complaint before the ILO, the Government clarifies that while the DOLE focal person did contact them, the purpose was not to ask to withdraw the complaint but to inquire on the status of the terminated workers.
36. As to the livelihood assistance, the Government informs that it initially offered PHP535,000 (US\$10,300) as funding for a consolidated project proposal but the dismissed workers insisted on receiving individual project proposals. Based on the rules governing the livelihood formation programme for terminated workers, the standard per capita cost for an individual beneficiary is PHP10,000 (US\$193) and consists of tools and jigs which aim at assisting the affected workers to start their livelihood undertaking and training for skills enhancement. While Mr Lasola, acting as the leader of the dismissed workers, insisted that the livelihood assistance should not be based on per capita standards, this request could not be accommodated as the DOLE livelihood programme is governed by existing rules and regulations which do not permit a one-time PHP1,000,000 (US\$19,254) grant to an individual beneficiary. Accordingly, in February 2012, the DOLE met with representatives of the workers on several occasions to discuss the livelihood formation and present options for livelihood projects, including commodity trading, water-refilling station, food processing and Internet station. A DOLE officer was designated to act as the focal person for the delivery of the assistance but the group unanimously agreed to sustain their stand and prioritize the Committee's recommendations on reinstatement of all terminated union officers, since the amount of the livelihood assistance was insufficient to cover their claims.
37. The Government further indicates that since the case has been pending before the ILO since 2006 and the issues raised by the complainant are merely recurring, the Regional Tripartite Monitoring Body (RTMB) of Region 6 was requested to actively engage the dismissed faculty members, with the aim of crafting and implementing an action plan to finally resolve

the pending issues. Mr Lasola manifested that livelihood and possible employment were no longer solutions to the case as all the dismissed officers have again been employed while one officer was abroad. The RTMB is therefore exploring with the parties the possibility of the University management providing financial assistance to the terminated union officers.

38. *The Committee takes due note of the detailed information submitted by the complainant and the Government. The Committee notes with regret that the Supreme Court confirmed the illegality of the complainant's 2003 strike, which had led to the dismissal of a number of USAEU officers, especially considering that the union officers were dismissed for not having ensured immediate compliance with an assumption of jurisdiction order issued under article 263(g) of the Labour Code (now renumbered as article 278(g)) which has been repeatedly found to be contrary to freedom of association and which has been pending amendment for a number of years. The Committee further notes that, given the finality of the Supreme Court decision and the lack of legal basis to compel the University management to accept a settlement package, the Government focused on other schemes, including employment and livelihood assistance for the dismissed workers. The Committee observes in this regard that while the complainant denounces the Government's refusal to hire any of the terminated workers for any of the open vacancies in Government agencies, the Government, for its part, maintains that it took the necessary measures to provide endorsement letters and explains that the appointing authorities have discretion in selecting the most appropriate candidate for each vacancy. The Committee also notes that the negotiations on the livelihood assistance appear to have been unfruitful, with the Government favouring group assistance and the dismissed workers insisting on an individual livelihood grant in an amount exceeding what the Government was able to provide under the existing regulations. Finally, the Committee observes that, given the lapse of time since the allegations were made in 2006, the RTMB was requested to engage with the dismissed workers to craft and implement an action plan to resolve the issues. The Committee understands that, in view of the fact that all dismissed workers have since been re-employed and one was abroad, reinstatement or livelihood assistance were no longer an adequate response to the workers' claims, leading the RTMB to explore other options, such as financial assistance. Taking all of the above into consideration and in the absence of any new information from the complainant for the past five years, the Committee trusts that the RTMB was able to propose actions and measures acceptable to both parties and that this issue has since been satisfactorily resolved.*
39. *The Committee further notes that the Government does not provide any information on the investigations into the allegations of anti-union discrimination at enterprises A and B but trusts that, given the time that has elapsed since these allegations were made in 2006 and in the absence of any recent information from the complainant, the matters have since been resolved. The Committee expects that any future allegations of anti-union discrimination will be speedily investigated and, where appropriate, accompanied by adequate remedies. In these circumstances, the Committee will not pursue the examination of this case.*

Case No. 2745 (Philippines)

40. The Committee last examined this case at its October 2013 meeting [see 370th Report, paras 643–684] and made the following recommendations [see 370th Report, para. 684]:
- (a) The Committee expects that the Strengthening Workers' Rights to Self-Organization Bill, amending articles 234, 235, 236, 237 and 270 of the Labour Code, which removes the 20 per cent minimum membership for registration of independent labour organizations, reduces the required membership of local unions for federation registration, and removes the required government authorization on receipt of foreign funding, will be adopted in the near future. It urges the Government to keep it informed on any progress made in this regard.

- (b) Concerning the concrete allegations of interference of LGUs into internal union affairs at the Nagkakaisang Manggagawa sa Hoffen Industries-OLALIA factory (Hoffen), Samahan ng Manggagawa sa Mariwasa Siam Ceramics, Inc. (Siam Ceramics), Samahan ng Manggagawa sa EDS Mfg, Inc. (EDS Inc.) and Golden Will Fashion Phils., the Committee takes due note of the information provided as regards the latter enterprise and requests the Government to keep it informed regarding the outcome of the further investigation conducted on the alleged interference of local government officials. With respect to the remaining three companies mentioned above, the Committee once again requests the Government to keep it informed of the status of the motu proprio investigations that were to be conducted by the CHR into the allegations of Government interference in union affairs and expects that the Government will soon be able to report progress in the resolution of these cases. The Committee also requests the Government to keep it informed of the measures taken or envisaged to ensure full respect in the future of the principle that the public authorities and employers exercise great restraint in relation to intervention in the internal affairs of trade unions.
- (c) With respect to the complainant's allegations that, on various occasions, enterprises in the EPZs closed down, either the whole company or strategic departments where most unionists were located, following the recognition of a union (in particular Sensuous Lingerie and Golden Will Fashion Phils.), the Committee once again requests the Government to provide information concerning the motu proprio investigations that were to be conducted by the CHR into the relevant allegations concerning these companies, and expects that the Government will make efforts to ensure a speedy resolution of these cases by the agencies concerned. It requests the Government to keep it informed in this regard.
- (d) As regards the allegations of anti-union discrimination in the form of illegal dismissals of trade union members in various enterprises, the Committee once again requests the Government to carry out independent investigations of the dismissals which occurred at Daiho Philippines Inc., Hanjin Garments, Asia Brewery, Anita's Home Bakeshop and NMCW and, if it finds that they constitute anti-union acts, to take measures to ensure the reinstatement of the workers concerned without delay. If reinstatement is not possible for objective and compelling reasons (as in the case of the latter company), the Government should ensure that the workers concerned are paid adequate compensation which would represent a sufficiently dissuasive sanction for anti-union dismissals. In addition, the Committee urges the Government to keep it informed of any relevant judgment handed down in the case of Anita's Home Bakeshop, and in particular of the decisions of the NLRC RAB VII or the NLRC Division 4 in Cebu City. The Committee further requests the Government to keep it informed of the motu proprio investigations that were to be conducted by the CHR into the abovementioned allegations. It expects that the Government will do its utmost to ensure a speedy and equitable resolution of all cases by the agencies concerned. Furthermore, the Committee once again requests the Government, in respect of Enkei Philippines, to take the necessary steps so that, pending the outcome of any appeal proceedings instituted by the company, the union members who were dismissed are reinstated immediately in their jobs under the same terms and conditions prevailing prior to their dismissal with compensation for lost wages and benefits, in conformity with the 2007 NLRC order for reinstatement; if reinstatement is not possible for objective and compelling reasons, the Government should ensure that the workers concerned are paid adequate compensation which would represent a sufficiently dissuasive sanction for anti-union dismissals. Similarly, in the case of Sun Ever Lights, the Committee once again requests the Government to keep it informed of any developments in regard to the motion for writ of execution of the 2008 NLRC reinstatement order pending with the NLRC.
- (e) With respect to the alleged denial of the right to strike, the Committee expects that the ongoing legislative reform and the steps taken within the framework of the NTIPC towards the elaboration of an administrative issuance will advance expeditiously and successfully, and urges the Government to continue to keep it informed in this regard. The Committee expects that the Government will take the necessary measures without delay to ensure the full respect for the trade union rights of EPZ workers in practice, including the right to strike.
- (f) In relation to the allegations of blacklisting and vilification of union members at Daiho Philippines and Anita's Home Bakeshop, the Committee once again requests the

Government to keep it informed of the outcome of any inquiries conducted by the CHR into these allegations and to make every effort to ensure the swift investigation and resolution of these cases.

- (g) As to the allegations of false criminal charges filed against labour leaders and unionists at the onset of union formation, or during collective bargaining negotiations, picket protests and strikes, at the companies Sensuous Lingerie, Kaisahan ng Manggagawa sa Phils. Jeon Inc., Golden Will Fashion and Asia Brewery, the Committee urges the Government to keep it informed of the motu proprio investigation that was to be conducted by the CHR into the allegations concerning the latter company, and to do its utmost to report progress in investigating this case without further delay. The Committee once again requests the Government to ensure that all relevant information is gathered in an independent manner, and, should it be determined that the persons employed in the abovementioned companies were arrested in relation to their trade union activities, to take the necessary measures to ensure that all charges are immediately dropped. The Committee requests to be kept informed of the developments, including any judgment handed down.
- (h) As regards the serious allegations of involvement of the army and police (units of the PNP, Regional Special Action Forces–PNP, and/or AFP SWAG or security guards sent by PEZA and the municipal government) to intimidate and/or disperse workers during protests, strikes or on picket lines, at Sun Ever Lights, Sensuous Lingerie, Asia Brewery and Hanjin Garments, which in the latter company’s case resulted in the death of one protester, the Committee once again requests the Government to take all necessary measures for an independent investigation to be carried out into the abovementioned incidents alleged by the complainant with a view to identifying and punishing those responsible without further delay. The Committee requests the Government to keep it informed of the motu proprio investigations that were to be conducted by the CHR and to make all efforts to ensure timely progress in the resolution of these cases. Also, the Committee once again requests the Government to establish without delay an independent judicial inquiry and proceedings before the competent courts as soon as possible, with regard to the allegation of the killing of a protester at Hanjin Garments, with a view to shedding full light on to the relevant facts and circumstances, and to determine where responsibilities lie, punish the guilty parties and prevent the repetition of similar events. The Committee firmly expects that the Government will do its utmost to ensure the speedy investigation and judicial examination of this case and requests to be kept informed in this respect.
- (i) Concerning the allegations of a prolonged presence of the army inside the workplaces in the enterprises Sun Ever Lights and Siam Ceramics, the Committee requests the Government to keep it informed in regard to action taken and resolution of these cases.
- (j) The Committee requests the Government to continue to keep it informed with regard to the capacity-building activities carried out in 2013 with a view to giving instructions to the law enforcement authorities so as to eliminate the danger entailed by the use of excessive violence when controlling demonstrations as well as their impact. It further requests the Government to supply copies of the PNP Guidelines on the accountability of the immediate officer for the involvement of his subordinates in criminal offenses, mentioned in the previous examination of the case.
- (k) The Committee requests the Government to continue to keep it informed with regard to the upcoming capacity-building activities for the effective implementation of the Guidelines, or concerning freedom of association, collective bargaining and international labour standards in general, as well as their impact on the alleged implementation of a “no union, no strike” policy in the country’s EPZs. It also requests the Government to provide statistics of complaints on anti-union discrimination in the EPZs.
- (l) The Committee draws the special attention of the Governing Body to the extreme seriousness and urgent nature of the matters dealt with in this case.

41. The Government provides its observations with respect to many of these issues in communications dated 7 November 2013, 26 May 2014, 12 February 2015 and 1 October 2019.

Trade union rights in economic zones

42. With regard to the alleged violations of trade union rights in companies in export processing zones (EPZs), special economic zones and other industrial areas, the Government reiterates that the Monitoring Body of the National Tripartite Industrial Peace Council (NTIPC-MB) had issued resolution No. 8, series of 2012, to facilitate the gathering of information on and the eventual resolution of 17 cases of alleged violations of trade union rights presented by Kilusang Mayo Uno (KMU). Out of this number, one case¹ has been recommended for closure on the ground that the union and the management had reached a settlement, four cases² were covered by separate NTIPC-MB resolutions, as they were previously raised in Case No. 2528 and the NTIPC-MB recommendations were already effected in four other cases:

- (i) Regarding the case filed by Goldilocks Ant-Bel (enterprise A) Workers Association (GAWA) for alleged unfair labour practice, illegal dismissal, moral and exemplary damages and attorneys' fees, the Government states that following the September 2012 denial by the Court of Appeals of the motion for reconsideration of its previous ruling that had established the legality of the company closure of business and had considered that there was no illegal dismissal or obligation to pay backwages, the Department of Labor and Employment (DOLE) has extended to the members of the union a livelihood assistance under the DOLE Adjustment Measures Program amounting to 283,705 Philippine Peso (PHP) (US\$5,421).
- (ii) Concerning the Sun Ever Lights (enterprise B) Labour Union – Independent (SELLUI) case, a motion was filed by the union for a writ of execution of the 2008 reinstatement order issued by the National Labor Relations Commission (NLRC). The NTIPC-MB resolved to refer the case to the NLRC for an immediate resolution and the Commission reported that the case has already been settled.
- (iii) Regarding the case of Nagkakaisang Manggagawa sa Chong Won (NMCW-Independent) (enterprise C), the Government has previously reported that following the company closure in 2007 and declaration of insolvency, the Philippine Economic Zone Authority (PEZA) auctioned the company's property amounting to about PHP1.6 million (US\$30,574) and the lawyer of the workers was tasked to distribute the money among the worker claimants. A copy of the court report on the distribution of the money will be provided as soon as available.
- (iv) As to the Anita's Home Bakeshop (enterprise D) Workers Union-ANGLO-KMU case, the Government indicates that the NTIPC-MB requested the Court of Appeals to expedite the resolution of the case and the court reported that the case was dismissed on 20 December 2013 and no appeal was filed. The DOLE provided the 33 displaced union members a livelihood grant with a total cost of PHP298,000 (US\$5,695) in addition to the earlier grant of PHP130,612 (US\$2,496) released to the displaced workers under the DOLE Adjustment Measures Program.

43. Concerning the other eight cases, the Government provides the following updated information gathered from the various concerned agencies through the NTIPC-MB:

¹ AICHI Forging Company Employees Union-1 Independent.

² The Samahan ng mga Manggagawa sa EMI-Independent, the Kaisahan ng Manggagawa sa Phils. Jeon Inc., the Aniban Manggagawang Inaapi sa Hanjin Garments and the PAMANTIK (Solidarity of Workers in Southern Tagalog-KMU).

- (i) In the Nagakakaisang Manggagawa se Hoffen Industries-Olalia case (enterprise E) that concerns alleged interference of local government officials in union affairs, the management claims that it does not have knowledge of such interference and that, despite the allegations, the Hoffen Employees Workers' Union (HEWU-PAFLU) won a certification election conducted in 2008 and was certified as a collective bargaining agent at the enterprise. As to the allegations concerning illegal dismissals and closure of the company affecting around 1,800 workers, the union president filed a case for unfair labour practices, union busting and illegal closure before the NLRC asking for reinstatement and payment of backwages. However, in April 2013, 248 former workers, including some of the local union officers, issued an affidavit stating that after the management informed them of the losses incurred by the company and prompted them to offer gratuity pay to the employees in accordance with the collective bargaining agreement, they had willingly accepted the offer of the management and were not forced to accept the package, did not consent to the filing of the case before the NLRC against the company and were satisfied with how the management treated them. The NLRC reported that the appeal in this case has already been resolved and that a decision was promulgated on 20 November 2013.
- (ii) In the Tunay na Pagkakaisa ng Manggagawa sa Asia Brewery Incorporated-Independent case (enterprise F), the management refutes the union's claim that, in 2004, it illegally dismissed 31 union officers and members for disloyalty. It clarifies that two union officers were expelled for union disloyalty by virtue of the closed-shop provision of the collective bargaining agreement that enables the termination of employment of an employee on the grounds of his or her expulsion from the union. The other 29 employees were dismissed for staging an illegal strike in October 2004 and committing illegal acts in the process. Verification showed that the dismissed union officers and members filed a complaint with the NLRC RAB IV against the company and its officials for illegal dismissal and money claims. The NLRC dismissed the complaint for lack of merit and the Court of Appeals affirmed the dismissal of the 29 employees but ordered the reinstatement of two union officers (Bela and Lacerna) to their respective positions with backwages from the time they had been dismissed until their actual reinstatement. The Supreme Court also declared their termination illegal and that they were deemed reinstated to their former status and entitled to the benefits that they have been regularly receiving. As to the alleged criminalization of the labour dispute, the criminal case filed against Rodrigo Perez et al. for damages caused during the October 2004 strike was resolved in July 2014 and Perez was acquitted. The case of Bonifacio Fenol, charged with grave disobedience for throwing stones at policemen during the February 2009 strike at the company, was also dismissed in August 2011.
- (iii) Regarding Samahang Manggagawa ng ENKEI case (enterprise G), in which the union alleged that 47 workers, including six members of the executive committee and four board members, were illegally dismissed in 2006 without due process, after attending a union meeting on a non-working holiday, and that the management forced the workers to work without prior notice and charged them with insubordination, the management argued that the direction to the employees to render work on the non-working day was meant to meet the demands of the customers, as failure to meet them would cause great and irreparable losses to the company and that despite previous notice to render work, the employees deliberately did not report to work on the date. The Government informs that in May and June 2007, the NLRC issued resolutions declaring the termination of the 47 employees as illegal and ordering their reinstatement without loss of seniority rights and benefits. The management filed a petition for certiorari and prohibition but the Court of Appeals denied it in December 2011 and modified the assailed NLRC resolutions to exclude 27 employees who had already received settlements and signed Affidavits of Waiver, Quitclaim and Release.

- (iv) Regarding Golden Will Fashion Phils. (enterprise H) Workers' Organization-Independent case, in which the union denounced retrenchment of 103 union members following a six-month forced vacation leave, the management claimed that the company was affected by the 2008 global financial crisis and had no choice but to implement a temporary closure from March to June 2009 before filing a notice of retrenchment. According to a PEZA report, the company paid the workers in accordance with existing laws, deposited to the NLRC the remaining separation pay for employees who had not yet received it and assigned authorized personnel to serve as contact persons for the concerned employees. On the alleged intervention of local government officials in union organizing, the company admitted that it had invited Governor Maliksi for a peaceful dialogue with the union. As to the criminal charges filed against 25 union officers and active members for qualified theft, the Government informs that the charges were dismissed on 4 May 2010 due to insufficient evidence.
- (v) Regarding the Sensuous Lingerie (enterprise I) Unified Labor Organization case, in which the union alleged company closure while negotiations for a collective bargaining agreement were ongoing, the management claimed that due to serious business reversals and unfavourable economic conditions, it had to close operations in June 2008. PEZA reported that 605 workers affected by the closure were absorbed by a sister company, while those who did not qualify were given separation pay.
- (vi) In the Samahan ng Manggagawa sa Mariwasa Siam Ceramics, Inc.-Independent case (enterprise J) that concerned alleged interference of local government units with union affairs and the use of army or police presence inside the workplace during the process of petition for certification election, the management refuted the allegations and the DOLE records show that there are four registered trade unions at the enterprise. The Government emphasizes the difficulties in gathering substantial information on the allegations due to a considerable lapse of time and the Regional Tripartite Monitoring Body (RTMB) is verifying whether such incidents of interference or harassment still prevail in the company.
- (vii) In the Samahan ng Manggagawa sa EDS Mfg., Inc.-Independent case (enterprise K) that involves alleged interference of corrupt former union leaders in union affairs, the enterprise claims that it cannot provide information on the matter considering that the issue concerns an inter/intra-union dispute that does not involve the company, whereas the Government underlines the difficulties in gathering information on the allegations due to a considerable lapse of time. It reiterates that the RTMB is verifying whether such incidents of interference still prevail in the said enterprise.
- (viii) In the Workers' Union of Daiho Philippines Incorporated-Independent case (enterprise L), which concerned alleged illegal retrenchment affecting 106 employees from two plants, the management claimed that the notice of retrenchment took effect in accordance with the law, following a 30-day notice, was due to the installation of a labour saving device and offered fair and justified separation pay to all retrenched employees. Additionally, the union denounced union busting when the management filed a motion for reconsideration in the petition for certification election initially granted by the DOLE but the management explained that the motion aimed to question the union's registration, its collective bargaining representation, as well as its personality as it covered two plants but its registration address only referred to one factory. The Government indicates that verification showed that the results of the certification election conducted on 27 January 2010 did not favour the union, which was thus not certified as the bargaining agent of the company's employees. The case was elevated to the Court of Appeals and referred to the Philippine Mediation Centre-Court of Appeals for purposes of mediation. In June 2012, the case was closed after the management filed a motion for leave to withdraw petition on the grounds that the union had already filed with the DOLE Regional Office a motion that it had accepted the

adverse outcome of the 27 January 2010 certification election and the union had thus not been certified as the bargaining agent of the company's employees.

Legislative reform

44. Concerning progress on legislative reform, the Government indicates that in October 2013, a DOLE Department Order No. 40-H-13 was issued in order to help shift the exercise of the assumption of jurisdiction power from the criteria of “industry indispensable to the national interest” to “essential services” criteria. The Department Order is an implementing guideline for section 263(g) of the Philippine Labor Code, was processed through extensive tripartite discussions and approved by the National Tripartite Industrial Peace Council (NTIPC). It adopts four of the five ILO-listed essential services and includes a provision on tripartite recommendation of industries that may or may not be essential services per se. Thus, it defines companies or industries affecting “national interest” along the ILO’s definition of “essential services” in the exercise of assumptive power of the Secretary of Labor and Employment over labour disputes, strikes and lockouts. These industries include the hospital sector, electric power industry, water supply services (except small water supply services, such as bottling and refilling stations) and air traffic control, and other industries may be included upon recommendation of the NTIPC. The Department Order also reiterates the procedure for the exercise of the Secretary’s assumptive power, where either or both parties shall invoke the exercise of the assumptive power through a petition for assumption of jurisdiction. If invoked by both parties, its issuance is automatic regardless of the category of the industry, if invoked by one party, the petition would trigger the conduct of an exhaustive conciliation under the Office of the Secretary until settlement is reached. In both instances, conciliated agreement is worked out and arbitral award is the last resort. The Department Order emphasizes speedy resolution of assumed or certified cases and addresses the claimed arbitrariness in the use of the assumptive power of the Secretary of Labor and Employment, as well as the overbroad criteria of industries indispensable to the national interest. It intends to transition the social partners towards aligning the law on assumption of jurisdiction to the ILO essential services criteria and a Technical Working Group has already been constituted by the House Committee on Labor and Employment to harmonize all the pending bills on assumption of jurisdiction during the January 2015 hearing. The Government points out that the Department Order has been successfully observed since its issuance and that its implementation is expected to facilitate its enactment into law. The Government also indicates that the Single Entry Approach (SEnA), providing for an institutionalized 30-day mandatory conciliation–mediation service on all individual and collective labour and employment disputes as the first approach, resulted in a decline in the number of assumption cases and cases certified for compulsory arbitration. The Government provides detailed statistics in this regard.
45. With regard to the 20 per cent membership requirement for registration of independent unions in the Union Registration Bill or the Strengthening Workers’ Right to Self-Organization Bill, the Government informs that the total removal of this requirement has been reconsidered and the requirement was lowered to 10 per cent, as agreed by the NTIPC.
46. The Government adds that promotion of freedom of association and collective bargaining is now embedded in the Labor Laws Compliance System (LLCS) of the DOLE (Department Order No. 131, series of 2013), which shifts the labour standards enforcement system from a purely regulatory approach to one that combines both regulatory and facilitative approaches that should enable establishments to comply with all labour laws with the active participation of both employers and workers. The LLCS involves an assessment and certification process with the participation of the social partners to determine compliance by establishments with labour laws. It is tripartite: the Labour Laws Compliance Officer, together with employers’ and workers’ representatives conducts a joint assessment of the

establishment's compliance with all labour laws and, based on this assessment, the establishment may be issued with three types of certificates (compliance with general labour standards, compliance with occupational safety and health standards and compliance with labour relations). In case of deficiencies, the Labour Law Compliance Officers will assist the establishments to comply by providing technical assistance and educating both employers and workers on labour laws and standards. The Government provides statistics on the number of establishments that underwent certification of compliance with labour standards.

47. Finally, the Government informs that to ensure that labour disputes are not converted into criminal cases, the DOLE coordinated with the Department of Justice (DOJ) for an issuance reinforcing the provisions of Circulars Nos 15, series of 1982, and 9, series of 1986, requiring government prosecutors to secure clearance from the DOLE and/or the Office of the President before taking cognizance of complaints for the preliminary investigation and the filing in court of the corresponding information of cases out of, or related to, a labour dispute, including with allegations of violence, coercion, physical injuries, assault upon a person in authority and other similar acts of intimidation obstructing the free ingress to, and egress from, a factory or a place of operation of the machines of such a factory or the employer's premises. The DOJ issued Memorandum Circular No. 16 on 22 April 2014, in conformity with Title XII of the *Guidelines on the conduct of the DOLE, DILG, DND, DOJ, AFP and PNP relative to the exercise of workers' rights and activities*.

Capacity-building activities

48. The Government provides detailed information on capacity-building activities undertaken to ensure compliance with international labour standards: (i) in order to cascade the knowledge contained in the modules finalized during the Trainers' training on international labour standards, freedom of association and collective bargaining conducted on 21–25 January 2013, four area-wide trainings on international labour standards were held from May to July 2013 for the DOLE, PEZA and Commission on Human Rights (CHR) officials to instil common understanding and interpretation of international labour standards, in particular freedom of association, collective bargaining, concerted actions and other trade union activities; (ii) as regards the *Guidelines on the conduct of the DOLE, DILG, DND, DOJ, AFP and PNP relative to the exercise of workers' rights and activities*, four area-wide advocacy workshops took place in August 2013 for the sectoral partners (DOLE, Regional Tripartite Industrial Peace Councils (RTIPCs), RTIPC-Monitoring Bodies, DILG especially local government units (LGUs), the Department of National Defense (DND), DOJ, Armed Forces of the Philippines (AFP) and the Philippine National Police (PNP)), so as to orientate them on the significance of the Guidelines in order to: promote compliance among all stakeholders; raise participants' understanding on their roles and functions in collaboration with other stakeholders relative to the exercise of workers' rights and trade union activities; improve coordination among government in handling cases through the implementation of the Guidelines; strengthen the networking links and engagement among workers and employers and contribute to tripartite prevention and monitoring of violence against workers and unions; (iii) an orientation seminar on international labour standards, freedom of association and collective bargaining for university students took place on 3 December 2013 with the primary objective to raise awareness and promote full understanding of international labour standards and workers' rights to freedom of association, collective bargaining, concerted actions and other trade union activities, and convey to the students the relevance of such principles in sustaining social justice and industrial peace; around 200 students participated in the seminar; (iv) three area-wide trainings on freedom of association and collective bargaining for the military and the police were also conducted from March to April 2014 so as to equip the participants with knowledge on the principles of freedom of association and the right to collective bargaining and to improve the application of the various Guidelines in relation to their respective mandates, duties and functions; and (v) a

capacity-building seminar for members of the RTMBs in labour relations-heavy regions took place on 19–20 May 2014 with the objective to carry out self-assessment, identify and address gaps in the system of monitoring and resolving cases of trade union rights violations; equip members of the RTMBs with appropriate or modernized ways on the effective and efficient monitoring of cases of violations of trade union rights; and update them on international labour standards, freedom of association and collective bargaining principles in relation to insurgency situations, peacekeeping and maintenance of public order; the seminar resulted in the adoption of draft RTMB Operational Guidelines.

49. The Government further informs that the Department, in coordination with the ILO Country Office, also conducted the following activities: knowledge sharing on alternative dispute resolution processes workshop on 24–25 February 2014 with participants from the Bureau of Labor Relations, Bureau of Working Conditions, Legal Service, NLRC and National Conciliation and Mediation Board; training session for DOLE trainers on improving skills to handle training activities on international labour standards, freedom of association and collective bargaining on 14 March 2014; National Consultative Forum on collective bargaining on 23 June 2014 with participants from members of employers' organizations, labour groups, government sector and the academia with the aim of generating comments and policy inputs from key stakeholders and to use them as a basis for the development of a national policy on collective bargaining; area-wide orientation seminars on the LLCS for labour and employers were conducted in October 2014; and a consultation workshop on policy reforms on collective bargaining was held on 28–29 January 2015. The implementation of the Guidelines in all potential and actual labour disputes, accompanied by continuous capacity-building activities, resulted in zero labour-dispute related violence, unlike in the previous years. Indeed, the Guidelines served as important instruments prescribing the conduct to be observed by implementers and stakeholders during labour disputes and have been successful in ensuring that no incident or violence occurred during concerted activities of workers. The Government provides a number of specific cases as relevant examples both from special economic zones and outside the zones.
50. *The Committee takes notes of the detailed information submitted by the Government. With regard to the Strengthening Workers' Right to Self-Organization Bill, amending articles 234, 235, 236, 237 and 270 of the Labor Code by removing the 20 per cent minimum membership for registration of independent labour organizations, reducing the required minimum membership of local unions for federation registration and removing the required government authorization on receipt of foreign funding (recommendation (a)), the Committee notes the Government's indication that the Bill has been reconsidered and, as agreed by the NTIPC, now aims to lower the 20 per cent membership requirement for registration of independent trade unions to 10 per cent instead of its outright removal. The Committee further notes that, according to the information submitted by the Government to the 2018 Committee of Experts and the 2019 Committee on the Application of Standards, the mentioned legislative changes have not yet been adopted and a number of bills amending the Labor Code on the mentioned subject matter are still pending, in particular House Bills Nos 1355, 4448 and Senate Bill No. 1169. In these circumstances, the Committee trusts that the Government will make a serious effort to bring the Labor Code into conformity with the principles of freedom of association in the very near future and refers this legislative aspect to the Committee of Experts.*
51. *With respect to the alleged denial of the right to strike in export processing zones (EPZs) and the ongoing legislative reform in this regard (recommendation (e)), the Committee notes the Government's indication that: (i) DOLE Department Order No. 40-H-13, an implementing guideline for article 263(g) of the Labor Code (now renumbered as article 278(g)), was issued to help shift the exercise of the assumption of jurisdiction power of the Secretary of Labor and Employment over labour disputes, strikes and lockout from*

the criteria of “industry indispensable to the national interest” to “essential services” criteria; (ii) these services include the hospital sector, electric power industry, water supply services (except small water supply services, such as bottling and refilling stations), air traffic control, and other industries may be included upon recommendation of the NTIPC; (iii) the Department Order reiterates the procedure provided under Department Order No. 40-G-03 for the exercise of the Secretary’s assumption power, has been successfully observed since its issuance and should facilitate the passage in Congress of the relevant bill; and (iv) the SEnA programme, providing for a 30-day mandatory conciliation–mediation service on all individual and collective labour and employment disputes as the first approach, has resulted in the decline in the number of cases brought to compulsory arbitration. The Committee further observes from the information submitted by the Government to the 2018 Committee of Experts and the 2019 Committee on the Application of Standards that several bills addressing the issue are still pending, in particular House Bills Nos 175, 711, 1908 and 4447 and Senate Bill No. 1221. While taking due note of these developments, the Committee expects that the legislative reform aimed at amending article 278(g) of the Labor Code to restrict government intervention leading to compulsory arbitration to essential services will be adopted in the very near future so as to ensure the full respect for trade union rights of EPZ workers.

- 52.** *Concerning the alleged violations of trade union rights in a number of enterprises in EPZs, special economic zones and other industrial areas, the Committee recalls that these refer to interference of local government units into internal union affairs, closure of enterprises following the recognition of trade unions, anti-union discrimination in the form of illegal dismissals, blacklisting and vilification of union members, false criminal charges filed against labour leaders and unionists, involvement of the army, the police or security guards during protests and prolonged presence of the army inside the workplaces in more than 15 enterprises.*
- 53.** *As to the allegations of interference of local government units into internal union affairs in four enterprises (recommendation (b)), the Committee takes due note of the Government’s detailed reply in respect to enterprises E, H, J and K. While taking note of the information submitted, the Committee regrets the apparent lack of progress in investigating some of the above allegations. The Committee underlines that allegations of violations of trade union rights should be examined rapidly, since excessive delay in processing such allegations may hinder their investigation and render it difficult to adopt an adequate remedy. The Committee trusts that, despite the difficulties encountered, the Government will be able to achieve satisfactory resolution to all these cases.*
- 54.** *With respect to the alleged closure of a number of enterprises in EPZs following the recognition of trade unions (recommendation (c)), the Committee notes the information provided by the Government in respect of enterprises A, H and I. Recalling that, while the genuine closure or restructuring of companies is not contrary to freedom of association principles, the closure or restructuring and the lay-off of employees specifically in response to the exercise of trade union rights is tantamount to the denial of such rights and should be avoided [see 370th Report, October 2013, para. 668], the Committee expects the Government to ensure that, in the future, similar allegations are investigated without delay to ensure speedy and adequate remedy.*
- 55.** *With regard to the allegations of anti-union discrimination in the form of illegal dismissals of trade union members in various enterprises (recommendation (d)), the Committee takes note of the detailed information provided by the Government in respect of enterprises B, C, D, E, F, G and L and of the various measures taken.*
- 56.** *The Committee regrets that the Government does not provide any information with regard to the alleged dismissals at Hanjin Garments (enterprise M). Given the considerable lapse*

of time since these allegations were made, the Committee firmly expects that these cases have since been resolved by the agencies concerned to the satisfaction of all parties. Recalling that anti-union discrimination is one of the most serious violations of freedom of association, as it may jeopardize the very existence of trade unions [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 1072], the Committee trusts that the Government will take all necessary measures to ensure that, in the future, any allegations of anti-union discrimination are properly and speedily investigated so as to allow for a rapid and equitable resolution and an adequate remedy for the concerned workers.

57. In relation to the allegations of blacklisting and vilification of union members at enterprises D and L (recommendation (f)), the Committee had previously noted the Government's indication that these cases had been referred to the concerned agencies (Court of Appeals, NLRC, CHR, PEZA, DOLE, DILG, Supreme Court and DOJ) for appropriate action and immediate resolution. The Committee regrets the lack of any new information in this regard and recalls once again that all practices involving the blacklisting of trade union officials or members constitute a serious threat to the free exercise of trade union rights and, in general, governments should take stringent measures to combat such practices [see **Compilation**, *op. cit.*, para. 1121].
58. As to the allegations of false criminal charges filed against labour leaders and unionists at the onset of union formation, or during collective bargaining negotiations, picket protests and strikes (recommendation (g)), the Committee welcomes the information provided by the Government in respect of enterprises F and H but notes that some cases were pending for ten years before the unionists concerned were finally acquitted of all charges. The Committee further observes from Case No. 2528 that, according to the Government, the criminal case filed against officials of Kaisahan ng Manggagawa sa Phils. Jeon Inc. (enterprise N) had been closed due to lack of direct evidence [see 370th Report, October 2013, para. 77]. With regard to enterprise I, the Committee notes that the Government does not provide any updates as to the criminal charges filed against the trade unionists but trusts that, given the time that has elapsed since these allegations were made and the absence of any further information from the complainant, the matters have been solved and any criminal charges filed against trade unionists based on legitimate trade union activities have been dropped.
59. With respect to the more general allegations of criminalization of trade union activities, the Committee welcomes the Government's initiatives to ensure that labour disputes are not converted into criminal cases, in particular by way of reinforcing the provisions of circulars that ensure that prosecutors must secure clearance from the DOLE or the Office of the President before taking cognizance of complaints related to a labour dispute.
60. Concerning the serious allegations of involvement of the army, police and security guards to intimidate or disperse workers during protests, strikes or on picket lines at enterprises B, F, I and M, which in the latter company's case resulted in the death of one protester (recommendation (h)) and the allegations of prolonged presence of the army inside the workplaces in the enterprises B and J (recommendation (i)), the Committee had previously noted the Government's indication that these cases had been referred to the agencies concerned (Court of Appeals, NLRC, CHR, PEZA, DOLE, DILG, Supreme Court or DOJ) for appropriate action and immediate resolution. The Committee regrets that the Government does not provide any updated information in this regard and wishes to recall once again that the authorities should resort to calling in the police in a strike situation only if there is a genuine threat to public order. The intervention of the police should be in proportion to the threat to public order and governments should take measures to ensure that the competent authorities receive adequate instructions so as to avoid the danger of

*excessive violence in trying to control demonstrations that might undermine public order [see **Compilation**, op. cit., para. 935]. It also wishes to emphasize that prolonged presence of the army inside workplaces is liable to have an intimidating effect on the workers wishing to engage in trade union activities, and to create an atmosphere of mistrust which is not conducive to harmonious industrial relations. In these circumstances and in the absence of any information to the contrary from the complainant, the Committee expects that these allegations have been fully addressed by the agencies concerned.*

- 61.** *Further recalling that, in cases in which the dispersal of public meetings by the police has involved loss of life or serious injury, the Committee has attached special importance to the circumstances being fully investigated immediately through an independent inquiry and to a regular legal procedure being followed to determine the justification for the action taken by the police and to determine responsibilities [see **Compilation**, op. cit., para. 104], the Committee requests the Government to indicate whether an independent judicial inquiry and proceedings were established before the competent courts with regard to the allegation of the killing of a protester at enterprise M, with a view to shedding full light on to the relevant facts and circumstances and determining the responsibilities, punishing the guilty parties and preventing the repetition of similar events, and to keep it informed of the outcome of the proceedings. The Committee will pursue the examination of this aspect of the case in the framework of Case No. 3119, when addressing the pending investigations into allegations of harassment of trade unionists by the police and the military in that case.*
- 62.** *With regard to giving instruction to the law enforcement authorities so as to eliminate the danger entailed by the use of excessive violence when controlling demonstrations (recommendation (j)) and other capacity-building activities on freedom of association and international labour standards (recommendation (k)), the Committee welcomes the Government's initiative to raise the awareness of State officials and other relevant stakeholders on the subject and takes due note of the detailed information provided by the Government in this regard. It notes in particular the numerous trainings, workshops and seminars on international labour standards, freedom of association and collective bargaining conducted for State officials, including the police and the armed forces, social partners and other stakeholders between 2013 and 2015, as well as the concrete activities undertaken to ensure improved application by State authorities of the various guidelines in relation to their respective mandates, duties and functions. It also notes the Government's indication that promotion of freedom of association and collective bargaining is now embedded in the LLCS aimed at assessing and certifying the compliance of enterprises with international labour standards. The Committee further observes, from the information submitted by the Government to the 2019 Committee on the Application of Standards, that: (i) additional capacity-building training of social partners, prosecutors, enforcers and other relevant actors took place in November 2018 and January and February 2019; (ii) the DOLE has repeatedly called on the AFP and the PNP to ensure the observance of the Guidelines on the conduct of the DOLE, DILG, DND, DOJ, AFP and PNP relative to the exercise of workers' rights and activities; (iii) the AFP has reaffirmed its commitment to the Guidelines and issued directives to all military units to respect the rights of workers; and (iv) as part of the commitment of the AFP and the PNP to integrate the Labor Code and the Guidelines in their educational programmes, lectures and orientations on freedom of association and trade unionism were held in February and May 2019. The Committee strongly encourages the Government to continue to elaborate training programmes and provide capacity-building activities to members of the armed forces, the police and other relevant State actors so as to ensure adequate and effective protection for legitimate trade union activities. The Committee expects that the numerous initiatives taken at the national level as well as improved knowledge and awareness of human and trade union rights among state officials will significantly contribute to minimizing army and police presence at workplaces, reducing incidents of army and police involvement in protests and strikes and making any such involvement proportionate to the threat to public order. The Committee*

will continue to follow-up on this issue in the framework of Case No. 3119, as part of its examination of measures taken by the Government to ensure observance by the police and the armed forces of human and trade union rights.

Case No. 3196 (Thailand)

- 63.** The Committee last examined this case concerning alleged dismissal of trade union activists after their participation in the submitting of demands for collective bargaining to the employer, the refusal by the employer to reinstate the workers despite the decisions to that effect of the Labour Relations Committee (LRC) and the Central Labour Court (CLC), the demotion of the SMTWU President and prohibition imposed on him to access the company's premises, at its October 2017 meeting [see 383rd Report, paras 626–667]. On that occasion, the Committee made the following recommendations [see 383rd Report, para. 667]:
- (a) The Committee therefore requests the Government to review the situation of workers whose reinstatement was ordered by the LCL and the CLC to see how they may be efficiently supported pending the final decision of the Supreme Court and to keep it informed of all measures taken in this respect. It further requests the Government to provide a copy of the Supreme Court decision once it had been handed down.
 - (b) The Committee expects that the court will pronounce on the dismissal of the SMTWU President without delay and that the union and its President can exercise fully their freedom of association rights and trade union activities. It requests the Government to provide a copy of the judgment once it has been handed down.
 - (c) The Committee requests the Government to keep it informed of all measures taken in this respect of the recommendations above.
- 64.** In its communication dated 5 February 2018, the Government provides a copy of the CLC decision of 21 December 2017 pronouncing the dismissal of the SMTWU President for having caused a slowdown in his unit between 1 and 11 December 2015, which resulted in damages to the company.
- 65.** In its communication dated 28 September 2018, the Government provides copies of the Supreme Court and CLC decisions, dated 27 October 2017 and 26 April 2018, respectively, regarding the dismissal of nine trade union activists. The Supreme Court revoked the Order of the LRC concerning the reinstatement of nine trade unionists and replaced it with compensation. It also ordered the CLC to determine the amount of compensation.
- 66.** *The Committee takes note of the CLC judgment pronouncing, on 21 December 2017, the dismissal of SMTWU President for having caused a slowdown, resulting in damages to the company, and violating the work rules and regulations set forth by the management.*
- 67.** *With regard to the nine dismissed trade unionists, the Committee recalls from the previous examination of the case that: on 17 December 2013, a group of the company's employees had submitted the demands and negotiated with the employer; as no agreement was reached, on 21 December 2013, the employees notified a conciliation officer of the labour dispute; on 25 December 2013, an agreement was reached by both parties. On 26 December 2013, the SMTWU was registered. On the same day, ten workers were dismissed. In January 2014, the SMTWU filed a complaint of unfair practice (wrongful termination) to the LRC. On 9 April 2014, the LRC issued an order of reinstatement of nine labour leaders in their former positions without loss of pay and benefits. The employer appealed the order to the CLC. On 25 May 2015, the CLC upheld the LRC order. On 7 July 2015, the employer appealed the CLC decision to the Supreme Court. The Committee notes that the Supreme Court, while recognizing that an agreement was signed with the employer on 25 December 2013 pursuant to which, the company had agreed not to take any disciplinary action against the nine trade*

unionists, it considered that the fact that they were working at a supervisory level when they led the work stoppage, and thereby violated the law and intentionally caused damages to the company, justified the revision of the LRC order from reinstatement to compensation. The Committee notes that the CLC decided on the financial settlement payable to the workers concerned as follows: 84,000 Thai baht (THB) (approximately US\$2,725) to co-defendant No. 1; THB270,000 (approximately US\$8,760) to co-defendant No. 2; THB30,000 (approximately US\$975) to co-defendant No. 3; THB50,000 (approximately US\$1,625) to co-defendant No. 4; THB50,000 to co-defendant No. 5; THB55,000 (approximately US\$1,785) to co-defendant No. 6; THB50,000 to co-defendant No. 7; THB50,000 to co-defendant No. 8 and THB50,000 to co-defendant No. 9. While acknowledging that in this case, specific allegations have been examined by the national judiciary, including the Supreme Court, which has rendered a final decision, the Committee wishes to emphasize that agreements should be binding on the parties [see *Compilation of decisions of the Committee on Freedom of Association*, sixth edition, 2018, para. 1334]. In light of the above, the Committee will not pursue the examination of this case.

Case No. 3021 (Turkey)

68. The Committee last examined this case, which concerns the conformity of the Act on Trade Unions and Collective Bargaining Agreements (Act No. 6356) with Convention No. 98, at its June 2017 meeting [see 382nd Report, paras 140–145]. On that occasion, it invited the Government to send detailed information on the application of Decree No. 678 to the Committee of Experts on the Application of Conventions and Recommendations (CEACR); it further requested the Government to continue reviewing the impact of the perpetuation of the branch threshold requirement on the trade union movement and the national collective machinery in full consultation with the social partners; to revise the law with a view to removing the one per cent threshold if it was confirmed that the perpetuation of it had a negative impact on the national collective bargaining machinery; and to keep it informed of any developments in this respect.
69. In its communication dated 13 November 2017, the Government provides information on the application of Decree No. 678 allowing the Council of Ministers to postpone strikes in local transportation companies and banking institutions for 60 days. It indicates, in particular, that in 2017, five strikes were suspended pursuant to the Decree. In four cases, the parties have come to an agreement and in one case, the dispute was referred to a High Court of Arbitration, which resulted in the signing of an agreement. The Government further informs that by a decision of the Constitutional Court, certain provisions of Act No. 6356 were repealed. It also indicates that Sosyal-Is concluded eight collective agreements in 2015, covering 102 workers; 30 in 2016, covering 5,914 workers; and 15 in 2017, covering 1,402 workers.
70. *The Committee takes note of the information provided by the Government. Noting that these matters are being followed by the CEACR in respect of Conventions Nos 87 and 98, the Committee refers the legislative aspects of this case to the CEACR and will not pursue its examination.*

* * *

Status of cases in follow-up

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

Case	Last examination on the merits	Last follow-up examination
1865 (Republic of Korea)	March 2009	June 2017
2096 (Pakistan)	March 2004	June 2019
2362 (Colombia)	March 2010	November 2012
2512 (India)	November 2007	March 2018
2603 (Argentina)	November 2008	November 2012
2715 (Democratic Republic of the Congo)	November 2011	June 2014
2743 (Argentina)	March 2013	November 2015
2749 (France)	March 2014	–
2756 (Mali)	March 2011	June 2018
2797 (Democratic Republic of the Congo)	March 2014	–
2807 (Islamic Republic of Iran)	March 2014	June 2019
2871 (El Salvador)	June 2014	June 2015
2889 (Pakistan)	March 2016	–
2892 (Turkey)	March 2014	October 2015
2902 (Pakistan)	March 2019	–
2925 (Democratic Republic of the Congo)	March 2013	March 2014
2962 (India)	June 2015	June 2018
2977 (Jordan)	March 2013	November 2015
2988 (Qatar)	March 2014	June 2017
2991 (India)	June 2013	March 2019
3003 (Canada)	March 2017	–
3011 (Turkey)	June 2014	November 2015
3022 (Thailand)	June 2014	March 2019
3036 (Bolivarian Republic of Venezuela)	November 2014	–
3041 (Cameroon)	November 2014	–
3046 (Argentina)	November 2015	–
3047 (Republic of Korea)	March 2017	–
3054 (El Salvador)	June 2015	–
3058 (Djibouti)	March 2015	March 2019
3078 (Argentina)	March 2018	–
3083 (Argentina)	November 2015	–
3098 (Turkey)	June 2016	November 2017
3100 (India)	March 2016	–
3101 (Paraguay)	October 2015	June 2018
3107 (Canada)	March 2016	–
3110 (Paraguay)	June 2016	–
3120 (Argentina)	March 2019	–
3123 (Paraguay)	June 2016	–
3127 (Paraguay)	June 2018	–

Case	Last examination on the merits	Last follow-up examination
3128 (Zimbabwe)	March 2016	June 2019
3137 (Colombia)	October 2018	–
3140 (Montenegro)	March 2016	June 2019
3150 (Colombia)	October 2018	–
3164 (Thailand)	October 2016	June 2019
3167 (El Salvador)	November 2017	–
3169 (Guinea)	June 2016	–
3171 (Myanmar)	June 2016	June 2019
3180 (Thailand)	March 2017	June 2019
3182 (Romania)	November 2016	–
3201 (Mauritania)	June 2019	–
3202 (Liberia)	March 2018	–
3209 (Senegal)	March 2018	–
3227 (Republic of Korea)	March 2018	–
3229 (Argentina)	March 2018	–
3237 (Republic of Korea)	June 2018	–
3238 (Republic of Korea)	November 2017	–
3248 (Argentina)	October 2018	–
3253 (Costa Rica)	March 2019	–
3257 (Argentina)	October 2018	–
3268 (Honduras)	June 2018	–
3274 (Canada)	October 2018	–
3276 (Cabo Verde)	March 2018	–
3278 (Australia)	March 2019	–
3283 (Kazakhstan)	June 2018	–
3285 (Plurinational State of Bolivia)	March 2019	–
3288 (Plurinational State of Bolivia)	March 2019	–
3289 (Pakistan)	June 2018	–
3290 (Gabon)	June 2019	–

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

73. In addition, the Committee has received information concerning the follow-up of Cases Nos 1787 (Colombia), 2153 (Algeria), 2341 (Guatemala), 2434 (Colombia), 2445 (Guatemala), 2528 (Philippines), 2533 (Peru), 2540 (Guatemala), 2566 (Islamic Republic of Iran), 2583 and 2595 (Colombia), 2637 (Malaysia), 2656 (Brazil), 2673 (Guatemala), 2679 (Mexico), 2652 (Philippines), 2684 (Ecuador), 2694 (Mexico), 2699 (Uruguay), 2700 (Guatemala), 2706 (Panama), 2708 (Guatemala), 2710 (Colombia), 2716 (Philippines), 2719 (Colombia), 2723 (Fiji), 2746 (Costa Rica), 2751 (Panama), 2753 (Djibouti), 2755 (Ecuador), 2758 (Russian Federation), 2763 (Bolivarian Republic of Venezuela), 2768 (Guatemala), 2793 (Colombia), 2816 (Peru), 2840 (Guatemala), 2850 (Malaysia), 2852 (Colombia), 2854 and 2856 (Peru), 2870 (Argentina), 2872 (Guatemala), 2882 (Bahrain), 2883 (Peru), 2896 (El Salvador), 2900 (Peru), 2916 (Nicaragua), 2924 (Colombia), 2934

(Peru), 2944 (Algeria), 2946 (Colombia), 2948 (Guatemala), 2949 (Eswatini), 2952 (Lebanon), 2954 and 2960 (Colombia), 2966 (Peru), 2976 (Turkey), 2979 (Argentina), 2980 (El Salvador), 2982 (Peru), 2985 (El Salvador), 2987 (Argentina), 2994 (Tunisia), 2995 (Colombia), 2998 (Peru), 3006 (Bolivarian Republic of Venezuela), 3010 (Paraguay), 3016 (Bolivarian Republic of Venezuela), 3017 (Chile), 3019 (Paraguay), 3020 (Colombia), 3024 (Morocco), 3026 (Peru), 3030 (Mali), 3032 (Honduras), 3033 (Peru), 3035 and 3040 (Guatemala), 3043 (Peru), 3055 (Panama), 3056 (Peru), 3059 (Bolivarian Republic of Venezuela), 3061 (Colombia), 3065, 3066 and 3069 (Peru), 3072 (Portugal), 3075 (Argentina), 3077 (Honduras), 3085 (Algeria), 3087 and 3090 (Colombia), 3093 (Spain), 3095 (Tunisia), 3096 (Peru), 3097 (Colombia), 3102 (Chile), 3103 (Colombia), 3104 (Algeria), 3114 (Colombia), 3121 (Cambodia), 3126 (Malaysia), 3131 (Colombia), 3142 (Cameroon), 3146 (Paraguay), 3159 (Philippines), 3162 (Costa Rica), 3170 (Peru), 3172 (Bolivarian Republic of Venezuela), 3177 (Nicaragua), 3188 (Guatemala), 3191 (Chile), 3194 (El Salvador), 3212 (Cameroon), 3220 (Argentina), 3231 (Cameroon), 3236 (Philippines), 3240 (Tunisia), 3244 (Nepal), 3256 (El Salvador), 3272 (Argentina), 3286 (Guatemala), 3287 (Honduras), 3297 (Dominican Republic), 3305 (Indonesia) and 3317 (Panama), which it will examine as swiftly as possible.

CASE NO. 3269

INTERIM REPORT

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

– **the National Union of Afghanistan Workers and Employees (NUAWE)**

supported by

– **the International Trade Union Confederation (ITUC)**

Allegations: The complainant organization denounces violations of trade union rights by the Government, in particular the issuance of a unilateral decision on confiscation of trade union premises and property without a court order

74. The Committee last examined this case (submitted in March 2017) at its June 2018 meeting, when it presented an interim report to the Governing Body [see 386th Report, paras 69–85, approved by the Governing Body at its 333rd Session (June 2018)]. [Link to previous examinations.](#)
75. Since there has been no reply from the Government, the Committee has been obliged to postpone its examination of the case on several occasions. At its meeting in June 2019 [see 389th Report, para. 6], the Committee made an urgent appeal to the Government indicating that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body (1972), it could present a report on the substance of the case, even if the requested information or observations had not been received in due time. To date, the Government has not sent any information.
76. Afghanistan has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

77. In its previous examination of the case in June 2018, the Committee made the following recommendations on the matters still pending [see 386th Report, para. 85]:
- (a) The Committee urges the Government to provide its observations on the complainant's allegations without delay so that it may examine this question in full knowledge of the facts and, in particular, to indicate the exact reasons for the alleged transfer of the complainant's property under state ownership. In the meantime, in view of the significant risk that such measures can have on trade union activities, the Committee requests the Government to suspend the application of the August 2016 decree ordering confiscation of the complainant's property pending any judicial review and to ensure that any property already seized without a valid court order is returned to the complainant.
 - (b) The Committee requests the Government to clarify whether the 2016 decree can indeed lead to administrative intervention in or control over trade union affairs and whether, in particular, administrative suspension or dissolution of a trade union could be a possible consequence of the review undertaken and, if so, invites the Government to amend the 2016 decree to ensure that this is not possible.
 - (c) The Committee requests the Government to provide detailed observations on the allegations contained in the ITUC communication: intensified efforts of the Government

to confiscate and take over the legitimately acquired properties of the NUAWÉ, including recent attempts at violent takeover and occupation of the NUAWÉ offices by the police and the armed forces, the freezing of the union's bank accounts without a judicial authorization, failure to renew its license, as well as failure to engage with the union and the hindering of freedom of expression and press.

B. The Committee's conclusions

78. *The Committee regrets that, despite the time that has elapsed since the presentation of the complaint in March 2017, the Government has still not replied to the complainant's allegations even though it has been requested several times, including through two urgent appeals [see 384th Report, para. 6 and 389th Report, para. 6]. The Committee requests the Government to be more cooperative in the future.*
79. *Hence, in accordance with the applicable procedural rules [see 127th Report, para. 17, approved by the Governing Body at its 184th Session (1972)], the Committee is once again obliged to present a report on the substance of the case without being able to take account of the information which it had hoped to receive from the Government.*
80. *The Committee reminds the Government that the purpose of the whole procedure established by the International Labour Organization for the examination of allegations of violations of freedom of association is to promote respect for this freedom in law and in fact. The Committee remains confident that, if the procedure protects governments from unreasonable accusations, governments, on their side, will recognize the importance of presenting, for objective examination, detailed replies concerning allegations made against them [see First Report, 1952, para. 31].*
81. *The Committee recalls that this case concerns allegations of confiscation by the Government of legitimately acquired trade union premises and property without a court order, including attempts at violent takeover and occupation of the NUAWÉ offices by the police and the armed forces, as well as the freezing of the union's bank accounts, failure to renew its licence and the hindering of freedom of expression and press. Given the seriousness of these allegations, the Committee wishes to emphasize that it is stated in the resolution on trade union rights and their relation to civil liberties, adopted by the International Labour Conference at its 54th Session (1970), that the right to adequate protection of trade union property is one of those civil liberties which are essential for the normal exercise of trade union rights. The confiscation of trade union property by the authorities, without a court order, constitutes an infringement of the right of trade unions to own property and undue interference in trade union activities. The occupation or sealing of trade union premises should be subject to independent judicial review before being undertaken by the authorities in view of the significant risk that such measures may paralyse trade union activities. The entry by police or military forces into trade union premises without a judicial warrant constitutes a serious and unjustifiable interference in trade union activities [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, paras 275, 288, 287 and 280]. The Committee also wishes to underline that workers' organizations have the right to freely organize their administration and activities without interference from the authorities. It recalls that measures of suspension or dissolution by the administrative authority constitute serious infringements of the principles of freedom of association [see **Compilation**, op. cit., para. 986] and that the freezing of union bank accounts may constitute serious interference by the authorities in trade union activities [see **Compilation**, op. cit., para. 707].*

82. *In the absence of information from the Government on the above allegations, the Committee finds itself obliged to reiterate the conclusions and recommendations it made when it examined this case at its meeting in June 2018 [see 386th Report, paras 69–85].*

The Committee's recommendations

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

- (a) The Committee urges the Government to provide its observations on the complainant's allegations without delay so that it may examine this question in full knowledge of the facts and, in particular, to indicate the exact reasons for the alleged transfer of the complainant's property under state ownership. In the meantime, in view of the significant risk that such measures can have on trade union activities, the Committee requests the Government to suspend the application of the August 2016 decree ordering confiscation of the complainant's property pending any judicial review and to ensure that any property already seized without a valid court order is returned to the complainant.*
- (b) The Committee requests the Government to clarify whether the 2016 decree can indeed lead to administrative intervention in or control over trade union affairs and whether, in particular, administrative suspension or dissolution of a trade union could be a possible consequence of the review undertaken and, if so, invites the Government to amend the 2016 decree to ensure that this is not possible.*
- (c) The Committee requests the Government to provide detailed observations on the allegations contained in the ITUC communication: intensified efforts of the Government to confiscate and take over the legitimately acquired properties of the NUAWE, including recent attempts at violent takeover and occupation of the NUAWE offices by the police and the armed forces, the freezing of the union's bank accounts without a judicial authorization, failure to renew its license, as well as failure to engage with the union and the hindering of freedom of expression and press.*

CASE NO. 3259

DEFINITIVE REPORT

Complaint against the Government of Brazil presented by

- the General Union of Workers (UGT)**
- the State Federation of Workers in Physical Culture Establishments of the State of Rio Grande do Sul (FETECFERGS) and**
- the Union of Workers in Sports Clubs and Sports Federations of the State of Rio Grande do Sul (SECEFERGS)**

Allegations: The complainant organizations allege anti-union practices on the part of Grêmio Foot-Ball Porto Alegrense, including the dismissal of several union officials and the violation of applicable collective instruments

84. The complaint is contained in initial communications from the Union of Workers in Sports Clubs and Sports Federations of the State of Rio Grande do Sul (SECEFERGS) and the State Federation of Workers in Physical Culture Establishments of the State of Rio Grande do Sul (FETECFERGS) of 19 May 2016 and from the General Union of Workers (UGT) of 9 June 2016. The SECEFERGS sent further communications on 13 April and 6 June 2017. The UGT and SECEFERGS jointly sent another communication on 1 June 2018.
85. The Government sent its observations in a communication of 25 March 2019.
86. 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), the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154).

A. The complainants' allegations

87. In their initial communications, the complainant organizations allege that, under the management of its new president, Mr Romildo Bolzam Júnior, Grêmio Foot-Ball Porto Alegrense (hereinafter the football club) has engaged in anti-union practices since 2015, including the dismissal of several union officials and the violation of the provisions of a collective agreement. The complainant organizations specifically allege that: (i) four union officials were dismissed without cause, namely: Mr Arci Da Silva Caetano, member of the union's supervisory board and deputy director of FETECFERGS; Ms Tania Marilda de Freitas, deputy member of the federation's supervisory board; Mr Virlei Reis Gonçalves, deputy member of the supervisory board of SECEFERGS and deputy director of FETECFERGS; and Mr Silvio Vargas de Oliveira, member of the supervisory board of SECEFERGS and deputy director of FETECFERGS; (ii) SECEFERGS and FETECFERGS lodged appeals against the above-mentioned dismissals, with a preliminary decision ordering reinstatement being obtained in the case of Ms de Freitas, and the corresponding decisions still pending in respect of the other cases; (iii) on 8 June 2016, Mr Andrade Osório Brittes Pacheco Prates, an employee of the football club and deputy director of SECEFERGS who was under a significant amount of stress, died; and (iv) since May 2015, the wages of the football club's employees have not been reviewed, in violation of the collective standards applicable in the enterprise.
88. In a communication of 13 April 2017, SECEFERGS provides the following additional information: (i) the Regional Labour Court of the Fourth Region ordered the reinstatement of Mr Arci Da Silva Caetano; (ii) the preliminary decision to reinstate Ms Tania Marilda de Freitas was upheld by the Regional Labour Court of the Fourth Region; (iii) Mr Virlei Reis Gonçalves first obtained a preliminary decision ordering his reinstatement, which was then upheld by the Regional Labour Court of the Fourth Region; (iv) the president of the football club initiated legal proceedings against SECEFERGS and its president, Mr Miguel Salaberry Filho; and (v) in turn, SECEFERGS initiated legal proceedings against the football club for violating the collective standards applicable in the enterprise. In a communication of 6 June 2017, SECEFERGS alleges that the above-mentioned violations are still ongoing, including the dismissal on 30 May 2017 of a fifth union official, Mr Mauro Roberto Rosito.

89. In a communication of 1 June 2018, the UGT and SECEFERGS indicate that, in two decisions handed down by the Regional Labour Court of the Fourth Region, the football club was ordered to reinstate Mr Mauro Roberto Rosito and to comply with several provisions of the collective agreement of 2016–18 applicable to the sector.

B. The Government's reply

90. In a communication of 25 March 2019, the Government sent its reply to the complainants' allegations. The Government states that the initial decisions of the Regional Labour Court of the Fourth Region, partially granting the petitions filed by the workers, demonstrate that a legal framework and protection mechanisms are in place to safeguard workers against any potentially anti-union acts. The Government considers that, in the light of the foregoing, there is no indication in the present case of any shortcomings by the Government of Brazil in respect of the protection of workers against anti-union acts, and it therefore requests that the case be closed.

C. The Committee's conclusions

91. *The Committee notes that the present case refers to allegations of anti-union practices on the part of a football club, including the unfair dismissal of five union officials in 2016 and 2017, and the violation, since 2015, of several provisions of the collective instruments applicable to the football club in question, especially with regard to wage reviews. The Committee also notes that the complainant organizations mention that a union official who was allegedly under a significant amount of stress died in 2016 as a result of a heart attack.*

92. *The Committee notes that, for its part, the Government states that the decisions of the Regional Labour Court of the Fourth Region, partially granting the petitions filed by the workers of the football club, show that a legal framework and protection mechanisms are in place to safeguard workers against any potentially anti-union acts, demonstrating, in the present case, the absence of any shortcomings in respect of the protection of freedom of association by the Government of Brazil.*

93. *The Committee observes that both the complainant organizations and the Government refer to several decisions of the Regional Labour Court of the Fourth Region relating to the allegations made within the framework of the present case. In particular, the Committee notes that, according to the information and the accompanying documents provided by the complainant organizations: (i) the dismissal on 16 May 2016 of four union officials (Mr Da Silva Caetano, Ms de Freitas, Mr Reis Gonçalves and Mr Vargas de Oliveira) resulted in court decisions being handed down between June and October 2016 ordering their reinstatement on the grounds that special protection is afforded by law to persons who have a trade union mandate; (ii) the dismissal on 30 May 2017 of a fifth union official, Mr Mauro Roberto Rosito, resulted in a court decision ordering his reinstatement, in the absence of serious misconduct; and (iii) the allegations of non-compliance with the provisions of the collective instruments applicable to the football club in respect of wage reviews resulted in two court decisions of March and June 2018, partially granting the petitions filed by the union. The Committee further observes that the complainant organizations have neither challenged the above-mentioned court decisions nor referred to any failure to comply with the reinstatement orders.*

94. *The Committee notes that it is apparent from the foregoing that the two main allegations of the complainant organizations have resulted in swift court decisions, which have led, first, to the reinstatement of the five dismissed union officials and, second, to the football club being required to apply several provisions of the collective instruments in force. Trusting that the above-mentioned court decisions will contribute to ensuring full compliance in the*

future with the principles of freedom of association in the football club, the Committee considers that this case does not call for further examination.

The Committee's recommendation

95. *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. 2318

INTERIM REPORT

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

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

- 96.** The Committee has already examined the substance of this case (submitted in January 2004) on numerous occasions since June 2005, and most recently at its October 2018 meeting where it issued an interim report, approved by the Governing Body at its 334th Session [see 387th Report, paras 128–140]. [Link to previous examinations](#)
- 97.** The Government sent its latest observations in a communication dated 4 June 2019.
- 98.** Cambodia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). It has not ratified the Workers' Representatives Convention, 1971 (No. 135).

A. Previous examination of the case

- 99.** In its previous examination of the case, the Committee made the following recommendations [see 387th Report, para. 140]:
- (a) The Committee urges the competent authorities to take all necessary measures to expedite the process of investigation of the murders of Mr Chea Vichea, Mr Ros Sovannareth and Mr Hy Vuthy. It requests the Government to report on concrete progress in this regard and to provide information on the activities and progress of the Investigation Taskforce of the National Police Commissariat related to these heinous crimes. It further requests the Government to take any measures necessary to guarantee the safety of Mr Chea Vichea's brother and that of those who may be in a position to assist these investigations.
 - (b) The Committee expects that the NCRILC or other appropriate body will thoroughly review and ensure an investigation into the allegations of torture and other ill treatment by police of Mr Born Samnang and Mr Sok Sam Ouen, intimidation of witnesses and political interference with the judicial process and requests the Government to keep it informed of the outcome and any measure of redress provided for the wrongful imprisonment of those two men. It requests the Government to provide further information on the nature of their release from prison, indicating whether this release is temporary.

- (c) Recalling that it had previously deplored the fact that Mr Thach Saveth was arrested and sentenced for the premeditated murder of trade unionist Mr Ros Sovannareth in a trial characterized by the absence of full guarantees of due process necessary to effectively combat impunity for violence against trade unionists, the Committee expects that the NCRILC or other appropriate body will thoroughly investigate the circumstances surrounding his trial so as to ensure that justice has been carried out and that he has been able to exercise his right to a full appeal before an impartial and independent judicial authority. It requests the Government to keep it informed of developments in this regard, including the outcome of the legal proceedings currently before the Court of Appeals and the outcome of the investigations.
- (d) The Committee once again urges the Government to keep it informed of any developments with respect to the murder of Mr Hy Vuthy, including the outcome of the legal proceedings of the Phnom Penh Municipal Court and the outcome of any work undertaken thereon by the NCRILC. It also requests the Government to provide information as to why no reinvestigation of the case has been ordered.
- (e) Recalling that it has been raising, since 2007, the alleged assault of 13 trade union activists of the FTUWKC and of the FTUSGF and the alleged dismissal of three trade union activists of the FTUWGGF, the Committee expresses once again its concern over the lengthy delay and the lack of progress made in the investigation into these matters. Emphasizing the importance of taking concrete steps to investigate these matters without delay, the Committee expects the Government to keep it informed of meaningful progress in this regard.
- (f) The Committee firmly expects that the Government will take swift action and will be able to report on meaningful progress concerning the long-standing issues under examination in this case, as this necessarily has an impact on the social climate and the exercise of freedom of association rights of all workers in the country.
- (g) The Committee invites the complainant organisation to provide an update on the issues raised in this case, particular as regards the workers that had been allegedly assaulted and those dismissed.
- (h) The Committee once again draws the Governing Body's attention to the extremely serious and urgent nature of this case.

B. The Government's reply

100. Regarding the investigations on the murders of trade union leaders Chea Vichea, Hy Vuthy and Ros Sovannareth, the Government reports that the relevant ministries and institutions involved with the investigations have been working very closely since it is not in the interest of the Government to delay these investigations. However, the long pending nature of the cases and the lack of cooperation from victims' families rendered the conduct of the investigations even more difficult and it has therefore not been possible to conclude them. Additionally, the Government assures that Mr Chea Vichea's brother and those who may be able to assist in the investigation are living happily without fear for their personal safety. The Government has never received any report of concern over their safety. Regardless of the challenges, the Government remains highly committed to bringing the perpetrators to justice as quickly as possible. Hence, the issue of these investigations was also brought to the attention of the National Committee on Reviewing the Application of the International Labour Conventions ratified by Cambodia (NCRILC) during its annual meeting of December 2018. The NCRILC convened a full member meeting on 30 January 2019 and inter-ministerial meeting on 27 February 2019 to follow-up and determine the mechanism to conclude the murder cases.

101. The Government reiterates that the Supreme Court decided to drop the charges against Bom Samnang and Sok Sam Oeun on 25 September 2013 and ordered their release. The Government adds that their allegations of torture and ill treatment by the police during detention is baseless. The Government strongly encourages them to file a case to court so

that an appropriate investigation could be initiated. The Government adds that all necessary legal support will be provided to them in case they decide to bring a formal complaint to court and have concrete evidence to support their case.

- 102.** With regard to the situation of Thach Saveth, the Government recalls that he had been sentenced to prison for 15 years by a judgment of the Phnom Penh Municipal Court in February 2005, and had filed an appeal to the Court of Appeals, which upheld the judgment of the Municipal Court. Thach Saveth subsequently filed an appeal to the Supreme Court in February 2009, which nullified the judgment of the Court of Appeals, ordered it to rehear the case and released Thach Saveth on bail. The Government indicates that the case is still under the legal proceedings of the Court of Appeals and that the Ministry of Labour and Vocational training (MLVT) will inform the Committee of any progress in this regard.
- 103.** The Government states that Chan Sophon, who was arrested in September 2013 in the case of the murder of Hy Vuthy, was released in February 2014 and the case is still under the legal proceedings of the Phnom Penh Municipal Court. The MLVT will keep the committee informed of any progress.
- 104.** With regard to the assaults of 13 trade union activists of the Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC) of the Suntex Garment Factory (hereafter Factory (a)) and the case of dismissal of three trade union activists of the FTUWKC of the Genuine Garment Factory (hereafter Factory (b)), the Government indicates that the MLVT convened a meeting with the union and the workers concerned on May 2015, however, none of the workers came to the meeting. The Government further indicates that, based on confirmation received from the President of the FTUWKC on 30 January 2019, as well as information from the factories' representatives, those workers had been reinstated following the decision of the Arbitration Council. Those workers are however no longer working in the factories or members of the FTUWKC. The President of the FTUWKC confirmed that it was unable to contact those workers. The Government is of the view that, as this case seems to have already been settled based on the decision of the Arbitration Council, it should be considered as closed.

C. The Committee's conclusions

- 105.** *The Committee recalls that it has considered this serious case on numerous occasions which relates, inter alia, to the murder of the trade union leaders, Chea Vichea, Ros Sovannareth and Hy Vuthy, and to the prevailing situation of impunity with regard to acts of violence against trade unionists.*
- 106.** *The Committee recalls that it had previously noted that a National Committee for reviewing the implementation of ratified International Labour Conventions (NCRILC) was established through governmental Decision No. 64 of 16 August 2017 which abrogated Decision No. 44 of June 2015 on the establishment of the Inter-ministerial Commission for Special Investigation on complaint No. 2318. It noted that the National Committee includes among its duties, inter alia, reviewing and managing research on practice and law, and collecting information and evidence on any complaint related to the implementation of International Labour Conventions and relevant International Treaties. The Committee further noted that the members of this tripartite National Committee were appointed by virtue of governmental Decision No. 111 of 6 December 2017. The members include, among others, representatives of the Ministry of Labour and Vocational Training, the Ministry of Justice, the Ministry of Interior, the National Police Chief, the Royal Gendarmerie and workers' and employers' organizations. The Committee had also noted the Government's indication that on 30 July 2018 the NCRILC endorsed a road map on the implementation of the ILO's recommendations concerning freedom of association which specifies inter alia time-bound*

actions aimed at providing conclusions to the pending investigations of the murder cases of trade unions leaders and that progress reports from designated institutions in charge would be regularly discussed by the NCRILC.

107. *The Committee takes note from the succinct report of the Government that the progress of the investigations was discussed by the NCRILC during its meetings of December 2018, its full-member meeting of 30 January 2019 and its inter-ministerial meeting of 27 February 2019. While the Government declares that it remains highly committed to bringing the perpetrators to justice as quickly as possible, it however asserts that these investigations were rendered difficult because of the long pending nature of the cases and the lack of cooperation from victims' families. Additionally, with regard to the Committee's recommendations on the need to guarantee the safety of Chea Vichea's brother and that of those who may be in a position to assist these investigations, the Committee notes the Government's indication that they all live without fear for their personal safety and that the authorities have never received any report of concern in this regard.*
108. *The Committee must express its deep concern over the evident lack of progress of the criminal investigations, despite the suggested lack of cooperation of victims' families, and over the succinct report of the Government which does not provide any information on the content of the discussion of the NCRILC on the status of the investigations or any decision eventually taken with the aim of concluding them. Recalling the need to conclude the investigations and to bring to justice the perpetrators and the instigators of these crimes in order to send an important message that any acts of violence against trade unionists will be punished and to prevent their recurrence, the Committee expects that the Government will take all necessary measures to expedite the process of investigation into the murders of trade union leaders Chea Vichea, Ros Sovannareth and Hy Vuthy, and that it will keep the Committee duly informed of any concrete action that the NCRILC may have taken to follow up on these investigations to ensure that the perpetrators and the instigators of these heinous crimes are brought to justice without further delay.*
109. *The Committee notes the indication from the Government that allegations from Bom Samnang and Sok Sam Oeun, who were wrongfully convicted for Chea Vichea's murder and definitely acquitted in September 2013 by the Supreme Court, of their torture and ill treatment by the police during their detention, are baseless and that they are strongly encouraged to file a case to court so that an appropriate investigation could be initiated. The Committee notes with interest the Government's indication that all necessary legal support will be provided to them in case they decide to bring a formal complaint to court and have concrete evidence to support their case. The Committee recalls, however, that in cases of alleged torture or ill treatment while in detention, governments should carry out independent inquiries into complaints of this kind so that appropriate measures, including compensation for damages suffered and the sanctioning of those responsible, are taken to ensure that no detainee is subjected to such treatment [See **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 112]. For many years, the Committee has been calling for an independent and impartial investigation into the prosecution of Mr Born Samnang and Mr Sok Sam Oeun, including by the Inter-Ministerial Commission for Special Investigations (which ceased operating since the establishment of the NCRILC). The Committee firmly urges the Government to ensure that an investigation into the allegations of torture and ill treatment of Born Samnang and Sok Sam Oeun while in detention is thoroughly undertaken, under the monitoring of the NCRILC, and requests the Government to keep it informed of the outcome of the investigation or any measure of redress provided for the wrongful imprisonment of those two men. The Committee emphasizes that, in this particular case, the absence of proper investigation or redress creates a situation of impunity, which may reinforce the atmosphere of mistrust and insecurity, prejudicial to the exercise of trade union activities.*

- 110.** *The Committee recalls that its previous recommendations also concerned the situation of Thach Saveth, arrested and sentenced for 15 years of imprisonment in February 2005 for the premeditated murder of Ros Sovannareth in a trial characterized, in the Committee's view, by the absence of full guarantees of due process necessary to effectively combat impunity for violence against trade unionists. Following the release of Thach Saveth on bail pursuant to the Decision of the Supreme Court ordering the review of the case, the Committee requested that justice be carried out and that Thach Saveth be able to exercise his right to a full appeal before the judicial authority. The Committee notes the information from the Government that the case is still under proceedings of the Court of Appeals nearly eight years on. Observing that legal proceedings are overly lengthy in this case and, as justice delayed is justice denied, the Committee expects that the proceedings before the Court of Appeals will be concluded expeditiously and that the Government will keep it duly informed of developments in this regard.*
- 111.** *With regard to the case of the murder of Hy Vuthy, the Government reiterates that Chan Sophon, the suspect who was arrested in September 2013 in accordance with an arrest warrant issued by the Phnom Penh Municipal Court in April 2012, was released in February 2014. The Government indicates that the case is currently under the legal proceedings of the Phnom Penh Municipal Court. The Committee expects that the Government will keep it duly informed of developments in this regard, and specify whether an order has been made to the judicial police to conduct a reinvestigation given that the Government stated in 2017 that no order was made in this regard.*
- 112.** *With regard to the assaults of 13 trade union activists of the Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC) of Factory (a) and the case of dismissal of three trade union activists of the FTUWKC of Factory (b), the Committee notes the indication that, based on confirmation received from the President of the FTUWKC on 30 January 2019, as well as information from the factories' representatives, those workers had been reinstated following a decision of the Arbitration Council. They are, however, no longer working in the factories or members of the union and given that this case seems to have already been settled based on the decision of the Arbitration Council, the Government expresses its view that it should be considered as closed. In light of the above, unless the complainant provides specific follow-up information, the Committee will not pursue its examination of this matter.*
- 113.** *In conclusion, the Committee must express its deep concern over the absence of information from the Government on tangible developments concerning all the long-standing issues under examination in this case. The Committee must again express its firm expectation that the Government will take swift action in this regard and will be able to report on meaningful progress, as this necessarily has an impact on the social climate and the exercise of freedom of association rights of all workers in the country. Consequently, the Committee must once again draw the Governing Body's attention to the extremely serious and urgent nature of this case.*

D. The Committee's recommendations

- 114.** *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 Government will take all necessary measures to expedite the process of investigation into the murders of trade union leaders Chea Vichea, Ros Sovannareth and Hy Vuthy, and that it will keep the Committee duly informed of any concrete action that the NCRILC may have*

taken to follow up on these investigations to ensure that the perpetrators and the instigators of these heinous crimes are brought to justice without further delay.

- (b) The Committee firmly urges the Government to ensure that an investigation into the allegations of torture and ill treatment of Born Samnang and Sok Sam Oeun while in detention is thoroughly undertaken, under the monitoring of the NCRILC, and requests the Government to keep it informed of the outcome of the investigation or any measure of redress provided for the wrongful imprisonment of those two men.*
- (c) The Committee expects that the proceedings before the Court of Appeals with regard to the case of Thach Saveth will be concluded expeditiously and that the Government will keep it duly informed of developments in this regard.*
- (d) The Committee must again express its firm expectation that the Government will take swift action in relation to all the outstanding matters in this case and will be able to report on meaningful progress, as this necessarily has an impact on the social climate and the exercise of freedom of association rights of all workers in the country.*
- (e) The Committee once again draws the Governing Body's attention to the extremely serious and urgent nature of this case.*

CASE NO. 3298

DEFINITIVE REPORT

Complaint against the Government of Chile presented by

- the National Union of Workers of Chile (UNT) and**
- the Autonomous Central of Workers of Chile (CAT)**

Allegations: The complainant organizations allege the anti-union nature of the dismissal of a trade unionist at a state mining company, who went on a hunger strike to demand reinstatement

- 115.** The complaint is contained in a communication from the National Union of Workers of Chile (UNT) and the Autonomous Central of Workers of Chile (CAT) dated 31 July 2017.
- 116.** The Government sent its observations in communications dated 15 January 2018 and 13 August 2019.
- 117.** Chile has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Labour Relations (Public Service) Convention, 1978 (No. 151).

A. The complainants' allegations

- 118.** In their communication dated 31 July 2017, the complainant organizations state that since May 2010, Mr Richard Bobadilla Campos has held an employment contract without limit of time as a mining truck operator at the state mining company CODELCO (hereinafter “the mining company”) in the region of Antofagasta, in the Radomiro Tomic division, in the city of Calama. They allege that, in August 2012, after submitting a complaint to the labour inspectorate for non-compliance by the company with a collective agreement and after having presented himself in September 2012 as a candidate to be a trade union official at the elections of the Workers' Union of the Radomiro Tomic Division, Mr Bobadilla suffered bullying and workplace harassment. The trade union organizations indicate that although the worker was not elected to be a trade union official, following the conclusion of the union's electoral process the workplace harassment caused him to suffer a deep depression threatening his state of health, as confirmed in Decision No. 52223 issued by the Social Security Supervisory Authority in August 2014. The complainant organizations allege that, in accordance with article 71 of the Occupational Accidents and Diseases Act, No. 16744, in the event of occupational diseases, workers should be transferred to tasks where they are not exposed to the abuse and harassment caused by their superiors.
- 119.** The complainant organizations state that on 1 November 2012, the enterprise dismissed Mr Bobadilla on the grounds of article 160(7) of the Labour Code, namely, serious failure to fulfil the obligations stipulated in the employment contract. The complainant organizations attached a copy of the letter of dismissal, which shows that the serious failure allegedly consisted of incitement to unrest and organizing an activity to see a football match of Chile versus Argentina without prior authorization from his direct superior. The complainant organizations indicate, however, that in a report prepared by the Provincial Labour Inspectorate of El Loa Calama dated 3 May 2013 (hereinafter “inspection report”), on the request of the labour judge of El Loa Calama, in respect of an application for the protection of fundamental rights brought by Mr Bobadilla, it was found that he had in fact requested authorization from his superior to watch the football match; that there were no documents that said anything about the employer withdrawing that authorization and that, in any case, general authorization is granted by the enterprise in a collective instrument for such events.
- 120.** The complainant organizations state that Mr Bobadilla began a hunger strike on 26 April 2017 for reinstatement following his arbitrary and unjust dismissal, and indicate that, with the support of the Catholic church, the Government was requested to hold round-table talks with a view to finding a fair solution, but that no reply was received from the Government in this respect. According to a report on the state of health of Mr Bobadilla prepared by the Human Rights Committee of the Medical College on 26 June 2017, his health was a matter of concern from a humanitarian point of view, requiring urgent measures to be taken by the authorities.

B. The Government's reply

- 121.** The Government sent its own observations and also those of the mining company in its communications of 23 January 2018 and 13 August 2019. The company indicates that Mr Bobadilla was contracted on 3 May 2010 under an employment contract without limit of time as a mine operator at the Radomiro Tomic worksite and that, on 1 November 2012, his employment relationship was terminated by means of a letter of dismissal, on the grounds set out in article 160(7) of the Labour Code, namely, the serious failure to fulfil the obligations stipulated in the employment contract. According to the letter of dismissal: (i) Mr Bobadilla had arranged, for Sunday 14 October to 16 October, an activity during his working hours to see a football match, without having the authorization of his direct superior,

and had even coordinated this activity with staff from an externally contracted company; (ii) with the intention of investigating the incident, on 24 October, following the rest to which he was entitled, the worker met with the labour relations department; and (iii) without having authorization from his superior or having a valid reason, the worker left work before the end of his working hours on 25 October 2012 and did not come to work on the next working day, which was 29 October 2012, again without authorization.

- 122.** The Government states that on 26 January 2013, Mr Bobadilla submitted an application for the protection of fundamental rights before the Labour Court of Calama as well as an action for unfair dismissal and the recovery of work-related benefits, both of which were rejected in a judgment dated 13 August 2013. In the judgment, the Court stated that: (i) evidence had not been submitted regarding how the complaint that the former worker had lodged with the labour inspectorate (in respect of which no labour violations were proven and the company did not receive a fine) could have caused animosity against him; (ii) there were no elements to prove that there had been hostility towards the former worker as a result of his trade union candidacy; (iii) Mr Bobadilla had arranged an activity during his working hours to see a football match, without having the authorization of his direct superior, who decides whether or not to authorize this type of activity; on 25 October, after having met with the labour relations department and finding himself subject to an internal investigation process designed to determine his responsibility in the incident relating to the football match, the worker, without authorization from his superior or having a valid reason, left work before the end of his working hours on 25 October 2012 and did not come to work on the next working day, 29 October 2012, again without authorization or justification of any kind; and (iv) with regard to the psychiatric report in which the former worker was allegedly diagnosed with reactive depression due to non-work-related mourning and the fact that in November 2012 the depression had allegedly returned, the Court considered that its value as evidence should be set aside as being well below the minimum standard required.
- 123.** The Government states that on the basis of the above the Court rejected the payment of the compensation requested and only found as being owing to the worker a sum corresponding to proportional leave coverage. It also states that, on 26 August 2013, the former worker lodged an appeal for annulment against the judgment mentioned and that the Court of Appeal of Antofagasta upheld the first-instance judgment in its entirety, noting that according to the inspection report the authorization to watch the match had been revoked one day before the match for reasons of productivity. The Government states that on 23 December 2013, the Court of Appeal of Antofagasta found the case to be enforceable and the company paid the sum corresponding to the proportional leave coverage at the Court of Calama.
- 124.** With regard to the report to which the complainant organizations refer, prepared by the Social Security Supervisory Authority in 2014 (Decision No. 52223) the company states that according to the report the former worker suffered from depression during a period following the end of the employment relationship with the company, namely from November 2012 until January 2013. It also states that the former worker wrongly interpreted article 71 of the Occupational Accidents and Diseases Act, No. 16744, given that this legislation stipulates that “members affected by an occupational disease should be transferred, by the enterprise where they are providing their services, to other tasks where they would not be exposed to the causal agent of the disease”. According to the company, the obligation incumbent on the employer relates to workers who continue their present employment relationship and in no circumstance to those whose contractual ties have ended. Neither is there a requirement under the legislation in question to reinstate the worker, as incorrectly maintained in the claim.
- 125.** The company also states that it tried to reach an agreement with the former worker in order to conclude the case, without acknowledging any liability, and it offered the former worker a sum of money, which was not accepted because his objective was to be reinstated. The

Government states that for the duration of the hunger strike every possible effort was made to bring it to an end and that, on 24 April 2017, a representative of the Deputy Secretary of the Interior filed an application for protection with the Court of Appeal of Santiago to protect the life and physical integrity of the former worker, and the Court requested a report from the Ministry of Labour and Social Welfare in which, among other points, it was emphasized that the former worker was in grave danger and that his life was at risk. On 2 August 2017, the Court granted the application for protection and ordered that Mr Bobadilla be taken to hospital. The Government states that following his transfer, the hospital issued two statements, the second on 8 August 2017 in which it noted, among other details, that the patient was still receiving medical and psychosocial support.

- 126.** The Government also states that Mr Bobadilla initiated two other legal proceedings in 2017: one application for the protection of fundamental rights before the Court of Appeal of Santiago (claiming reinstatement on the grounds of having suffered an occupational disease caused by dysfunctional reporting relationships); and a claim for damages in respect of an occupational disease, loss of earnings and moral damages before the Labour Court of First Instance of Santiago. On 21 August 2017 the Court found the application for protection to be inadmissible as the time limits to file the application for protection had expired, and also the alleged events had been previously resolved at the judicial level. Mr Bobadilla lodged an appeal and on 2 October 2017 the Supreme Court upheld the appealed decision. The Government also states that on 14 November 2017 the company was notified that a claim for damages in respect of an occupational disease, loss of earnings and moral damages had been submitted for the same events contained in the previously resolved claim on the violation of fundamental rights and in the application for protection. With respect to this proceeding, the Government states that, on 25 January 2019, the Court rejected the claim and, on 5 July 2019, the Appeals Court of Antofagasta rejected an appeal for annulment filed against the first instance judgment. The Government also informs that on 26 July, the said Court of Appeals declared admissible a request for unification of jurisprudence presented by the complainant and that, to date, said process is pending before the Supreme Court.

C. The Committee's conclusions

- 127.** *The Committee observes that in this case the complainant organizations are denouncing the anti-union nature of the dismissal of a worker from a state mining company, who, a number of years after being dismissed, went on a hunger strike to demand reinstatement.*
- 128.** *The Committee notes the allegation by the complainant organizations that, after having submitted a complaint to the labour inspectorate in August 2012 for non-compliance by the company with a collective agreement and after having presented himself in September 2012 as a candidate to be a trade union official, Mr Bobadilla suffered bullying and workplace harassment. It also notes that in November 2012 he was dismissed for having arranged an activity to watch a football match, despite having requested authorization from his superior to do so, which is substantiated in an inspection report. They also allege that the workplace harassment caused him to suffer a deep depression and state that on 26 April 2017 he began a hunger strike to demand his reinstatement, which, according to publicly available information, ended on 29 August 2017, without him achieving his objective.*
- 129.** *In this respect, the Committee notes that the Government and the company both state that the dismissal was due to serious non-compliance with the employment contract, which was corroborated by the Labour Court of Calama, which rejected the application for the protection of fundamental rights and an action for unfair dismissal initiated by Mr Bobadilla in January 2013. The Committee observes that in that judgment the Court concluded that it had not been proven that there had been hostility against the former worker for having submitted a complaint to the labour inspectorate or for having participated in trade union*

elections. The Committee also observes that the Court of Appeal of Antofagasta rejected an appeal for annulment of the judgment mentioned and noted that according to the inspection report the authorization to watch the football match had been revoked one day before the match.

130. *The Committee notes the company's statement that it tried to reach an agreement with the former worker, without acknowledging any liability, and that despite offering him a sum of money, it was not accepted because his objective was to be reinstated. It also notes that, according to the Government, in order to protect the life and physical integrity of the former worker during his outdoor hunger strike, an application for protection was filed and on 2 August 2017 the Court of Appeal of Santiago ordered that he be taken to hospital, where he allegedly stayed until 29 August of the same year. The Committee further notes that, according to the Government, Mr Bobadilla initiated other legal proceedings in 2017 that were not related to the alleged anti-union nature of the dismissal.*

131. *, The Committee notes that the legal proceedings initiated at the national level focused primarily on issues unrelated to the anti-union nature of the dismissal (the existence or otherwise of authorization to arrange an activity relating to a football match, and the worker's depression) and that they only referred marginally to the candidacy of the former worker for the position of trade union official. The Committee observes that the judicial decisions found that the dismissal had been due to serious non-compliance with the employment contract and that there was no evidence of the impact of the worker's candidacy on that decision. In view of the above conclusions and not having the necessary information to determine the existence or otherwise of anti-union discrimination against Mr Bobadilla, the Committee considers that this case does not call for further examination.*

The Committee's recommendation

132. *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. 3184

INTERIM REPORT

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

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

133. The Committee last examined this case (submitted in February 2016) at its June 2019 meeting, when it presented an interim report to the Governing Body [see 389th Report, paras 216–261, approved by the Governing Body at its 336th Session (June 2010)]. [Link to previous examinations](#)

134. On that occasion, the Committee decided to once again examine this case at its meeting in October–November 2019 [see 389th Report, para. 261].
135. The Government sent its partial observations in a communication dated 24 September 2019.
136. China has not ratified either the Freedom of Association or 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

137. At its June 2019 meeting, the Committee made the following recommendations on the matters still pending [see 389th Report, para. 261]:
- (a) Regarding the allegations involving Mr Meng, the Committee:
 - urgently requests the Government to take the necessary steps for the delivery to Mr Meng of the identification papers without delay;
 - urges the Government to reply without delay to the allegation of detention of Mr Meng following publication of articles in relation to his activities and imprisonment; and
 - once again requests the Government to keep it informed of the outcome of the ongoing investigation into the destruction of the door in Mr Meng's rented house.
 - (b) The Committee once again urges the Government to conduct a full investigation into the alleged beatings and injuries suffered by workers and their representatives at the shoe factory, as well as Mr Chen and Zhu Xinhua (labour dispute at the bag factory) without further delay and to keep it informed of the outcome.
 - (c) The Committee urgently requests the Government to transmit a copy of the report of the investigation into the alleged harsh treatment of the labour activists while in custody and numerous interrogations of the accused.
 - (d) The Committee once again requests the Government to confirm that Mr Deng and Mr Peng are no longer under investigation and will not be prosecuted.
 - (e) The Committee once again requests the Government to keep it informed of measures taken to ensure the right of all workers to form and join the organization of their own choosing.
 - (f) The Committee urges the Government to take all necessary steps to ensure the release of any workers detained in relation to their activities to form a union and to submit a detailed reply on the allegations of arrests, detention, ill-treatment and disappearance of labour activists and supporters of the technology company's workers, as well as criminal charges laid against some.
 - (g) The Committee urges the Government to take the necessary measures to ensure adequate protection against anti-union discrimination in law and in practice and to provide a copy of the report on the outcome of the investigation referred to by the Government (regarding Messrs Yu and Li) and detailed information with regard to the alleged dismissals of Messrs Mi, Li, Song, Kuang, Zhang and Chang.
 - (h) The Committee once again requests the Government to reply without further delay to the specific allegations in relation to the right to strike and demonstrate in practice, including the frequent use of public order laws to restrict its exercise, by specifying the conditions for the effective exercise of this right in law and in practice.

- (i) The Committee will once again examine this case at its next meeting in October–November 2019.

B. The Government's reply

- 138.** In its communication dated 24 September 2019, the Government indicates that it has launched a special investigation into the situation in this case and in this respect transmits the following information.
- 139.** Regarding the results of investigations into the cases of Messrs Meng and Chen, Ms Zhue and others, the Government reiterates that the investigation revealed that the local police in Guangdong Province did not receive any reports from workers at the Lide Shoe Factory (shoe factory) nor from the abovementioned worker advisors. In the case of the destruction of the door in Mr Meng's rented residence, upon receipt of his report, the local police worked promptly on his case in accordance with the law. A large number of interviews and investigations were conducted, but no solid clue was found to identify the suspect. As provided for in Chinese law, this case is still under investigation by police.
- 140.** The Government further indicates that on 3 January 2017, the bail imposed on Messrs Deng and Peng pending trial was legally lifted. Currently, Mr Deng is engaged in legal business activities and Mr Peng is employed away from his home town; their personal freedom is not restricted.
- 141.** Regarding the alleged violations at the JASIC Technology Co. (the technology company), the Government indicates that since its establishment on 20 August 2018, the company trade union has fully played its role in promoting the harmonious development of enterprises, protecting the legitimate rights and interests of workers and serving the masses of workers wholeheartedly, including by directing its efforts at the following areas:
- (i) Trade union build-up is more institutionalized (the trade union has established six special committees; developed 32 rules and regulations, including its Standing Orders; and put in place such welfare facilities as the Workers' Library, the Home of Music, the Multi-functional Hall, the Fitness Gym, the Psychological Counselling Room, the Dispute Mediation Room and the Loving Mother's Room). By the end of last May, the trade union had registered a membership of 781, or 84 per cent of the total workforce.
 - (ii) Channels of communication and consultation between workers and the management have been enhanced (the trade union has identified "employee relationship, labour standards and collective bargaining" as its main areas of priority, actively conducted wage negotiation with the management, and communicated to the latter a wide range of opinions and suggestions which it had solicited from the workers through many channels, including through its letterbox, the Application Form for Personal Demands and regular visits/interviews).
 - (iii) Progress has been made in workers' education and training (under the impetus of the trade union, the company designed a three-year action plan for workers' education and training. Since the beginning of 2019, more than 1,000 workers have been trained).
 - (iv) The role of the trade union has been further strengthened (the trade union has conducted the "Trade Union Day" promotional campaign and a variety of cultural and sports activities; organized skills competitions among workers; and coordinated with the management in order to improve its catering service delivery and workers' dormitory management, thus gaining universal recognition from the workers and staff).

142. The Government once again reiterates that the Constitution of the People's Republic of China and relevant laws fully guarantee to its citizens' freedom of association rights and contain no prohibitive provisions regarding the right to strike. At the same time, in exercising these rights, Chinese workers and their organizations shall abide by the relevant provisions of national laws. The persons involved in this case were subject to investigation and penalty not on the ground of organizing workers or participating in trade union activities, but for the reason of violating relevant provisions of the Criminal Law by resorting to unlawful means in the process of labour dispute settlement. The Trade Union Law provides that "if an enterprise or a public institution is subject to work stoppage or slow down measures, the trade union shall represent the employees to negotiate with the enterprise, public institution or other relevant authorities, make known the employees' views and requirements and propose resolutions. The enterprise or public institution shall meet the reasonable requirements raised by the employees."
143. The Government concludes by once again reiterating that in handling the cases in question, the courts and the police complied with the procedures prescribed by the law, and that the legitimate rights of persons concerned were properly guaranteed.

C. The Committee's conclusions

144. *The Committee recalls that this case concerns allegations of arrest and detention on charges of "gathering a crowd to disturb public order" of advisers and paralegals who have provided support services to workers and their organizations in handling individual and/or collective labour disputes.*
145. *The Committee recalls, in particular, that Mr Meng, one of the advisers, had been sentenced to 21 months of imprisonment on the above charges. It further recalls that the International Trade Union Confederation (ITUC) alleged that following his release from prison, Mr Meng's identification documents were withheld by the authorities; and that without these documents, he cannot access medical services to treat hepatitis, contracted in prison, nor apply for jobs; that his freedom of movement is restricted and that he was once again detained (for a few days) following publication of articles describing his activism, trial and imprisonment. The Committee once again deeply regrets the absence of a reply from the Government on this matter. It points out that the withholding of identification documents by reason of a person's involvement in legitimate trade union activities or assistance therewith violates the basic civil liberties of Mr Meng, given that these documents are necessary for his freedom of movement, as well as for obtaining employment and accessing healthcare services. The Committee therefore once again urges the Government to take the necessary steps for the delivery to Mr Meng of the identification papers without delay. Furthermore, once again recalling 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 [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 123], the Committee urges the Government to reply without delay to the allegation of detention of Mr Meng following publication of articles in relation to his activities and imprisonment. The Committee notes the Government's indication that the case of the destruction of the door in Mr Meng's rented house is still under investigation, but that so far, no evidence has been found to identify the suspect. The Committee once again requests the Government to keep it informed of the outcome of the ongoing investigation.*
146. *The Committee further recalls that in its previous examination of this case it regretted that no information had been provided by the Government regarding the alleged beating and injuries suffered by workers and their representatives at the shoe factory, as well as by Mr Chen and Zhu Xinhua (labour dispute at the bag factory) and requested the Government*

to provide detailed information on the outcome of the relevant investigations. In this respect, the Committee noted the Government's indication that the investigation had revealed that the local public security authorities in Guangdong Province did not receive any complaints reporting cases of beatings of workers at the shoe factory (nor of Mr Chen, Zhu Xinhua and others at the bag factory). The Committee also noted that the ITUC contested the Government's claim that the local public security authorities had not received any complaints of cases of beatings at the shoe factory. The Committee notes that in its communication dated 24 September 2019, the Government reiterates its previous statement. The Committee therefore once again recalls that all allegations of violence against workers who are organizing or otherwise defending workers' interests should be thoroughly investigated and full consideration should be given to any possible direct or indirect relation that the violent act may have with trade union activity. In the event of assaults on the physical or moral integrity of individuals, the Committee has considered that an independent judicial inquiry should be instituted immediately with a view to fully clarifying the facts, determining responsibility, punishing those responsible and preventing the repetition of such acts [see *Compilation, op. cit.*, paras 101 and 105]. The Committee recalls that even in the absence of a formal filing of charges, each case should be thoroughly investigated and, where witnesses have come forward, appropriate and adequate protection should be provided. The Committee therefore once again urges the Government to conduct a full investigation into these allegations without further delay and to keep it informed of the outcome.

147. The Committee further recalls that it requested the Government to provide detailed information on the alleged harsh treatment of the labour activists while in custody, and, in particular, on the alleged numerous interrogations of the accused. The Committee noted the Government's indication that a special investigation into the situation was carried out and revealed that Mr Zeng and others were not subject to cruel treatment while in detention. The Government reiterated that the public security authority deals with cases in strict conformity with relevant legal provisions and that the rights of those concerned were sufficiently safeguarded during the hearing. In the absence of any new information, the Committee urges the Government to transmit a copy of the investigation report.
148. Regarding its previous requests to confirm that Mr Deng and Mr Peng are no longer under investigation and will not be prosecuted, the Committee notes the Government's indication that the bail had been lifted, that Mr Deng pursues legal business activities and Mr Peng is employed away from his hometown, and that their freedom is not restricted. The Committee understands the Government's indication to mean that Messrs Deng and Peng are no longer under investigation and that they will not be prosecuted and requests the Government to confirm its understanding.
149. The Committee recalls the allegations of violation of workers' rights to establish a trade union in full freedom without previous authorization at the technology company in Shenzhen, as well as arrests, detention, ill-treatment and disappearance of labour activists and supporters of the company's workers and the detailed account of the events that gave rise thereto. The Committee noted in particular, that the establishment of a trade union at the technology company was only possible with the involvement and approval of the Federation of Trade Unions (FTU). In this respect, the Committee further noted that according to the ITUC, the overall legislative framework did not allow workers to join or form trade unions unless the local unions affiliate with the All-China Federation of Trade Unions (ACFTU) and that in this particular case, the nine-member trade union committee finally elected was effectively dominated by management with the company investment director as the trade union chairperson. While taking note of the Government's reiteration that the national legislation and practice ensure that workers enjoy freedom of association and of the information on the achievements of the company trade union and its representativity outlined by the Government, the Committee regrets that the Government has not responded to the numerous allegations of enterprise interference in the creation of the union, including

management representation in its leadership. The Committee recalls that all appropriate measures should be taken to guarantee that, irrespective of trade union affiliation, trade union rights can be exercised in normal conditions with respect for basic human rights and in a climate free of violence, pressure, fear and threats of any kind. The Committee further recalls once again 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 [see **Compilation**, op. cit., para. 475] and once again calls upon the Government to ensure this right for all workers.

150. Furthermore, the Committee had previously noted with serious concern the list of 32 individuals, engaged in or supporting the workers' action (see appendix) who were allegedly in detention (5) or have disappeared (27) in this connection, as well as criminal charges brought against some. Regretting that no information has been provided by the Government in respect of this serious allegation, the Committee once again 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 [see **Compilation**, op. cit., para. 123]. The Committee urges the Government to take all necessary steps to ensure the release of any workers detained in relation to their activities to form a union and to submit a detailed reply on each of the allegations of arrests, detention, ill-treatment and disappearance of labour activists and their supporters, as well as criminal charges laid against some and sanctions imposed. The Committee also requests the complainant organization to provide any further information it might have in this regard.
151. The Committee further noted that among these 32 individuals, four (Messrs Mi, Yu, Liu and Li) were workers of the technology company who were also allegedly dismissed due to their involvement in the establishment of the union and later charged with the criminal offence of "assembling a crowd to disturb public order". The ITUC also referred to the dismissal of other workers in this connection and names, in particular, Messrs Song, Kuang, Zhang and Chang. The Committee noted that according to the Government, following investigations it was ascertained that Messrs Liu and Yu were dismissed for fighting with their colleagues and absenteeism, respectively, and that the civil case of Mr Yu's dismissal was suspended due to him being involved in a pending criminal case. The Committee observed the contradictory nature of the information provided by the Government and that of the complainant in relation to the circumstances around these dismissals. It recalled that adequate protection against all acts of anti-union discrimination in respect of employment, such as dismissal, demotion, transfer or other prejudicial measures is fundamental to the principle of freedom of association. The Committee once again urges the Government to take the necessary measures to ensure adequate protection against anti-union discrimination in law and in practice and to provide a copy of the report on the outcome of the investigation previously referred to by the Government and detailed information with regard to the alleged dismissals of Messrs Mi, Li, Song, Kuang, Zhang and Chang.
152. Regarding the pending criminal cases against the four workers (Messrs Mi, Yu, Liu and Li) in relation to the exercise of their right to assembly, the Committee noted that the ITUC reiterated that it was not possible for workers and labour activists to participate in a legitimate strike or demonstration without violating the law that prohibits the disturbance of public order; and that it was common for the prosecutor and the court to view industrial action taken by workers as public security violations rather than as the exercise of fundamental rights. The Committee notes the Government's reiteration that the national legislation does not contain provisions prohibiting strikes and that the persons involved in this case were subject to investigation and penalty not on the ground of organizing workers or participating in trade union activities, but for the reason of violating relevant provisions

of the Criminal Law by resorting to unlawful means in the process of labour dispute settlement. In the face of conflicting information, the Committee recalls that workers should enjoy the right to peaceful demonstration to defend their occupational interests. It further recalls that the right to organize public meetings constitutes an important aspect of trade union rights. In this connection, the Committee has always drawn a distinction between demonstrations in pursuit of purely trade union objectives, which it has considered as falling within the exercise of trade union rights, and those designed to achieve other ends [see *Compilation, op. cit.*, paras 208 and 209]. In light of the circumstances of this case, the Committee wishes to highlight that the Criminal Law should not be applied in such a manner as to penalize workers in violation of their right to peaceful demonstration. The Committee therefore once again requests the Government to reply without further delay to the specific allegations in relation to the exercise of the right to strike and demonstrate in practice and in particular to provide information on the status of the pending criminal cases against the four workers, including detailed information on the precise acts for which they have been charged, as well as any court judgment rendered in their case.

The Committee's recommendations

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

- (a) Regarding the allegations involving Mr Meng, the Committee:*
 - (i) urges the Government to take the necessary steps for the delivery to Mr Meng of the identification papers without delay;*
 - (ii) urges the Government to reply without delay to the allegation of detention of Mr Meng following publication of articles in relation to his activities and imprisonment; and*
 - (iii) once again requests the Government to keep it informed of the outcome of the ongoing investigation into the destruction of the door in Mr Meng's rented house.*
- (b) The Committee once again urges the Government to conduct a full investigation into the alleged beatings and injuries suffered by workers and their representatives at the shoe factory, as well as Mr Chen and Zhu Xinhua (labour dispute at the bag factory) without further delay and to keep it informed of the outcome.*
- (c) The Committee urges the Government to transmit a copy of the report of the investigation into the alleged harsh treatment of the labour activists while in custody and numerous interrogations of the accused.*
- (d) The Committee requests the Government to confirm that Messrs Deng and Peng will not be prosecuted.*
- (e) The Committee once again requests the Government to keep it informed of measures taken to ensure the right of all workers to form and join the organization of their own choosing.*
- (f) The Committee urges the Government to take all necessary steps to ensure the release of any workers detained in relation to their activities to form a union*

and to submit a detailed reply on each of the allegations of arrests, detention, ill-treatment and disappearance of labour activists and their supporters, as well as criminal charges laid against some and sanctions imposed. The Committee requests the complainant organization to provide any further information it might have in this regard.

- (g) The Committee urges the Government to take the necessary measures to ensure adequate protection against anti-union discrimination in law and in practice and to provide a copy of the report on the outcome of the investigation referred to by the Government (regarding Messrs Yu and Li) and detailed information with regard to the alleged dismissals of Messrs Mi, Li, Song, Kuang, Zhang and Chang.*
- (h) The Committee once again requests the Government to reply without further delay to the specific allegations in relation to the right to strike and demonstrate in practice, including the frequent use of public order laws to restrict its exercise, by specifying the conditions for the effective exercise of this right in law and in practice.*
- (i) The Committee requests the Government to provide information on the status of the pending criminal cases against Messrs Mi, Yu, Liu and Li and detailed information on the precise acts for which they have been charged, as well as any court judgment rendered in their case.*
- (j) The Committee will once again examine this case at its next meeting in March 2020.*

Appendix

List of 32 individuals detained or disappeared in connection with Jasic workers' campaign

1. Mr Mi Jiuping: the technology company worker, detained since July 2018, charged with “gathering a crowd to disrupt social order.” He is being held at the Shenzhen Municipal No. 2 Detention Centre. Mi’s first two lawyers were forced to withdraw from his case. On 1 October 2018, a request by a new lawyer to meet with Mi was denied on the grounds that Mi’s case involved state secrets.
2. Mr Yu Juncong: the technology company worker, detained since July 2018, charged with “gathering a crowd to disrupt social order”. He is being held at the Shenzhen Municipal No. 2 Detention Centre. After meeting with Yu on 30 August 2018, Yu’s lawyer was pressured to withdraw from the case. Yu’s requests for a meeting with his new lawyer have not been accepted after 30 August 2018.
3. Mr Liu Penghua: the technology company worker, detained since July 2018, charged with “gathering a crowd to disrupt social order”. He is being held at the Shenzhen Municipal No. 2 Detention Centre. Liu told a lawyer who met with him in September that he had been beaten. Further requests to meet with his lawyer have been denied.
4. Mr Li Zhan: former the technology company worker and worker supporter, detained since July 2018, charged with “gathering a crowd to disrupt social order”. He is being held at the Shenzhen Municipal No. 2 Detention Centre. After meeting with Li on 18 September 2018, Li’s lawyer was pressured to withdraw from his case.
5. Ms Shen Mengyu: graduate of Sun Yat-sen University, forcibly disappeared in August 2018. Still missing.
6. Ms Yue Xin: graduate of Peking University, forcibly disappeared on 24 August 2018. Still missing.
7. Ms Gu Jiayue: graduate of Peking University, taken from her home on 24 August 2018, charged with “picking quarrels and provoking trouble” and is being held under “residential surveillance at a designated place”. Whereabouts unknown.
8. Mr Xu Zhongliang: graduate of University of Science and Technology Beijing, detained since 24 August 2018, charged with “picking quarrels and provoking trouble” and is being held under “residential surveillance at a designated place”. Whereabouts unknown.
9. Mr Zheng Yongming: graduate of Nanjing Agricultural University, detained since 24 August 2018, charged with “picking quarrels and provoking trouble” and is being held under “residential surveillance at a designated place”. Whereabouts unknown.
10. Mr Shang Kai: editor of a leftist media website Hongse Cankao, taken away by Guangdong police on 24 August 2018 from the office of Hongse Cankao. Still missing.
11. Mr Fu Changguo: staff member of a workers’ centre, Dagongzhe, detained since August 2018, charged with “gathering a crowd to disrupt social order” and is being held at the Shenzhen Municipal No. 2 Detention Centre.
12. Mr Yang Shaoqiang: graduate of University of Science and Technology Beijing, taken from home in August 2018, charged with “picking quarrels and provoking trouble” and is being held under “residential surveillance at a designated place”. Whereabouts unknown.
13. Mr Tang Jialiang: postgraduate student at Beijing Institute of Technology, forcibly disappeared since early September 2018. Still missing.
14. Mr Wu Lijie: editor of a leftist media website Hongqi, taken from home and forcibly disappeared 24 October 2018. Still missing.
15. Mr Zhang Shengye: graduate of Peking University, taken from campus and forcibly disappeared on 9 November 2018. Still missing.
16. Ms Sun Min: graduate of Peking University, taken away in Guangzhou and forcibly disappeared on 9 November 2018. Still missing.

17. Mr Zong Yang: graduate of Peking University, taken away in Beijing and forcibly disappeared on 9 November 2018. Still missing.
18. Mr Liang Xiaogang: worker supporter, taken away in Shanghai and forcibly disappeared on 9 November 2018. Still missing.
19. Mr Tang Xiangwei: worker supporter, taken away in Wuhan and forcibly disappeared on 11 November 2018. Still missing.
20. Mr Zheng Shiyong: worker supporter, taken away in Wuhan and forcibly disappeared on 11 November 2018. Still missing.
21. Ms Zheng Yiran: graduate of Beijing Language and Culture University, taken away in Beijing and forcibly disappeared on 9 November 2018. Still missing.
22. Mr Lu Daxing: graduate of Nanjing University of Science and Technology, taken away in Beijing and forcibly disappeared on 9 November 2018. Still missing.
23. Ms Li Xiaoxian: graduate of Nanjing University of Chinese Medicine, taken away in Beijing and forcibly disappeared on 9 November 2018. Still missing.
24. Mr He Pengchao: graduate of Peking University, founder of Qingying Dreamworks Social Worker Centre, taken away in Beijing and forcibly disappeared on 9 November 2018. Still missing.
25. Ms Wang Xiangyi: graduate of Peking University, founder of Qingying Dreamworks Social Worker Centre, taken away in Shenzhen and forcibly disappeared on 9 November 2018. Still missing.
26. Ms Jian Xiaowei: graduate of Renmin University, staff member of Qingying Dreamworks Social Worker Centre, taken away in Shenzhen and forcibly disappeared on 9 November 2018. Still missing.
27. Ms Kang Yanyan: graduate of University of Science and Technology Beijing, staff member of Qingying Dreamworks Social Worker Centre, taken away in Shenzhen and forcibly disappeared on 9 November 2018. Still missing.
28. Ms Hou Changshan: graduate of Beijing Foreign Studies University, staff member of Qingying Dreamworks Social Worker Centre, taken away in Shenzhen and forcibly disappeared on 9 November 2018. Still missing.
29. Ms Wang Xiaomei: graduate of Nanjing University of Information Science and Technology, staff member of Qingying Dreamworks Social Worker Centre, taken away in Shenzhen and forcibly disappeared on 9 November 2018. Still missing.
30. Ms He Xiumei: supporter of Qingying Dreamworks Social Worker Centre, taken away in Shenzhen and forcibly disappeared on 9 November 2018. Still missing.
31. Ms Zou Liping: local trade union staff member, detained in Shenzhen on 9 November 2018, charged with “picking quarrels and provoking trouble”. Whereabouts unknown.
32. Mr Li Ao: local trade union staff member, detained in Shenzhen on 9 November 2018, charged with “picking quarrels and provoking trouble”. Whereabouts unknown.

CASE NO. 3091

DEFINITIVE REPORT

**Complaint against the Government of Colombia
presented by
the General Confederation of Labour (CGT)**

Allegations: the complainant organization alleges that a municipal enterprise providing public services used a restructuring process to carry out acts of anti-trade union discrimination and interference

- 154.** The complaint is set out in two communications from the General Confederation of Labour (CGT) dated 6 June 2014 and 31 January 2017.
- 155.** The Government sent its observations in communications dated 19 June 2015 and 13 February 2018.
- 156.** Colombia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

- 157.** In its communications dated 6 June 2014 and 31 January 2017, the CGT indicated that the municipal enterprise EMCALI (hereafter “the company”) is a state industrial and commercial enterprise responsible for providing water, energy, sewage and telecommunications services in the municipalities of Cali, Yumbo and Puerto Tejada. The complainant alleges that, between May 2004 and January 2010, in the context of a supposed restructuring process, the company dismissed 52 members of the Union of Public Officials of EMCALI (SERVIEMCALI), including the seven members of the board of directors and 27 heads of department. This action halved the membership of the trade union, an affiliate of the CGT with 105 members that was founded on 5 May 2002. The complainant indicates that the dismissed workers were public employees and were not covered by the collective agreement signed between the company and the Union of Cali Municipal Enterprise Workers (SINTRAEMCALI), the majority union of official workers, which ensured job stability for official workers.
- 158.** The complainant organization alleges that the heads of department were wrongly classed as public employees when they should have been classed as official workers. The complainant indicates that, although the company’s board of directors had indicated that heads of department were classed as public employees in resolutions issued in 1997 and 1999, rulings issued on 1 July 1999, 23 May 2002 and 25 March 2004 by the State Council at the Administrative Disputes Chamber had annulled those resolutions, indicating that heads of department were classed as official workers and not public employees. Those rulings indicated that workers employed by a state industrial and commercial enterprise should generally be classed as official workers and that such enterprises should only appoint public employees in management posts or positions of trust in exceptional circumstances. It was also indicated that, given the type of activities and level of decision-making required by the

role, the position of head of department should not be classed as a public employee post but an official worker post.

159. The complainant organization indicates that the heads of department requested the company to class them as official workers on the basis of the three State Council decisions. The company refused that request and the workers therefore lodged *tutela* proceedings as a temporary measure to protect their rights; however, these proceedings were dismissed as the action was deemed inadmissible. The complainant indicates that SERVIEMCALI asked the company through different communications and requests to comply with the State Council decisions, and that not only did the company not respond to those requests, but it once again classed heads of department as public workers in resolution No. 820 of 20 May 2004. The complainant maintains that the company should reinstate the workers dismissed between 2004 and 2010, including the heads of department who were dismissed in the context of a restructuring process at the company, which was done under false pretences with the sole purpose of circumventing the State Council decisions.

B. The Government's reply

160. In its communications dated 19 June 2015 and 13 February 2018, the Government sent its observations as well as those of the company. The Government indicates that, in 2002, with the aim of salvaging the operational and financial viability of the municipal enterprise, the national Government intervened and the company has been administered by the Office of the Superintendent of Domestic Public Services ever since. The Government indicates that the Office of the Superintendent implemented various measures with the aim of rescuing the company from its difficult financial situation that exposed it to the threat of liquidation, one of which was the issuing of resolution No. 820 on 20 May 2004, which adopted the internal bylaws of the company, provided for a new organizational structure and list of positions, redefined the general responsibilities of the different divisions and indicated the roles to be carried out by official workers and public employees. The resolution declared that the main objective of the measures adopted was to improve the company's efficiency and effectiveness and thus its recovery and viability.

161. The Government indicates that although national legislation states that persons providing services at state industrial and commercial enterprises are official workers, companies should specify in their internal bylaws which roles involving management or positions of trust should be carried out by people classed as public employees. The Government indicates that the legality of resolution No. 820 of 2004 was assessed and the resolution was subsequently annulled; however, the State Council, the highest authority of the competent administrative tribunal, issued a ruling on the matter on 15 December 2011, determining that the resolution was lawful. The Government provided extracts of that ruling, which indicated that: (i) in 2014, the State intervened in the company owing to the critical financial situation in which the company found itself; (ii) the Office of the Superintendent of Domestic Public Services had taken on the management and administration of the company; (iii) although in principle it would have fallen to the company's board of directors to adopt a resolution of that kind, in this case the company had been subject to Government intervention and the Office of the Superintendent was charged with the administration of the company and therefore had the power to issue resolution No. 820 of 2004 and to determine the roles involving management or positions of trust that should be carried out by public employees; and (iv) the company's new bylaws had not been produced by the Office of the Superintendent on impulse or arbitrarily, but were the product of technical studies that had led to the organizational restructuring of the company.

162. The company indicates that official workers and public employees alike had been dismissed through the organizational restructuring process authorized through resolution No. 820 of

2004. It indicates that, in total, 385 positions were eliminated (349 official worker positions and 36 public employee positions) and states that restructuring and eliminating roles cannot be considered an anti-trade union activity as the dismissals had not been arbitrary and the assurances enjoyed by union officials had been respected. The company indicates that seven members of the SERVIEMCALI board of directors who held public employee positions and were dismissed in the context of the restructuring process were reinstated through *tutela* proceedings. The details of their cases were as follows: Mr Villarreal and Mr Muñoz are currently working for the company and the other five had taken voluntary redundancy in order to receive their old-age pension; specifically, Ms Montoya retired on 16 November 2005, Ms Trujillo retired on 28 December 2007, Mr Millán de Rodríguez retired on 31 December 2014, Ms Peláez retired on 15 May 2015 and Mr Martín Mancera retired on 1 August 2017. The company also indicates that most SERVIEMCALI officials between 2002 and 2011 were still employed by the company and those who were no longer employed had either taken voluntary redundancy, died or retired to take an old-age pension. It indicates that only two of these officials were dismissed on different dates by unilateral decision.

- 163.** The Government indicates that although SERVIEMCALI sought to have heads of department at the company recognized as official workers to ensure that they would be covered by the collective agreement signed with the company, public employees are also able to sign agreements with the company following the adoption of Decree No. 160 of 5 February 2014, which governs the law that approved the Labour Relations (Public Service) Convention, 1978 (No. 151). The Government indicates that, on 22 January 2015, SERVIEMCALI and SIEMCALI (another trade union) jointly presented lists of demands to the company, selected a negotiating committee and reached the direct settlement phase, proving that both parties wished to engage in negotiation.

C. The Committee's conclusions

- 164.** *The Committee observes that, in this case, the complainant alleges that a municipal enterprise used a restructuring process to carry out acts of anti-trade union discrimination and interference. The Committee notes that, as indicated by the complainant organization and the Government, the case refers to a state industrial and commercial enterprise in which the workers are mostly official workers and a small number are public employees that hold management posts or positions of trust.*
- 165.** *The Committee notes that the complainant organization alleges that: (i) between 2004 and 2010, in the context of a supposed restructuring process, the company dismissed half of the members of SERVIEMCALI, including the seven members of the board of directors and 27 heads of department; (ii) the aim of the restructuring process was to dismiss the heads of department, who were wrongly classed as public employees and therefore did not benefit from the collective agreement that ensured job stability for official workers; (iii) in 1999, 2002 and 2004, the State Council at the Administrative Disputes Chamber annulled the resolutions in which the company's board of directors had classed heads of department as public employees rather than official workers and indicated that, in the light of the type of activities and level of decision-making required by the role, the position of head of department could not be classed as a public employee position; and (iv) the company did not comply with the decisions mentioned above, did not recognize the heads of department as official workers and, on 20 May 2004, issued a resolution in which it again classed the heads of department as public workers.*
- 166.** *In this regard, the Committee notes that the Government and the company indicate that: (i) from 2002, and given the critical financial situation in which the company found itself, the Government intervened in the company and the Office of the Superintendent of Domestic*

Public Services implemented various measures aimed at improving the efficiency and effectiveness of the company, including the issuing of resolution No. 820 of 20 May 2004, which defined a new list of positions and general responsibilities for the different divisions, specified the roles to be carried out by official workers and public employees and determined that heads of department would be classed as public employees; (ii) in a ruling issued on 15 December 2011, the State Council at the Administrative Disputes Chamber determined that this resolution was lawful; (iii) as a result of the restructuring, 385 roles were eliminated, namely 349 official worker positions and 36 public employee positions; (iv) the seven members of the SERVIEMCALI board of directors who were dismissed were reinstated through tutela proceedings: two of those members currently work at the company and the other five had requested voluntary redundancy in order to receive their old-age pension; and (v) although SERVIEMCALI had sought to have heads of department at the company recognized as official workers to enable them to benefit from the collective agreement, following the adoption of Decree No. 160 in 2014, public employees are also able to sign collective agreements with the company and, on 22 January 2015, SERVIEMCALI and another trade union jointly presented a list of demands to the company, selected a negotiating committee and reached the direct settlement phase.

- 167.** *The Committee observes that the information provided by the parties indicates that from 2002 to 2013 the company was the subject of an intervention by the national Government and the Office of the Superintendent of Domestic Public Services was responsible for its administration. During that period, the Office of the Superintendent implemented a range of measures, such as the issuing of a resolution in 2004 that defined a new list of positions, specified the roles to be carried out by official workers and public employees and determined that heads of department would hold public employee positions.*
- 168.** *The Committee observes that the classification of heads of department within the company has been the subject of various proceedings brought before the courts of administrative disputes and that the State Council at the Administrative Disputes Chamber ruled on 15 December 2011 that the 2004 resolution through which the Office of the Superintendent had classed the position of head of department as that of a public employee was lawful. The Committee underscores that it is not within its remit to adopt a decision on the classification of certain public servants as official workers or public employees and that its responsibility is solely to ensure that the principles of freedom of association are fulfilled in the public sector. The Committee observes in this respect that, as a result of the adoption of Decree No. 160 of 5 February 2014, public employees are able to sign agreements with the company and that SERVIEMCALI presented a list of demands to the company in 2015.*
- 169.** *In relation to the dismissals carried out as a result of the restructuring of the company, the Committee observes that, according to the Government and the company, the seven members of the SERVIEMCALI board of directors who had been dismissed were reinstated through tutela proceedings. It also observes that of the 385 workers dismissed, 52 were SERVIEMCALI members and as a consequence the trade union lost half of its members. Observing that the Committee does not possess evidence to conclude that the trade union members, whether public employees or official workers, had been dismissed in connection with their trade union membership or the exercise of legitimate trade union activities, the Committee underscores that it is not within its purview to pronounce itself on allegations relating to restructuring programmes, even when these involve collective dismissals, unless they have given rise to acts of anti-union discrimination or interference [see **Compilation**, *op. cit.*, para. 1114]. In the light of the above, and in the absence of any other information from the complainant organization, the Committee will not pursue its examination of this case.*

The Committee's recommendation

170. *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. 3243

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

Complaint against the Government of Costa Rica presented by

- **UNI Global Union and**
- **the Banco Popular Employee's Union (SIBANPO)**

Allegations: The complainant organizations allege the violation of two provisions of a public bank's collective agreement by judgments of the country's Supreme Court

- 171.** The complaint is contained in communications dated 18 October and 20 December 2016 and 6 and 7 April 2017 presented by the Banco Popular Employees' Union (SIBANPO) and UNI Global Union.
- 172.** The Government sent its observations in communications dated 20 October 2017 and 13 September 2019.
- 173.** Costa Rica has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainants' allegations

174. In their respective communications of 18 October 2016, the complainant organizations allege that, by means of Vote No. 201413758 of 20 August 2014, the Constitutional Chamber of the Supreme Court unilaterally amended the scope of article 45 of the fourth collective agreement of Banco Popular y de Desarrollo Comunal (hereafter "the Bank") in relation to severance pay for the Bank's employees. The complainants specifically allege that: (i) for decades, industrial relations between the Bank and its employees have been governed by the collective labour agreement, which under article 62 of the Costa Rican Constitution, has force of law in the country; (ii) following an irregular practice adopted by public authorities in recent years, the Office of the Comptroller General of the Republic filed an application for constitutional review of article 45 of the Bank's collective agreement, requesting its partial annulment; (iii) article 45 of the agreement establishes that the Bank shall provide severance pay to its employees for the years worked when they retire, resign or are dismissed with or without employer liability; (iv) article 45 also provides that severance pay shall amount to a month's wages for each year worked prior to 1 March 2001, while the calculation for the years worked after that date shall be based on the formula set forth in the Labour Code; (v) the application for constitutional review filed by the Office of the Comptroller alleges that this article is excessive and contrary to the principles of equality, reasonableness and efficient use of public funds; and (vi) although, in the above-mentioned

vote, the Constitutional Chamber declared that the application was unfounded and that, therefore, the relevant clause of the collective agreement was not unconstitutional, it ruled that, for the clause to be considered constitutional, the number of years used for the calculation of severance pay must not exceed 20.

- 175.** The complainant organizations allege that this judgment of the Constitutional Chamber is incoherent and contradictory, totally lacks legal basis, is the result of political pressure and interests, and clearly violates the principle of free negotiations between the parties, as well as the principle of legal certainty. The complainants state in this respect that: (i) all the arguments put forward by the Office of the Comptroller in its application for constitutional review were rejected by the Court, as article 45 of the collective agreement does not foster discrimination, violate any fundamental right or undermine the principles of proportionality and reasonableness; (ii) there are no grounds whatsoever for limiting the number of years used to calculate severance pay to 20 years of work; and (iii) by imposing this limit that unilaterally amends the relevant clause of the collective agreement and thus distorts it, the Court is overstepping its mandate, violating the principle of free collective bargaining and disregarding the specific procedure, which respects due process, laid down in the Public Administration Act for the suppression of rights acquired under a collective agreement.
- 176.** In their respective communications of 20 December 2016, the complainant organizations add that: (i) the Bank's employees are public, non-government employees governed by the private employment regime and that, under article 2 of its constitution, the Bank operates with full administrative and functional autonomy, with its own assets, and is not safeguarded by the Government; (ii) as part of the application for constitutional review, the Office of the Attorney-General of the Republic is requesting that the application be declared as founded and that a limit of 20 years be established for severance purposes; and (iii) the judgment also undermines the approval process for the Bank's fifth collective agreement, since on 14 December 2016, the Industrial Relations Department of the Ministry of Labour and Social Security asked SIBANPO for clarification about the scope of the clause in the new agreement in relation to severance pay. Lastly, the complainants state that the Court's judgment is a legal contradiction, since it cannot declare the application for constitutional review of the collective agreement clause to be unfounded and, at the same time, unilaterally amend the same clause.
- 177.** In communications dated 6 and 7 April 2017, the complainant organizations refer to a second judgment from the Supreme Court regarding another provision of the Bank's collective agreement, a judgment that, according to their allegations, also violates the right to free collective bargaining. The organizations specifically state that: (i) the current article 35 of the Bank's fourth collective agreement refers to the formula for payment of the Bank's employees' wages and states that "Wages are weekly. Any economic benefit affecting wages shall be calculated on the basis of the weekly wage – that is, the monthly amount divided by four over 52 weeks"; (ii) although this article has formed part of the Bank's collective agreement for over 30 years, the Bank has decided to use a different formula from the standard one and has been dividing by 4.33, which means that the workers' wages are lower than the agreed wages; (iii) SIBANPO submitted the matter for judicial review, and while the findings were not in its favour at first instance, the first-instance judgments were fully revoked by 13 second-instance judgments issued between 27 February and 15 June 2012, when the Court of Appeal found that the Bank had strayed from the collective agreement; and (iv) the Bank applied to the Labour Chamber of the Supreme Court, which revoked the above-mentioned second-instance decisions by means of 13 decisions issued between 10 and 31 August 2012, finding, without evidence, that the payment formulas would have been included in the salary scales and that the employer had complied with the relevant clause of the collective agreement.

178. With regard to the above-mentioned 13 decisions of the Second Chamber of the Supreme Court, the complainant organizations state that they remove a standard benefit obtained through perfectly legal collective bargaining and therefore run counter to the principles of free and voluntary collective bargaining with legal certainty. They add that, under Convention No. 98, parties may freely determine which matters are subject to negotiation and which may result in improvements for workers in relation to the legislation. The fact that the collective agreement establishes a payment formula that is favourable to the formula provided for in the legislation is therefore perfectly valid.

B. The Government's reply

179. In a communication dated 20 October 2017, the Government sent its reply to the complainant organizations' second allegation, which relates to the alleged violation, by the Second Chamber of the Supreme Court, of article 35 of the Bank's collective agreement in relation to the weekly payment formula for the Bank's employees. The Government states in this respect that: (i) the Second Chamber of the Supreme Court, which is the highest labour court in the country, revoked the second-instance judgments that found that the Bank had strayed from the terms of the collective agreement; (ii) considering that the Second Chamber had not made adequate use of the evidence at its disposal (the Bank's salary scales), SIBANPO contested the Second Chamber's judgments before the Constitutional Chamber of the Supreme Court by means of an application for constitutional review; (iii) in a judgment dated 13 May 2015, the Constitutional Chamber declared the application to be unfounded, as applications for constitutional review are not to be used in cases of mere interpretation of laws or other legal provisions, but only to address matters of constitutional relevance, which was not the case in this instance; and (iv) at the request of the Ministry of Labour and Social Security, with a view to the preparation of the Government's reply to the Committee, the Second Chamber clarified that its judgments were not based on asset-related consequences or discretionary criteria, but on an objective interpretation of the agreement under examination.

180. In the light of the above, after recalling the case law of the Second Chamber with regard to recognition of the right to collective bargaining in the public sector, the Government states that the actions of the judicial officials have fully adhered to the principles of the ILO.

181. In a communication dated 13 September 2019, the Government sent its reply to the complainant organizations' first allegation concerning the unilateral amendment, by the Constitutional Chamber of the Supreme Court, of the scope of article 45 of a public bank's collective labour agreement, which establishes severance pay for the Bank's employees. The Government states that, by majority, the Constitutional Chamber of the Supreme Court considered that the contested clause was not unconstitutional, provided that the number of years used for the calculation of severance pay did not exceed 20. Referring to the relevant extracts of the judgment, the Government indicates that the Constitutional Chamber: (i) recognized, on the basis of article 75(3) of the Constitutional Jurisdiction Act, the authority of the Office of the Comptroller General of the Republic to file such an application for constitutional review, as it seeks to safeguard public funds; (ii) in a majority vote, recognized the possibility of challenging, through an application for constitutional review, a collective agreement, given that "the obligations assumed by public institutions and their employees may be subject to an assessment of reasonableness, economy and efficiency, either to prevent the rights of the workers themselves from being restricted or undermined through a collective agreement or to prevent excessive use of public funds"; (iii) with regard to higher benefits concerning severance pay in clauses of collective agreements, recalled that it had accepted the setting of higher limits through collective agreements, as the Labour Code establishes minimum standards that may be exceeded, provided that the gains remain within the parameters of reasonableness and proportionality. The Chamber has thus accepted the

existence of severance pay limits that exceed eight years, but not 20; and (iv) the final decision of the Court, which declared the clause to be constitutional provided that it did not exceed a maximum limit, sought to prevent the misuse of public funds, to the detriment of the public services that the Bank is required to provide, and also noted that there were no valid grounds for giving the employees of the Bank in question special treatment.

C. The Committee's conclusions

- 182.** *The Committee observes that the present case refers to the alleged violation of two provisions of a public bank's collective agreement by the country's Supreme Court. The Committee notes that the complainant organizations refer, first, to the alleged violation of article 45 of the collective agreement, which establishes that the Bank shall provide severance pay to its employees for the years worked when they retire, resign or are dismissed and alleges in this regard that: (i) this article, which has been included in successive versions of the collective agreement for decades, provides that severance pay shall amount to a month's wages for each year worked prior to 1 March 2001, while the calculation for the years worked after that date shall be based on the formula set forth in the Labour Code (section 29 of the Labour Code provides for compensation of between 19.5 and 22 days' wages per year worked, depending on length of service, and limits the years used to calculate severance pay to the last eight years worked); (ii) the Office of the Comptroller General of the Republic filed an application for constitutional review of this clause, arguing that it is excessive and contrary to the principles of equality, reasonableness and efficient use of public funds; (iii) although, in its judgment of August 2014, the Constitutional Chamber of the Supreme Court declared that the application for constitutional review was unfounded and that, therefore, the relevant clause of the collective agreement was not unconstitutional, it ruled that, for the clause to be considered constitutional, the number of years used for the calculation of severance pay must not exceed 20; (iv) this judgment is legally incoherent, as it rejects the arguments regarding unconstitutionality put forward by the Office of the Comptroller while unilaterally amending the terms agreed upon by the signatories of the agreement; (v) the establishment of a limit for the calculation of severance pay is not based on any legal argument and is the result of political pressure; (vi) it must be taken into consideration that the Bank in question enjoys full budgetary autonomy, that its employees are governed by the private employment regime and that, therefore, the amount of severance pay has no bearing; (vii) there is a specific mechanism, which respects due process, established in the Public Administration Act for the suppression of rights acquired under a collective agreement; and (viii) in the light of the foregoing, the judgment in question is in clear violation of Convention No. 98, ratified by Costa Rica, and the right of social partners to freely negotiate working conditions and to improve the benefits provided for in the legislation.*
- 183.** *The Committee notes the Government's reply, which refers to the content of the judgment of the Constitutional Chamber of the Supreme Court dated 14 August 2014. The Committee observes from the judgment of 14 August 2014 that: (i) the application for the constitutional review filed by the Office of the Comptroller General of the Republic, requesting annulment of article 45 of the collective agreement relating to severance pay, was based on the amount of severance pay as well as the circumstances envisaged for such payments (any type of termination of the employment relationship and not simply dismissal without just cause); (ii) the Constitutional Chamber found that industrial relations between the Bank and its employees is not governed exclusively by private law; (iii) the Constitutional Chamber recognized the authority of the Office of the Comptroller General of the Republic to file such applications for constitutional review, as it seeks to safeguard public funds; (iv) by means of a majority vote, the Constitutional Chamber considered that "the obligations assumed by public institutions and their employees may be subject to an assessment of reasonableness, economy and efficiency, either to prevent the rights of the workers themselves from being*

restricted or undermined through a collective agreement or to prevent excessive use of public funds”; (v) while it recognized the constitutional nature of the relevant clause of the Bank’s collective agreement, the Constitutional Chamber nevertheless ruled that, for the clause to be considered constitutional, the number of years used for the calculation of severance pay must not exceed 20; (vi) the Chamber found that although it is constitutional to establish, through collective bargaining, benefits that exceed the minimum benefits provided for in the Labour Code, the Chamber is responsible for ensuring that parameters of reasonableness and proportionality are respected to prevent the excessive use of public funds; and (vii) the Constitutional Chamber applied the same solution that it had applied to another public institution in a previous judgment dated 17 May 2006 (Judgment No. 2006-06730) to the Bank.

- 184.** *Recalling that agreements should be binding on the parties [see **Compilation**, op. cit., para. 1480], the Committee considers that the application for constitutional review of article 45 of the Bank’s collective agreement filed by the Office of the Comptroller General of the Republic runs the risk of undermining the confidence of the parties in the existing collective bargaining mechanisms in the country’s public sector or in the usefulness of such mechanisms in finding consensual resolutions to collective disputes. In the light of the foregoing, the Committee requests the Government to take the necessary steps, including legislative measures if necessary, so that the authorities give preference as far as possible to collective bargaining mechanisms in assessing matters of public interest in relation to economic benefits in clauses of public sector collective agreements. Where serious economic concerns may arise calling for the modification of public sector collective agreement provisions, these situations should be handled with preference within the framework of social dialogue. . The Committee requests the Government to keep it informed in this regard.*
- 185.** *Recalling that it has examined allegations of frequent recourse to the Constitutional court to challenge the validity of public sector collective agreement provisions in the past and noting from the information available on the Supreme Court website that article 45 of the Bank’s collective agreement is the subject of further applications for constitutional review, the Committee observes that systematic recourse to the courts to invalidate collective agreement provisions may undermine the confidence of the parties in the collective bargaining mechanisms in the public sector. In this regard, the Committee recalls that a fair and reasonable compromise should be sought between the need to preserve as far as possible the autonomy of the bargaining parties, on the one hand, and measures which must be taken by governments to overcome their budgetary difficulties, on the other [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 1485] .*
- 186.** *The Committee notes that the complainant organizations also allege that, by means of 13 judgments issued between February and August 2012, the Second Chamber of the Supreme Court upheld the violation by the Bank of article 35 of its collective agreement relating to the weekly payment of the Bank’s employees. The Committee notes that the complainants’ allege in this respect that: (i) for 30 years, the successive collective agreements of the Bank have provided that “Wages are weekly. Any economic benefit affecting wages shall be calculated on the basis of the weekly wage – that is, the monthly amount divided by four over 52 weeks”; (ii) the Bank has decided to use a different formula from the standard one and has been dividing the monthly wage by 4.33, which means that the workers’ wages are lower than the agreed wages; (iii) SIBANPO submitted the matter for judicial review and obtained, at second instance, 13 favourable judgments that were issued between 27 February and 15 June 2012; and (iv) the Second Chamber of the Supreme Court nevertheless revoked the above-mentioned second-instance judgments, finding, without evidence, that the employer had complied with the relevant clause of the collective agreement. The complainant alleges that the judgments of the Second Chamber of the*

Supreme Court disregard the improvements that were freely agreed by the parties to the collective agreement and are therefore in clear violation of Convention No. 98.

- 187.** *The Committee notes that, after recalling the case law of the Second Chamber of the Supreme Court, which has upheld the right to collective bargaining in the public sector, the Government states that the actions of the judicial officials in the present case have fully adhered to the principles of the ILO. The Government adds that the right to access to justice exercised by SIBANPO entails accepting the decisions of the judicial bodies, even when those decisions are not in their favour. The Committee notes that the Government specifically states that: (i) SIBANPO contested the judgments of the Second Chamber of the Supreme Court before the Constitutional Chamber of the Supreme Court by means of an application for constitutional review, on the grounds that the Second Chamber had misused the evidence; (ii) in a judgment dated 13 May 2015, the Constitutional Chamber declared the application to be unfounded, as applications for constitutional review are not to be used in cases of mere interpretation of laws or other legal provisions; and (iii) at the request of the Ministry of Labour and Social Security, with a view to the preparation of the Government's reply to the Committee, the Second Chamber clarified that its judgments were not based on asset-related consequences or discretionary criteria, but on an objective interpretation of the agreement under examination.*
- 188.** *The Committee notes the information provided both by the complainant organizations and by the Government and observes that, according to the relevant judgments of the Second Chamber of the Supreme Court, the Court considered that: (i) the content of the current article 35 of the Bank's collective agreement dates back to 1983, when it was decided that, as from 1984, the Bank's salary scales would be prepared on the basis of a weekly wage; (ii) this clause of the collective agreement enabled the Bank at the time to move from monthly wages to weekly wages, by dividing the former by four (and not by 4.33); (iii) this method of calculation established by the collective agreement was immediately put into practice and was incorporated into the Bank's general salary scale; and (iv) therefore, the Bank's salary scale and the monthly averages based on the scale already reflect the change arising from the agreement.*
- 189.** *The Committee observes that the foregoing shows that the debate surrounding article 35 of the Bank's collective agreement that has been brought before the courts stems from the interpretation of the scope and methods for applying the weekly payment formula contained in this article. Recalling that it has emphasized the importance of settling differences of interpretation of collective agreements by the mechanisms provided for such purpose in the agreement itself, or in any event by an impartial mechanism which should be accessible to both parties signatory to the agreement, such as an independent judicial body [see 382nd Report, Case No. 3162, para. 296], and observing that the difference of interpretation surrounding article 35 of the Bank's collective agreement has been examined by four successive judicial bodies, the Committee will not pursue its examination of this allegation.*

The Committee's recommendation

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

The Committee requests the Government to take the necessary steps, including legislative measures if necessary, to ensure that the authorities give preference as far as possible to collective bargaining mechanisms in assessing matters of public interest in relation to economic benefits in clauses of public

sector collective agreements. Where serious economic concerns may arise calling for the modification of public sector collective agreement provisions, these situations should be handled with preference within the framework of social dialogue. The Committee requests the Government to keep it informed in this regard.

CASE NO. 3271

INTERIM REPORT

**Complaint against the Government of Cuba
presented by
the Independent Trade Union Association of Cuba (ASIC)**

Allegations: The complainant organization alleges harassment and persecution of independent trade unionists, involving assaults, acts of aggression and dismissals; other acts of anti-union discrimination and interference by the public authorities; official recognition of only one trade union federation, controlled by the State; and the absence of collective bargaining and recognition of the right to strike

- 191.** The Committee last examined this case (submitted in December 2016) at its June 2018 meeting, when it presented an interim report to the Governing Body [see 386th Report, approved by the Governing Body at its 333rd Session (June 2018), paras 214–242]. [Link to previous examinations](#)
- 192.** The complainant sent further allegations on 4 June 2018, and on 14 February, 10 and 17 May, 10 June, 31 July and 27 August 2019.
- 193.** The Government sent its observations in six communications dated 24 September and 26 November 2018, and 27 March, 7 May, 13 and 26 September 2019.
- 194.** Cuba 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

- 195.** During its previous examination of the case in June 2018, the Committee made the following recommendations [see 386th Report, para. 242]:
- (a) The Committee requests the Government to ensure that ASIC is given recognition and that it can freely operate and carry out its trade union activities, in accordance with the principles of freedom of association.
 - (b) The Committee requests the Government to ensure, in the light of the decisions applying the principles of freedom of association mentioned in its conclusions, that an investigation is made into all the allegations of aggression and other forms of anti-union discrimination

made in the complaint and, should these be proven, to ensure that penalties that act as a deterrent are imposed and appropriate compensatory measures are taken, and to provide the Committee with detailed information on this matter and on the outcome (with copies of decisions or rulings) of any administrative or judicial proceedings instituted in relation to the allegations, including those brought against the trade unionists referred to above and the judicial proceedings reportedly brought against Mr Reyes Consuegras.

- (c) The Committee requests the Government to keep it informed regarding the exercise of the right to strike in practice, including as regards any discrimination or disadvantage in employment that may have been applied in practice against workers for peacefully exercising the right to strike.

B. The complainants' new allegations

196. In its communications dated 4 June 2018, and 14 February, 10 and 17 May, 10 June, 31 July, and 27 August 2019, the complainant provides new information concerning specific allegations of violations of the public freedoms of trade union officials and members of the Independent Trade Union Association of Cuba (ASIC).

197. The complainant reports that harassment, repression and threats against union activists and officials of ASIC and its affiliated unions by the state security forces are still ongoing, and that they continue to be subjected to arbitrary arrests. In addition, their right to travel to participate in international activities in connection with their work as trade unionists is being restricted, without explanation or just cause.

198. The complainant alleges specifically that:

- (a) on 1 May 2018, ASIC's ten highest-ranking officials were placed under house arrest for an eight-hour period, so as to prevent them from taking part in a protest against the official parade organized by the Government;
- (b) Mr Iván Hernández Carrillo, ASIC general secretary, was subjected to unlawful arrests and harassment by state security agents: (i) in the first five months of 2018, he was arrested ten times and subjected to death threats by state security officers; (ii) on 26 March 2018, he was arrested and violently beaten up by state security officers; (iii) on 18 December 2018, he was arrested, his belongings searched, and several documents confiscated (including his membership card of the French Democratic Federation of Labour (CFDT)); (iv) on 27 July 2019, police officers and officers of the secret political police ordered the trade unionist to remain in his home, but when he realized that there was no court order, the trade unionist left his home and as a result was arrested for a period of five hours and then released; (v) after leaving the police station he was followed by a patrol car for 96 hours; (vi) all his telephone calls are tapped, his access to email restricted and his social media accounts constantly blocked; and (vii) the official in question, who is serving a 28-year prison sentence under a legal concept known as *licencia extrapenal* (a type of parole), lives in constant fear of being returned to prison;
- (c) Mr Víctor Manuel Domínguez García, director of the National Trade Union Training Centre (CNCS), affiliated to ASIC, was prohibited from travelling and participating in international events connected to his trade union activities: (i) on 17 October 2017, he was prevented from travelling to Brussels to take part in a seminar organized by the CFDT on the world of work in Cuba; and (ii) on 31 May 2018 he was prevented from travelling to Geneva and participating in the activities of the International Labour Conference (ILC) and in the 49th CFDT Congress;

- (d) Mr Alejandro Sánchez Zaldívar, ASIC deputy general secretary, was subjected to arbitrary arrests, he and his family were harassed by the public authorities, and he was prevented from taking part in various union events held outside his home province: (i) on 7 and 8 March 2018, officials from the Department of State Security (DSE) raided his home and prevented him from travelling to Havana; (ii) on 9 March 2018, he was summoned to the Artemisa police station and detained for more than seven hours, during which time his personal belongings were stolen and he was threatened with the confiscation of his passport; (iii) in September 2018, he was prevented from travelling to Colombia to take part in a workshop on trade union affairs and labour relations sponsored by the National Institute of Social Studies (INES); (iv) on 1 November 2018, the customs authorities prevented him from catching his flight to Panama, where he was to take part in a workshop given by the University of Latin American Workers (UTAL); (v) on 12 February 2019, the union official's wife was harassed at her workplace by a DSE official; she was also warned that she and her husband would not be able to participate in any activities during the constitutional referendum on 24 February 2019; (vi) at midnight on 17 April 2019, two officers of the National Revolutionary Police (PNR) took the trade union official to the Cabañas police station, where they issued him with a warning for attempting to commit an offence, alleging his involvement in counter-revolutionary meetings in Havana; (vii) on 7 June 2019, he was prevented from leaving the country to participate in the ILC, where he was to be part of the delegation of the Democratic Trade Union Alternative of the Americas (ADS); and (viii) on 12 July 2019, he was interrogated, during which he was informed that he would never travel abroad again and that on 13 July 2019 (the day on which dissidents commemorate the sinking of the *13 de marzo* (13th of March) ferry), he would have to remain in his home, they also asked him to work for the police;
- (e) Mr Carlos Reyes Consuegras, ASIC secretary for trade union and labour affairs, was a victim of arbitrary arrests and harassment by state forces: (i) on 12 January 2018, after attending an ASIC meeting in Havana, he was arrested by the joint PNR forces and DSE officers in Cienfuegos province and several of his personal belongings were confiscated; (ii) on 2 March 2018, he was held by the above entities for over 11 hours to prevent him from attending an ASIC meeting; (iii) on 8 March 2018, he was summoned to the police station and informed that an investigation had been opened into his alleged offence of illicit economic activities; and (iv) on 19 November 2018, after taking part in a workshop given by UTAL, he was questioned by secret police officers in the provincial immigration office and, when he refused to provide information about the workshop, he was prohibited from travelling outside of his place of residence in Cienfuegos;
- (f) Mr Yoanny Limonta García, an audiovisual producer for ASIC, was subjected to arbitrary arrests: (i) on 7 February 2018, he was arrested by PNR officers in Cienfuegos terminal, transferred to the police station in Cienfuegos and his work equipment was confiscated (a video camera, tripod and flash memory device); and (ii) on 3 December 2018, while heading to the ASIC general secretary's home to film a video on human rights in Cuba, he was arrested, his work equipment was confiscated once again, and he was threatened with being charged with usurpation of public office if he continued with his independent press activities;
- (g) on 17 January 2018, Mr Wilfredo Álvarez García and Mr Bárbaro de la Nuez Ramírez were summoned by the Cienfuegos Technical Investigations Department (DTI) and detained for six hours. They were forced to wear regular prisoner uniforms, placed in solitary confinement, questioned, had their photos and fingerprints taken, and only allowed to leave on condition that they stopped attending meetings held in ASIC union officials' houses;

-
- (h) Mr Alexis Gómez Rodríguez, an ASIC member, was twice arbitrarily detained, during which an attempt was made to persuade him to become an informant for the State: (i) on 15 January 2018, he was questioned in the Centro Habana police station and held for 38 hours; (ii) on 23 February, he was questioned and held for 31 hours; and (iii) according to the union member, in both periods of detention he had been subjected to cruel and degrading treatment;
- (i) on 1 November 2018, the customs authorities prevented Mr Osvaldo Rodríguez Díaz, a lawyer and ASIC member, from travelling to Panama to take part in a workshop given by UTAL. On 15 November 2018, he was summoned to the Cotorro police unit, in Havana, transferred to a “special house”, questioned about his independent trade unionism work and attempts were made to persuade him to collaborate with the DSE;
- (j) on 26 January 2018, Mr Jorge Anglada Mayeta, an ASIC member, was tried in the Municipal People’s Court of Diez de Octubre for an alleged attack and given a two-year suspended sentence. According to the complainant, the allegations arise from an incident that occurred on 2 May 2017, during which the trade unionist intervened to stop a plain-clothes police officer arresting a self-employed worker;
- (k) on 26 February and 14 March 2018, Mr Roberto Arsenio López Ramos, president of the Association of Independent Educationalists of Cuba (CPIC), was summoned by the police and on both occasions questioned about the cooperation existing between ASIC and his organization;
- (l) on 15 March 2019, Mr Charles Enchris Rodríguez Ledzema, vice-president of the CPIC, was summoned to DSE headquarters in Güines and attempts were made to persuade him to become an informant;
- (m) Mr Eduardo Enrique Hernández Toledo, an ASIC member and self-employed worker (taxi driver), was subjected to harassment and criminal prosecution: (i) state inspectors harassed him and withdrew his taxi driver’s licence because of his ASIC membership; (ii) on 27 September 2018, under the direction of a public prosecutor, a group of neighbours carried out acts of provocation, in response to which the activist is alleged to have countered the provocation with the words “down with Raúl”; (iii) because of that act, he was arrested and sentenced to a one-year prison term for contempt for authority; and (iv) the union member is reportedly serving his sentence in the “Pianni” forced labour camp;
- (n) on 3 October 2018, Mr Mateo Moreno Ramón and Mr Leandro Vladimir Aguilera Peña, members of the Cuban Association of Small Entrepreneurs (ACPE), an organization affiliated to ASIC, were arrested by DSE security officers in Pinar del Río, where they were due to meet with self-employed workers to inform them about their rights, and were forced to return to Havana;
- (o) Ms Magela Garcés Ramírez, a gallery worker and art critic, employed by the Ministry of Culture, was removed from her post in the Servando Cabrera gallery in Havana on 19 December 2018 after the publication in the *ART OnCuba* magazine of a text entitled “100 questions on Cuban art”. As a disciplinary measure, she was transferred to a lower-grade post with less pay and different working conditions. She did not accept the disciplinary action, and resigned;
- (p) the home of Ms Sara Cuba Delgado, an ASIC member, was placed under surveillance by the DES following her return from Panama, where she had taken part in a workshop on trade union affairs and labour relations given by UTAL in November 2018;

- (q) Mr Carlos Gómez Guevara and Mr Yolsdan Armenteros Vázquez, ASIC members, reported that they had been closely followed by three DSE officials, after making a visit to ASIC general secretary's house;
- (r) university professor Omara Ruiz Urquiola, who worked at the Havana Higher Institute of Design and had publicly expressed her opposition to the regime and support for the independent trade union movement, was dismissed on 29 July 2019;
- (s) on 5 August 2019, the state security services raided the home of Mr Daniel Perea García, ASIC provincial secretary in Santiago de Cuba, was taken to and detained in the police station in Palma Soriana then subsequently released without charge. Since 2018, he has been subjected to continued assaults, arbitrary detentions and threats; specifically, on 6 February, 24 April and 26 June 2019 he was subjected to threats by a DSE agent known as "Adolfo", because of the statements the trade unionist had made on social networking sites about violations committed against medical professionals in the "*Mais Médicos*" (More Doctors) programme in Brazil. The trade unionist has filed a complaint with the public prosecutor's office with regard to the threats but has not received any response from the authorities;
- (t) on 7 August 2019, Mr Emilio Alberto Gottardi Gottardi, ASIC provincial secretary in Havana, was arrested when leaving his house by the joint forces of the national police and state security, interrogated about his trade union activities, in particular about the union's latest meeting, and threatened with legal action;
- (u) on 8 August 2019, following a meeting in the home of ASIC general secretary in the Matanzas province, the trade unionists Dannery Gómez Galeto, Willian Esmérito Cruz, Roque Iván Martínez Beldarrain and Yuvisey Roque Rajadel were arrested, interrogated, threatened and had their belongings confiscated (including ASIC documents and a letter from the ILO Secretariat to the trade union), and the money that they had on them was taken. Subsequently, in the early hours of 24 August, the aforementioned trade unionists, as well as trade unionist Yakdislania Hurtado Bicet, were arbitrarily detained for nine hours and freed after being issued with a warning not to meet with people posing a "social danger". In addition, Mr Roque Rajadel and Mr Martínez Beldarrain were asked to work for state security.

199. The complainant states that, due to the Venezuelan crisis and the threat of the collapse of the alliance between the two countries' regimes, the public authorities have stepped up repressive acts against independent trade unions, as well as arbitrary detentions, and the number of activists subjected to persecution and harassment has increased. The complainant alleges that: (i) there has been a significant increase in the cutting of the telephone services and tapping of telephone conversations of ASIC members, and in the blocking of their social media network services; (ii) the police force's new tactic is to blackmail detainees to coerce them into becoming informants; (iii) to date, approximately 20 trade unionists have been questioned and threatened; and (iv) the purpose of the Government's actions is to have the ASIC general secretary returned to prison on the pretext that he has violated his parole conditions; indeed, the persons questioned have been told that the general secretary receives money from the United States Central Intelligence Agency (known in English by its acronym CIA) and that if this allegation is proven he would return to prison. It was emphasized that he has only avoided imprisonment so far because of national and international pressure.

200. In its further allegations, the complainant expresses concern about the public authorities' interference in the independent trade union movement. The complainant reiterates that its members continue to be strongly pressured by the DSE during the arbitrary detentions to which they are subjected by the regime to become informants, with promises they will be granted amnesty and no longer be subjected to harassment.

201. Lastly, the complainant reports the continuing practice of the Cuban authorities of prohibiting independent union officials from leaving the country when they are travelling to carry out their trade union functions, including attending conferences and training courses.

C. The Government's reply

202. The Government provides its observations in its communications of 24 September and 26 November 2018, and 27 March, 7 May, 13 and 26 September 2019.

203. The Government states that, as with the allegations considered during the last examination of the case, these new allegations are false and part of externally organized and financed campaigns of political manipulation to discredit Cuba under the agenda to bring about a regime change and the desire to see a foreign power take control of the country, which was in contravention of the principles of sovereignty, self-determination and non-interference in domestic affairs. The Government indicates that the recommendations made by the Committee in its previous examination of the case are a reflection of the persistence of selective practices and political manipulation in the ILO's working methods and supervisory bodies against developing countries. The Government considers that these practices go against the spirit of dialogue and cooperation for the effective promotion of workers' rights, undermine tripartism and do not help improve the situation of workers in the world. Furthermore, it considers that these negative practices are inconsistent with the principles of objectivity, impartiality and non-selectiveness that should prevail in the handling of trade union freedoms. The Government therefore anticipates that it will be possible, on the basis of the elements submitted in its observations, to dismiss all of the allegations relating to the present case as baseless.

Recommendation (a)

204. With regard to recommendation (a), the Government states once again that ASIC is not a trade union organization, given that: (i) it does not have the objective of promoting or defending workers' interests; (ii) it does not have the genuine support of any labour collective and is not a grouping of Cuban workers; (iii) the supposed leaders or activists referred to in the complaint do not represent labour collectives and are not workers themselves, as they do not have fixed employment relationships with entities or employers in Cuba, thus they do not come within the purview of the ILO, and the labour laws are therefore not applicable to them; (iv) the Government of the United States, through the International Group for Corporate Social Responsibility and the American organization National Endowment for Democracy, funds ASIC leaders, who, in exchange for a sum of money, have to pose as independent trade union activists, dissidents or critics of the Government and report false violations of workers' rights; (v) the 2013 Labour Code (Act No. 116 of 2013) includes as its fundamental principles the right of workers to organize voluntarily and establish trade unions; (vi) the trade union organizations that make up the Confederation of Workers of Cuba (CTC) are autonomous and their members approve their own statutes and regulations, discuss and reach agreements democratically, and elect or dismiss their executives; (vii) national unions have 3,151,128 members and 95.1 per cent of Cuban workers are unionized; and (viii) Cuban workers are the beneficiaries of participatory and democratic social dialogue at all decision-making levels.

Recommendation (b)

205. With regard to recommendation (b), the Government indicates that the persons mentioned in the complaint have engaged in antisocial and criminal behaviour. It denies that any arbitrary or temporary detentions or arrests are carried out because these are effected in

conformity with the criminal procedure in force and are strictly in line with the guarantees of due process that are recognized in the domestic legal system. It further indicates that institutions and security forces perform their duties in strict accordance with the law and it is not their practice to repress, intimidate, harass, torture or mistreat citizens. It recalls that the internal system provides procedures and resources to punish any authority or official overstepping its powers.

206. Concerning the individual cases mentioned by the complainant, the Government states that:

- (a) it is untrue that Mr Iván Hernández Carrillo is a political prisoner: (i) the chamber for crimes against state security of the People's Provincial Court of Havana found him guilty in 2003 of the offence of acts against the independence and territorial integrity of the State, provided for in the Act on the Protection of National Independence and the Economy of Cuba (Act No. 88 of 1999), and sentenced him to 25 years' imprisonment; (ii) on 23 March 2011, he was granted parole (his conviction will expire in the first half of 2028); (iii) he cannot travel outside the country under article 25(b) of the Migration Act (Act No. 1312 of 1976, as amended by Decree Law No. 302 of 2012); and (iv) in July 2016, September 2017 and March 2018, three charges were brought against him for disobedience, incitement to commit a crime and contempt, which are offences provided for in the Criminal Code (Act No. 62 of 1987), which the Cuban authorities decided to handle as minor offences (with the imposition of administrative measures, including fines and specific obligations and prohibitions);
- (b) Mr Carlos Reyes Consuegras, who also has no employment relationship, was prosecuted for illegal gambling and administrative proceedings were also filed against him for the illegal rental of a home and a fine imposed for the illegal possession of psychotropic substances. In addition, he was twice prosecuted for illicit economic activities. With regard to action taken against him by the immigration authorities, this was because of his past record of antisocial and criminal behaviour. He has never been arrested, but simply interviewed, fully respecting the guarantees provided by law;
- (c) Mr Jorge Anglada Mayeta was not beaten up by a police officer while trying to defend a self-employed worker. Mr Anglada pounced on and assaulted a police officer carrying out his duties without prior warning or legitimate cause, which constitutes an offence in criminal legislation throughout the world. On 16 February 2018, the Municipal People's Court of La Habana Vieja, having respected all guarantees of due process, found him guilty of assault and sentenced him to two years' imprisonment with a restriction of liberty order for an equal period of time;
- (d) Mr Víctor Manuel Domínguez García, Mr Wilfredo Álvarez García, Mr Bárbaro de la Nuez Ramírez, Mr Alexis Gómez Rodríguez, Mr Roberto Arsenio López Ramos and Mr Charles Enchris Rodríguez Ledezma were prosecuted following allegations relating to acts classified as offences under Cuban legislation (illicit economic activities, illegal gambling, possession of psychotropic substances, speculation and hoarding, possession, production and sale of instruments for the purpose of committing crimes, usurpation of public office, handling stolen goods, contempt, causing serious injury, damage, forgery of documents and public disorder). Given that domestic legislation allows for conduct of low risk to society to be subject to administrative proceedings, the authorities handled the above as minor offences;
- (e) criminal proceedings were not instituted against Mr Eduardo Enrique Hernández Toledo because he was allegedly exercising his trade union rights, and neither did the authorities commit any acts of persecution or harassment against him. The aforementioned person is not a trade union leader and has never been subjected to harassment or pressure by the authorities. He was prosecuted by the People's Municipal

Court of Trinidad for contempt and sentenced to a one-year prison term with custodial hard labour, and is currently out on parole;

- (f) Mr Yoanny Limonta García, who is also not a union official and has no employment relationship, was subjected to police checks because of his repeated commission of acts classified as offences and other antisocial behaviour (in 2011 for speculation, in 2013 for possession, production and sale of instruments for the purpose of committing crimes, and in 2016 for usurpation of public office);
- (g) Mr Mateo Moreno Ramón and Mr Leandro Vladimir Aguilera Peña were not arrested; they simply received warnings from the relevant authorities, in strict compliance with the law, to prevent them from carrying out their criminal intentions;
- (h) the restrictions on the right to free movement of Mr Osvaldo Rodríguez Díaz and Mr Alejandro Sánchez Zaldívar were implemented in accordance with current migration legislation. Mr Sánchez Zaldívar has had no employment relationship since 2013 and has a long history of violation of existing rules, regulations and laws, including allegations of illegal economic activities and disobedience. The allegations of threats and harassment against him and his wife are also untrue. Mr Sánchez Zaldívar has participated in several trade union events and workshops abroad funded by a foreign power. In 2018, as part of his activities against Cuba, he travelled to Geneva in the context of the 107th International Labour Conference. During the current year, his freedom to travel has not been arbitrarily restricted and the authorities have acted only in accordance with migration law
- (i) Ms Magela Garcés Ramírez wrote and disseminated an article in which she made serious and groundless accusations against a significant number of artists and art institutions and, given the seriousness of the allegations, her employer decided that she should work for a different art collection, which is why she decided to resign from her post; and
- (j) Ms Sara Cuba Delgado was not subjected to surveillance and harassment by state officials.

207. With respect to the restrictions on ASIC members and officials travelling and participating in international events, the Government indicates that current migration legislation determines the grounds on which the authorities may restrict the right of a citizen to leave the country and this power is exercised by the relevant authorities in a non-arbitrary manner and respecting legal guarantees. It also denies preventing certain persons from leaving their homes during the 1 May celebrations or imposing house arrests.

Recommendation (c)

208. With regard to recommendation (c) concerning the exercise of the right to strike in practice, the Government states that current legislation does not include any prohibition of this right and that criminal legislation does not provide for any penalty for exercising this right. The fact that workers do not use this mechanism is not due to a legislative prohibition but to the fact that they have the option of resorting to other more effective means at their disposal, including a number of different forms of meaningful participation and the exercise of genuine decision-making power on matters that concern them. Furthermore, the protection of trade union officials against any acts of anti-union discrimination, including with respect to the exercise of the right to strike, is governed by section 16 of the 2013 Labour Code, which provides that trade union officials have all the guarantees necessary to carry out their functions and ensures their protection against transfers, disciplinary action, anti-union

dismissals or other measures affecting their working conditions imposed on them because of their trade union work.

209. The Government expects that, once all the information provided has been taken into account, the allegations that gave rise to this case will be dismissed because they are based on false grounds and are the result of fabrications that have nothing to do with the protection of workers.

D. The Committee's conclusions

210. *The Committee recalls that this complaint concerns a number of allegations of assault, harassment and persecution against union officials and members of ASIC and its affiliated unions, with arrests and acts of aggression and restrictions on the free movement of union officials and members while carrying out their functions, and other acts of discrimination and interference by the public authorities. The complainant also alleges that only one trade union federation is recognized by the State and that there is no recognition of the right to strike.*

211. *The Committee notes the Government's objections regarding the Committee's examination of this case. In particular, it notes that the Government considers that the allegations put forward by the complainant are part of campaigns of political manipulation to discredit Cuba, financed externally and in contravention of the principles of sovereignty, self-determination and non-interference in domestic affairs; and that the Committee's conclusions in the previous examination of the case are a reflection of the persistence of selective practices and political manipulation in the ILO's working methods and supervisory bodies against developing countries. In this respect, the Committee wishes to recall that, within the terms of its mandate, it is empowered to examine to what extent the exercise of trade union rights may be affected in cases of allegations of the infringement of civil liberties [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 22]. The Committee also recalls that it is not competent to consider purely political allegations; it can, however, consider measures of a political character taken by governments in so far as these may affect the exercise of trade union rights [see **Compilation**, op. cit., para. 24].*

Recommendation (a)

212. *With regard to the recognition of ASIC, and its ability to operate freely and carry out its trade union activities, the Committee notes that the Government reiterates that: (i) ASIC is not a trade union organization; (ii) it does not have the support of any labour collective; (iii) the supposed trade union officials of the organization in question have reportedly not entered into any employment relationship with any entities or employers in Cuba and, furthermore, they have not been elected by the workers to represent them; (iv) the right to organize and to establish trade unions freely is enshrined in the 2013 Labour Code; and (v) certain ASIC union members and officials do not have an employment relationship. While taking due note of the Government's reply, the Committee observes, firstly, that for several decades it has been examining allegations of non-recognition and interference by the Government in the free operation of trade union organizations not affiliated to the CTC [see Case Nos 1198, 1628, 1805, 1961 and 2258 of the Committee on Freedom of Association]. The Committee recalls that the right to official recognition through legal registration is an essential facet of the right to organize since that is the first step that workers' or employers' organizations must take in order to be able to function efficiently, and represent their members adequately. It further recalls that freedom of association implies the right of workers and employers to elect their representatives in full freedom and to organize their*

administration and activities without any interference by the public authorities [see *Compilation, op. cit.*, paras 449 and 666]. Considering that, according to the information provided by the complainant, some trade union members and officials mentioned in the complaint were self-employed workers and that others had been dismissed for anti-union reasons, the Committee recalls, secondly, that the criterion for determining the persons covered by the right to organize is not based on the existence of an employment relationship. Workers who do not have employment contracts should have the right to form the organizations of their choosing if they so wish [see *Compilation, op. cit.*, para. 330]. In light of the foregoing, the Committee refers to its previous conclusions and urges the Government to ensure that ASIC is given recognition, and that it can freely operate and carry out its trade union activities.

Recommendation (b)

Public freedoms

- 213.** *With regard to the alleged restrictions on public freedoms, the Committee recalls that, in its last examination of the case, the complainant had reported acts of anti-union discrimination, including arbitrary arrests, harassment, raids and prosecutions [see the Committee's 386th Report, para. 220] and had requested the Government to ensure that an investigation was made into those allegations. The Committee notes the numerous additional allegations made by the complainant regarding the commission of new acts of anti-union discrimination, in particular arbitrary arrests, harassment, criminal prosecutions and interference by the public authorities, and restrictions on the right to free movement of ASIC union officials and members, and the Government's reply regarding 17 specific cases of the 40 allegations.*
- 214.** *On the one hand, the Committee notes the Government's indications that Mr Iván Hernández Carrillo, Mr Carlos Reyes Consuegras, Mr Jorge Anglada Mayeta, Mr Víctor Manuel Domínguez García, Mr Alejandro Sánchez Zaldívar, Mr Wilfredo Álvarez García, Mr Bárbaro de la Nuez Ramírez, Mr Alexis Gómez Rodríguez, Mr Roberto Arsenio López Ramos, Mr Charles Enchris Rodríguez Ledezma, Mr Eduardo Enrique Hernández Toledo and Mr Yoanny Limonta García, who had allegedly been subjected to arbitrary arrests, had been tried and convicted for various activities classified as offences under Cuban legislation, with no connection whatsoever with their trade union activities, and that they enjoy all due process guarantees. With regard to the specific situation of the trade unionists Mr Mateo Moreno Ramón and Mr Leandro Vladimir Aguilera Peña, the Government states that authorities are acting in compliance with the law in order to prevent them from carrying out their criminal intentions, and denies that Ms Sara Cuba Delgado has been subjected to surveillance and harassment by state officials.*
- 215.** *The Committee also observes that: (i) the Government has not provided a copy of the court rulings handed down to the above-mentioned persons; (ii) while the Government lists the offences or details of previous legal proceedings against these persons (illicit economic activities, illegal gambling, possession of psychotropic substances, speculation and hoarding, possession, production and sale of instruments for the purpose of committing crimes, usurpation of public office, handling stolen goods, contempt, damage, forgery of documents, public disorder, disobedience, antisocial behaviour through the possession, production and sale of instruments for the purpose of committing crimes), it does not provide any evidence on the commission of those offences; (iii) the nature of the offences attributed to ASIC members and affiliated unions are very similar to those examined by the Committee in Case No. 2258, following a complaint filed in 2003 by the International Confederation of Free Trade Unions (ICFTU); (iv) the situation of Mr Iván Hernández Carrillo, ASIC general secretary, and Mr Víctor Manuel Domínguez García, CNCS director, was already examined by the Committee in Case No. 2258; and (v) in the case mentioned above, the Government*

did not provide a copy of the conviction of Mr Iván Hernández Carrillo and denied the existence of legal or other action against Mr Víctor Manuel Domínguez García.

- 216.** *The Committee recalls that, on numerous occasions, where the complainants alleged that trade union leaders or workers had been arrested for trade union activities, and the governments' replies amounted to general denials of the allegation or were simply to the effect that the arrests were made for subversive activities, for reasons of internal security or for common law crimes, the Committee has always followed the rule that the governments concerned should be requested to submit further and as precise information as possible concerning the arrests, particularly in connection with the legal or judicial proceedings instituted as a result thereof and the result of such proceedings, in order to be able to make a proper examination of the allegations. It also recalls that in many cases, it has asked the government concerned to communicate the texts of any judgments that have been delivered together with the grounds adduced therefor. [see **Compilation**, op. cit., paras 178 and 179]. Taking into account the different previous cases presented to the Committee concerning the harassment and arrests of trade unionists of independent trade union organizations of the CTC, the Committee urges the Government to send without delay a copy of the criminal convictions handed down against Mr Iván Hernández Carrillo, Mr Carlos Reyes Consuegras, Mr Jorge Anglada Mayeta, Mr Víctor Manuel Domínguez García, Mr Alejandro Sánchez Zaldívar, Mr Wilfredo Álvarez García, Mr Bárbaro de la Nuez Ramírez, Mr Alexis Gómez Rodríguez, Mr Roberto Arsenio López Ramos, Mr Charles Enchris Rodríguez Ledezma, Mr Eduardo Enrique Hernández Toledo and Mr Yoanny Limonta García and, with regard to the administrative and judicial proceedings awaiting decision, to keep it informed of their outcome.*
- 217.** *On the other hand, the Committee regrets to note that the Government has not provided specific information regarding Mr Osvaldo Arcis Hernández (arbitrary detention), Mr Bárbaro Tejada Sánchez (raids on his home and the confiscation of personal belongings), Mr Pavel Herrera Hernández (arbitrary arrest and anti-union dismissal), Mr Emilio Gottardi (restriction of movement and threats), Mr Raúl Zerguera Borrell (restriction of movement), Mr Aimée de las Mercedes Cabrera Álvarez (restriction of movement), Mr Reinaldo Cosano Alén (restriction of movement), Mr Felipe Carrera Hernández (arbitrary detention), Mr Pedro Scull (threats), Mr Lázaro Ricardo Pérez (restriction of movement), Mr Hiosvani Pupo (restriction of movement), Mr Daniel Perea García (threats and raids on his home), Mr Dannery Gómez Galeto (arbitrary detention), Mr Willian Esmérito Cruz (arbitrary detention), Mr Roque Iván Martínez Beldarrain (arbitrary detention), Mr Yuvisley Roque Rajadel (arbitrary detention), Mr Yakdislania Hurtado Bicet (arbitrary detention), Ms Ariadna Mena Rubio (arbitrary detention) and Ms Hilda Aylin López Salazar (arbitrary detention). 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. The apprehension and systematic or arbitrary interrogation by the police of trade union leaders and unionists involves a danger of abuse and could constitute a serious attack on trade union rights [see **Compilation**, op. cit., paras 132 and 128]. The Committee therefore urges the Government to ensure, in the light of the decisions mentioned in its conclusions, that an investigation is made into all the allegations of aggression and restrictions on public freedoms made in relation to the above-mentioned persons and to provide the Committee with detailed information on each of these matters and on the outcome (with copies of decisions or rulings) of any administrative or judicial proceedings instituted in relation to the aforementioned allegations.*
- 218.** *With regard to the alleged restrictions on the right to free movement, the Committee notes that, according to the complainant, it has become common practice for the Cuban*

authorities to prohibit ASIC union officials and members from leaving the country when travelling to participate in international activities in connection with their trade union work, including during the ILC. It also emerges from the allegations communicated by the complainant that the public authorities had imposed restrictions on the right to free movement on members of ASIC and affiliated unions with a view to preventing their participation in trade union meetings or public demonstrations in the national territory.

- 219.** *With regard to the alleged restrictions on ASIC members travelling outside the country to participate in activities connected to their trade union work including ILO meetings and invitations, the Committee notes that, according to the Government: (i) current migration legislation determines the grounds on which the authorities may restrict the right of an individual to leave the country and this power is exercised in a non-arbitrary manner; (ii) pursuant to this legislation, Mr Osvaldo Rodríguez Díaz and Mr Alejandro Sánchez Zaldívar were prohibited from leaving the country; (iii) Mr Iván Hernández Carrillo, ASIC general secretary, is serving a criminal conviction; and (iv) Mr Carlos Reyes Consuegras has an antisocial and criminal past, which prohibits him from travelling outside the country. The Committee observes that subsections (d), (e), (f) and (h) of article 25 of the Migration Act (Act No. 1312 of 1976, as amended by Decree Law No. 302 of 2012), which prohibit persons from leaving national territory “(d) when national defence and security render it advisable; (e) [when] they have obligations with respect to the Cuban State or civil responsibilities, provided that these have been expressly stipulated by the relevant authorities; (f) [when] they do not have the required authorization, pursuant to the laws aimed at maintaining a qualified workforce for the country’s economic, social, technical and scientific development, and for the security and protection of official information, ... (h) when for other reasons of public interest the competent authorities so decide”, grant a broad discretionary power to the public authorities to determine whether a person can travel outside the country, which could have an impact on the right of union officials of ASIC and other trade unions not affiliated to the CTC to organize and carry out their trade union activities freely. The Committee has highlighted that trade unionists, just like all persons, should enjoy freedom of movement. In particular, they should enjoy the right, subject to national legislation, which should not be such so as to violate freedom of association principles, to participate in trade union activities abroad [see **Compilation**, op. cit., para. 190]. The Committee recalls the special importance it attaches to the right of workers’ and employers’ representatives to attend and to participate in meetings of international workers’ and employers’ organizations and of the ILO [see **Compilation**, op. cit., para. 1069]. Regretting the Government’s indication that the presence of a trade union leader at the International Labour Conference in 2018 constitutes an act of this leader against the Cuban Government, the Committee expects the Government to refrain from unduly restricting the right of ASIC officials and members to organize and carry out their union activities freely, including when these are held outside the country.*
- 220.** *With regard to the alleged restrictions on the right of ASIC union officials and members to free movement in Cuban territory, the Committee notes that the Government denies imposing house arrests and preventing ASIC members from leaving their homes during the 1 May celebrations and that the complainant states that several of these restrictions were intended to prevent their participation in trade union meetings and to restrict their freedom of expression. While noting the diverging versions of events of the Government and complainant, the Committee is bound to recall that the restriction of a person’s movements to a limited area, accompanied by the prohibition of entry into the area in which his or her union operates and in which he or she normally carries on trade union functions, is inconsistent with the normal enjoyment of the right to association and with the exercise of the right to carry on trade union activities and functions [see **Compilation**, op., cit. para. 200]. The Committee therefore firmly expects the Government to fully ensure that*

ASIC officials have the freedom of movement in the national territory required to carry out their trade union activities without Government interference.

Dismissals and anti-union transfers

221. *With respect to the alleged anti-union dismissals of Mr Kelvin Vega Rizo and Mr Pavel Herrera Hernández, the Committee once again requests the Government to send its observations in this respect as soon as possible. Concerning the transfer of Ms Magela Garcés Ramírez, in the absence of any evidence establishing her membership of a trade union organization, or that her transfer had an anti-union motive, the Committee will not pursue its examination of this allegation. With regard to the dismissal of Ms Omara Ruíz Urquiola, the Committee requests the complainant to provide further information about its alleged anti-union nature.*

Acts of interference

222. *Lastly, with respect to the alleged infiltration by the Government into the trade union movement and acts of interference, the Committee notes that the complainant alleges that the Government continues to interfere in the independent trade union movement and that its members continue to be subjected to strong pressure by the DSE during arbitrary arrests with the aim of persuading them to become informants. Noting the absence of a response from the Government, the Committee urges the Government to provide its observations in that regard without further delay.*

Recommendation (c)

223. *With regard to recommendation (c) of the Committee regarding the exercise in practice of the right to strike, the Committee notes that the Government states that: (i) current legislation does not prohibit this right and criminal legislation does not provide for any penalty for exercising this right; (ii) in practice, workers do not use this mechanism because there are more effective dispute settlement mechanisms; and (iii) trade union officials are protected by article 16 of the 2013 Labour Code, which protects against transfers, the imposition of disciplinary measures or anti-union dismissals. Recalling that the right to strike by workers and their organizations is a legitimate means of defending their economic and social interests [see **Compilation**, op. cit., para. 752], the Committee trusts that the Government will guarantee the exercise of this right in practice.*

The Committee's recommendations

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

- (a) Referring to its previous conclusions, the Committee urges the Government to ensure that the Independent Trade Union Association of Cuba (ASIC) is given recognition and that it can freely operate and carry out its trade union activities.*
- (b) The Committee urges the Government to send a copy, without further delay, of the criminal convictions against Mr Iván Hernández Carrillo, Mr Carlos Reyes Consuegras, Mr Jorge Anglada Mayeta, Mr Víctor Manuel Domínguez García, Mr Alejandro Sánchez Zaldívar, Mr Wilfredo Álvarez García, Mr Bárbaro de la Nuez Ramírez, Mr Alexis Gómez Rodríguez, Mr Roberto Arsenio López Ramos, Mr Charles Enchris Rodríguez Ledezma, Mr Eduardo*

Enrique Hernández Toledo and Mr Yoanny Limonta García, and to keep the Committee informed of the outcome of the administrative and judicial proceedings awaiting decision.

- (c) *The Committee urges the Government to ensure, in light of the decisions mentioned in its conclusions, that an investigation is made into all the allegations of acts of aggression and restrictions on public freedoms with respect to Mr Osvaldo Arcis Hernández, Mr Bárbaro Tejeda Sánchez, Mr Pavel Herrera Hernández, Mr Emilio Gottardi, Mr Raúl Zerguera Borrell, Mr Aimée de las Mercedes Cabrera Álvarez, Mr Reinaldo Cosano Alén, Mr Felipe Carrera Hernández, Mr Pedro Scull, Mr Lázaro Ricardo Pérez, Mr Hiosvani Pupo, Mr Daniel Perea García, Mr Dannery Gómez Galeto, Mr Willian Esmérito Cruz, Mr Roque Iván Martínez Beldarrain, Mr Yuvisley Roque Rajadel, Mr Yakdislania Hurtado Bicet, Ms Ariadna Mena Rubio and Ms Hilda Aylin López Salazar, and to provide the Committee with detailed information with respect to each of the persons mentioned above and on the outcome (with copies of decisions or rulings) of any administrative or judicial proceedings instituted in relation to the above-mentioned allegations.*
- (d) *With regard to the alleged restrictions imposed on ASIC members on travelling outside the country to participate in international activities in connection with their trade union work, including ILO meetings and invitations, the Committee expects the Government to refrain from unduly restricting the right of ASIC officials and members to organize and carry out their union activities freely, including when these are held outside the country.*
- (e) *With regard to the alleged restrictions on the right to free movement of ASIC officials and members in Cuban territory, the Committee firmly expects that the Government will fully ensure that ASIC officials have the freedom of movement in the national territory required to carry out their trade union activities.*
- (f) *Concerning the alleged anti-union dismissals of Mr Kelvin Vega Rizo and Mr Pavel Herrera Hernández, the Committee once again requests the Government to send its observations in this respect as soon as possible.*
- (g) *With regard to the dismissal of Ms Omara Ruíz Urquiola, the Committee requests the complainant to provide further information about its alleged anti-union nature.*
- (h) *With respect to the alleged infiltration by the Government into the trade union movement and acts of interference, the Committee urges the Government to provide its observations in that regard without further delay.*
- (i) *Regarding the exercise of the right to strike, the Committee trusts that the Government will guarantee the exercise of this right in practice.*

CASE NO. 3148

INTERIM REPORT

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

- **the Trade Union Association of Banana Plantation, Agricultural and Rural Workers (ASTAC) and**
- **the Trade Union Association of the fruit company
Compañía Frutas Selectas SA (FRUTSESA)**

Allegations: The complainants denounce, firstly, the refusal to register a trade union of banana plantation workers comprising workers from various companies in the sector and, secondly, anti-union action to prevent the setting up of a company union in that sector

- 225.** The Committee last examined this case (submitted in May 2015) at its March 2017 meeting, when it presented an interim report to the Governing Body [see 381st Report, approved by the Governing Body at its 329th Session (March 2017), paras 420–442]. [Link to previous examinations](#)
- 226.** The Trade Union Association of Banana Plantation, Agricultural and Rural Workers (ASTAC) sent additional allegations by communications of 30 March and 14 December 2017, 5 January, 7 March, 21 May, 18 September and 1 December 2018, and 16 June 2019.
- 227.** The Government sent its reply by communications of 14 March, 25 July, 22 October and 3 August 2018, and 18 February and 8 July 2019.
- 228.** Ecuador 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 Rural Workers’ Organisations Convention, 1975 (No. 141).

A. Previous examination of the case

- 229.** In its previous examination of the case in March 2017, the Committee made the following recommendations [see 381st Report, para. 442]:
- (a) The Committee requests the Government to take the necessary measures to ensure that national legislation complies with the principles of freedom of association concerning the minimum membership required to establish a trade union at the enterprise level and the possibility of setting up primary-level trade unions comprising workers from various companies. The Committee refers the legislative aspects of this case to the CEACR.
 - (b) The Committee requests the Government to take the necessary measures to enable the registration of ASTAC without delay, and to ensure that, in the meantime, the necessary guarantees and protections are provided to its members.
 - (c) The Committee requests the Government to ensure that, in the near future, an independent inquiry is held into the various anti-union acts which took place around the establishment of the company trade union and to provide information on the inquiry’s findings and of any action taken by the public authorities, including in relation to the application to register the trade union.

- (d) The Committee trusts that, in the near future, the criminal complaint filed by the general secretary of the aforementioned company trade union will lead to the appropriate inquiry and decisions by the pertinent authorities. The Committee requests the Government to keep it informed in this regard.
- (e) The Committee requests the Government to ensure that, through the pertinent employers' organization, the abovementioned enterprise has an opportunity, if it so wishes, to express its opinion on the allegations regarding the setting up of a company trade union within it.

B. The complainants' additional allegations

230. In its various communications, ASTAC presents additional allegations related to aggressive and discriminatory practices used in the banana sector against any attempts to unionize, acts of anti-union discrimination (including anti-union dismissals), acts of retaliation against its leaders and members, and death threats.

231. Specifically, the complainant organization alleges that:

- (a) in March 2017, 21 ASTAC members were dismissed in retaliation for verbal complaints made during the site visit of the Office of the Ombudsperson to the Sitio Nuevo plantation belonging to the Manobal Group. On 28 March 2018, the complainant organization filed a complaint against the enterprise for retaliation;
- (b) on 24 March 2017, another plantation in the sector belonging to the same enterprise group refused entry to the Office of the Ombudsperson and the complainant organization;
- (c) ASTAC leaders and members fear for their physical safety as a result of the aggressive practices in the banana sector, which include the hiring of contract killers;
- (d) on 4 October 2017, the Orodelti plantation dismissed seven ASTAC members on anti-union grounds and circulated a blacklist among the plantations in the sector. The complainant makes specific reference to the situation of one member who, after being dismissed, was denied access to his home, which was on another plantation. A complaint was filed concerning these actions;
- (e) on 29 November 2017, ten union leaders of the complainant organization in the Álamos plantation of the Noboa Corporation were dismissed, 200 workers were pressurized to leave the union, and the six workers who refused to leave the union were dismissed;
- (f) on 23 February 2018, the general secretary of ASTAC, Mr Jorge Washington Acosta Orellana, filed a report of death threats with the State Public Prosecutor's Office. In addition, the complainant organization reported that various unknown individuals had been following its leaders;
- (g) on 27 February 2018, the Office of the Ombudsperson admitted a new petition from the complainant organization in which it reports, among others, obstruction of the establishment of a branch-level trade union able to represent the workers in the banana sector; and
- (h) in 2018, a total of 150 ASTAC members were dismissed in five different plantations (the Álamos plantation, ACMAD-OTISGRAFT, the María Isabel plantation, the La Julia plantation and the Agrilechos/REYBANPAC plantation) for having attempted to form enterprise trade unions or in retaliation for reporting the working conditions in

their respective places of work. On 8 November, the complainant organization filed a report of anti-union discrimination against the last-named plantation.

232. As to its registration, ASTAC reports that although the Government indicated that it would be handled directly by the Ministry of Labour, to date no representative of the organization has been able to meet with the Ministry to discuss the registration of the union and the situation of the workers in the banana sector in Ecuador. ASTAC points out that the Ministry of Labour has recognized two branch-level unions in the horticulture and domestic work sectors, and expresses the view that the Ministry of Labour has not registered the union for political and personal reasons, given that the father of the then Minister of Labour held the post of executive director of the largest association of the banana industry, and that the banana industry had wide decision-making power in the country's policies, given the importance of the sector to the economy of Ecuador.

233. Lastly, ASTAC reports that the Ministry of Labour's issuance of three ministerial agreements between April 2017 and May 2018 (MDT-2017-0029 governing labour relations specifically in the agriculture, livestock and agro-industrial sector; MDT-2018-0096 establishing a special employment contract for part-time activities in the agriculture sector; and MDT-2018-0074 establishing a special employment contract for part-time activities in the banana sector) constitutes a serious deterioration in freedom of association, the right to collective bargaining, and the right to fair remuneration and a minimum wage. The organization considers that the three agreements: (i) exclude collective bargaining from the sources of regulating contractual arrangements; (ii) by establishing that certain elements of the wage and working day should be determined by agreement between the parties, are individualizing labour relations and ignoring the role of the trade union organizations and collective bargaining; and (iii) by endorsing the signature of temporary contracts for permanent activities and by establishing that the employer may unilaterally terminate the employment contract, the special discontinuous part-time contracts for the banana sector may be used by the employer for anti-union purposes and also expose the workers to job instability.

C. The Government's reply

234. By its communications of 14 March, 25 July, 22 October and 3 August 2018, and 18 February and 8 July 2019, the Governments transmits its observations on the Committee's recommendations and ASTAC's additional allegations.

235. As to the minimum membership required to establish a trade union at the enterprise level and the possibility of setting up primary-level trade unions comprising workers from various enterprises, the Government states that: (i) on 23 October 2017, Executive Decree No. 193 was issued, which sets forth the regulations for the granting of legal personality to social organizations with a view to minimizing superfluous administrative requirements for such civil organizations and facilitating their management and development; (ii) on 13 March 2018, a proposal to reform Ministerial Agreement No. 0130 of 2013 – article 2(2) of which set the required minimum number of members to form a trade union at 30 – was issued, replacing that number with an indication that the minimum membership would be established by the Labour Code; (iii) the National Labour and Wage Board, a tripartite advisory body, will have responsibility for defining the minimum number of members and the criteria for defining it; and (iv) the proposed Basic Code of Labour and Employment Promotion is in the drafting process.

236. As to ASTAC's registration as a trade union organization, the Government reiterates that the application for approval and union's application for registration was rejected in 2014 because the 31 founder members did not have a dependent relationship with only one

employer, and the application for approval of status and granting of legal personality to recognize ASTAC was denied in 2016 because it was flawed in form and substance. The Government adds that: (i) on 9 February 2017, the Ministry of Agriculture and Livestock Farming granted legal personality to ASTAC as an agro-production organization; (ii) to date, the Government has no information indicating that the said organization filed any further application to found a trade union organization or that it filed any administrative or legal appeals to continue with the formal process for administrative recognition; and (iii) the Government invited ASTAC to submit a new application in accordance with the statutory requirements. As to ASTAC's allegation that the Ministry of Labour refused to engage in dialogue with the organization's representatives, the Government states that the Ministry of Labour did not decline to engage in dialogue with the representatives of the organization; on the contrary, it attended all the meetings with the various authorities and even provided advice on the framework of labour law which must govern trade union organizations, clarifying any doubts as to the regulatory content of the recently issued ministerial agreements.

- 237.** As to the purported death threats against ASTAC's general coordinator, Mr Jorge Acosta, the Government states that: (i) under article 75 of the Constitution, every person shall be entitled to free access to justice and the effective, impartial and expeditious protection of his or her rights; (ii) the Government of Ecuador has an obligation to safeguard the wellbeing of its citizens; however, to that end, Ecuadorian citizens must make an application to the relevant legal entity, where it will be duly attended to; and (iii) the electronic system of the Council of the Judiciary contains no records of any criminal complaint from the general coordinator of ASTAC, only an application for protection that had been filed.
- 238.** As to the establishment of an independent inquiry into the various anti-union acts which took place around the founding of the 7 February Association of Banana Plantation Workers, the Government indicates that the request to launch an inquiry in relation to anti-union acts must be substantiated on the basis of a complaint from the applicant so as to identify the acts violating the alleged constitutional rights, and also indicates that the Ministry of Labour does not have any record of reports of actions directed against the establishment of the association.
- 239.** The Government also transmits the observations of the fruit company Frutas Selectas S.A. (FRUTSESA) ("the fruit company"), which indicates that after conducting a thorough investigation into the allegations, it determined that: the trade union associations to which the Committee refers could not be found; the complaint is illegitimate and misleading; their officials and members were unknown to the entity; it violates the constitutional principle of respect for legal certainty; and in view of the inability to identify a legitimate complainant, it considered that it did not have to make any further comment. In addition, it indicated that it was the Ministry of Labour that did not approve the establishment of an enterprise trade union because the minimum membership had not been attained. As to the complaint of intimidation filed by Mr Luis Ochoa, general secretary of the 7 February Association of Banana Plantation Workers, against Mr Tito Gentilini, the enterprise indicates that the latter does not represent the enterprise and had merely worked as an external consultant.
- 240.** As to the issuance of the three ministerial agreements, the Government indicates that Ecuadorian legislation fully safeguards freedom of association, the right to organize and the right to a fair wage. The Government states that, although the legislature sought to provide workers with indefinite job stability, with a view to adapting to the needs of each production sector the legislature had left it to the employer's discretion to use other contractual arrangements such as temporary, casual or seasonal contracts (article 11 of the Labour Code). In addition, in accordance with article 23.1 of the Labour Code, the Ministry of Labour is empowered to allow special employment relationships not provided for under the Code, including in the agriculture sector. Consequently, in view of the high percentage of

informality in the agricultural sector and the specific needs of the sector, which has specific periods for planting and harvesting that do not correspond to the statutory hours of work established in the Labour Code, the Ministry of Labour decided to adapt to the economic, social and legal reality of the agriculture and banana sectors and to issue the aforementioned ministerial agreements.

- 241.** The Government affirms that those ministerial agreements do not contain any prohibition of or restrictions on freedom of association, as their purpose is to regulate existing labour relations and to prevent precariousness of labour rights. As to the right to fair remuneration, the Government indicates that the minimum wage is set in the sectoral wage scale issued by the Ministry of Labour every year and that it was established through social dialogue between the lawfully constituted workers' organizations at the national level, employers and the Ministry of Labour. However, the Government considers that the minimum pay set by the sectoral wage scale may be improved by agreement between the parties and emphasizes that the labour organizations are a key part of the continuous improvement of remuneration in Ecuador. Furthermore, the Government states that the ministerial agreements allow the possibility to maintain discontinuous stability for workers, analogous to the seasonal contract contemplated in the Labour Code in force, as the employer may call on its workers in each cycle or phase of productivity. Concerning specifically the purported restrictions on the right to freedom of association, the Government affirms that that right is protected under the Constitution. Lastly, the Government makes reference to an application filed by ASTAC on 22 August 2018 for constitutional review of the aforementioned agreements, and indicates that, on 2 May 2019, the Constitutional Court denied the application on the grounds that the applicant had failed to argue how the aforementioned ministerial agreements violated the Constitution and the international conventions ratified by Ecuador.

D. The Committee's conclusions

- 242.** *The Committee observes that, in this case, the complainants denounce, firstly, the refusal to register a trade union organization of banana plantation workers comprising workers from various companies in the sector and anti-union action against the leaders and members of that union and, secondly, anti-union action aimed at preventing the establishment of a nascent works union in an enterprise in the same sector.*
- 243.** *Firstly, the Committee recalls that, in its previous examination of the case, it requested the Government to take the necessary measures to ensure that national legislation complies with the principles of freedom of association concerning the minimum membership required to establish a trade union at the enterprise level and the possibility of setting up primary-level trade unions comprising workers from various companies, and that it referred the legislative aspects of the case to the CEACR. The Committee notes that the information provided by the Government concerning the regulations for the granting of legal personality to social organizations and the proposed reform of Ministerial Agreement No. 0130 of 2013 and of the Labour Code to assign responsibility to the National Labour and Wage Board, a tripartite advisory body, for defining the number of workers and criteria for determining the number. The Committee refers that information to the attention of the CEACR, to which it has referred the legislative aspects of this case.*
- 244.** *Secondly, the Committee recalls that in its previous examination of the case, it requested the Government to take the necessary measures to allow the registration of ASTAC. The Committee notes that ASTAC reports that, despite the Committee's recommendations, the Ministry of Labour has still not met with the union, that the Ministry did recognize two branch-level unions (in the horticultural and domestic work sectors) and that certain matters of a political and social nature were impeding the establishment of the trade union organization. The Committee notes that, in turn, the Government reiterates that the*

application for the approval and registration of the articles of association of ASTAC was rejected because the 31 founder members were not in a dependent employment relationship with only one employer and that the application for approval of status and granting of legal personality to recognize ASTAC as a social organization was rejected in 2016 because it was flawed in form and substance. The Government adds that: (i) on 9 February 2017, the Ministry of Agriculture and Livestock Farming granted legal personality to ASTAC as an agro-production organization; (ii) the Government has no record of ASTAC having filed administrative or legal appeals with a view to continuing the formal process for administrative recognition or a further application to establish a trade union organization; and (iii) denies that the Ministry of Labour declined to meet with ASTAC leaders and states that it even advised them on the recent legislative changes that affect the banana sector.

- 245.** *The Committee notes with regret that because its members do not work for the same employer, ASTAC has still not been recognized as a trade union organization. While pointing out once again that branch-level trade unions have been recognized in other sectors in the country, the Committee recalls that, in its previous examination of the case, it noted with concern that many agricultural workers in Ecuador not only find it impossible to set up company unions owing to the minimum membership requirement which is conflicting with the structure of a sector where most production units are small, but that they were also seeing their efforts to overcome that obstacle by grouping together in sectoral organizations being frustrated. The Committee observes that, on the one hand, ASTAC states that no representatives of its organization have managed to meet with the Ministry of Labour to discuss the union's registration and the situation of workers in the banana sector in Ecuador, while, on the other hand, the Government indicates that the Ministry of Labour did not decline to engage in dialogue with the representatives of that trade union organization and even provided it with advice. In addition, while noting the Government's indication that ASTAC has not challenged the decision denying its registration, the Committee draws the Government's attention to the fact that one of the main subject matters of this complaint concerns the registration of ASTAC and the fact that it is impossible under the law to form branch-level trade unions. Recalling that recognizing ASTAC as an agro-production organization does not guarantee that its trade union rights are protected, the Committee once again requests the Government to take the necessary measures to ensure that ASTAC is registered as a trade union organization if the organization submits a further request and to ensure that, in the meantime, the necessary guarantees and protections are provided to its members.*
- 246.** *Thirdly, the Committee recalls that, in its previous examination of the case, the Committee requested the Government to ensure that an independent inquiry is held in the near future into the various anti-union acts, including dismissals and threats, which the 7 February Association of Banana Plantation Workers had undergone in the fruit company, and to inform the Committee of the inquiry's findings. The Committee notes that the Government indicates that a request to initiate an inquiry must be substantiated on the basis of a complaint from the applicant and that the Ministry of Labour indicates that it has no record of any complaints concerning actions directed against the founding of the company union.*
- 247.** *In addition, the Committee notes the new information communicated by the complainant reporting a series of anti-union dismissals in various plantations in the sector, acts of intimidation and the circulation of a blacklist with the names of the members of ASTAC, and observes that the Government does not make any specific observations in relation to the alleged anti-union acts, including anti-union dismissals, retaliatory acts and blacklisting. The Committee observes that the appendices provided by the complainant show that it filed two complaints, in 2010 and 2016, with the Office of the Ombudsperson; that the Office of the Ombudsperson conducted two site visits on the basis of a report from ASTAC members; and that on 8 November 2017, and 28 March and 8 November 2018, ASTAC filed reports*

*with the Public Prosecutor's Office in connection with anti-union dismissals, blacklisting, harassment and acts of retaliation. As to the alleged blacklisting, the Committee recalls that all practices involving the blacklisting of trade union officials or members constitute a serious threat to the free exercise of trade union rights and, in general, governments should take stringent measures to combat such practices [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 1121].*

- 248.** *In the light of the above, in connection with the complaints filed by ASTAC on 8 November 2017, and 28 March and 8 November 2018 concerning blacklisting and anti-union acts, the Committee requests the Government to conduct the respective inquiries, to provide a copy of the findings of the inquiries and, if it is confirmed that anti-union acts were committed, to take measures with sufficient dissuasive effect to penalize those responsible. Furthermore, the Committee urges the Government to meet with representatives of both complainant organizations to examine the allegations of anti-union discrimination in the banana sector outlined in the complaint.*
- 249.** *Fourthly, the Committee recalls that, in its previous examination, it requested the Government to conduct an inquiry into the alleged death threats against Mr Luis Ochoa, general secretary of the 7 February Association of Banana Plantation Workers, that reportedly led to the filing of a criminal complaint on the grounds of intimidation. While noting that the company states that the person who threatened Mr Luis Ochoa is not a representative of the company, the Committee notes with regret that the Government does not communicate any specific information in relation to Mr Luis Ochoa's circumstances or the status of his criminal complaint, and recalls once again 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 **Compilation**, op. cit., para. 84]. Consequently, the Committee urges the Government to communicate without delay specific information on the alleged death threats against the general secretary of the 7 February Association of Banana Plantation Workers, Mr Luis Ochoa, and to keep it informed in this respect.*
- 250.** *The Committee also notes the additional allegations communicated by the complainant in connection with purported death threats against the general secretary of ASTAC, Mr Jorge Washington Acosta Orellana, which were the subject of a complaint to the Public Prosecutor's Office on 23 February 2018. In this respect, the Government states that the system containing the proceedings of the Council of the Judiciary only shows the existence of an application for protection that had been filed, and that if the union leader wishes to request protection measures, he may make an application to the relevant bodies, which will duly attend to it. The Committee observes that, on 23 February 2018, ASTAC filed a complaint with the Public Prosecutor's Office concerning death threats against its general secretary (file number 090101818024320), and urges the Government to ensure that the complaint filed by the secretary general of ASTAC, Mr Jorge Washington Acosta Orellana, on 7 March 2018, is investigated, that the Government takes any action necessary to prevent any repetition of those acts in the future and to ensure his safety, and that it keeps the Committee informed in this respect.*
- 251.** *Lastly, as to the alleged anti-union effects of the three ministerial agreements issued by the Ministry of Labour (MDT-2017-0029, MDT-2018-0096 and MDT-2018-0074), the Committee notes that ASTAC considers that: (i) their issuance constitutes a serious deterioration in freedom of association, the right to collective bargaining, and the right to fair remuneration and a minimum wage; (ii) they individualize labour relations and ignore the role of trade union organizations; (iii) by endorsing the signature of temporary contracts for permanent activities and establishing that the employer may unilaterally terminate the*

employment contract, the Government is exposing workers to job instability; and (iv) temporary contracts in the banana sector may potentially be used for anti-union purposes. In turn, the Government denies that the agreements contain any restrictions on freedom of association or collective bargaining, which are protected under the Constitution, given that in its view, the primary objective is to adapt the legislation in line with the realities and needs of the banana sector and to regulate labour relations in the sector. Furthermore, the Government states that the agreements have allowed employers the possibility to maintain a discontinuous stability for workers, as employers may call on their workers in each cycle or phase of productivity, and that ASTAC's application for constitutional review was denied by the Constitutional Court. While recalling that it is not within the mandate of the Committee to assess the legislative and regulatory action of the Government to establish minimum employment and contractual conditions in a particular sector [see **Compilation**, *op. cit.*, para. 34], the Committee recalls that, in certain circumstances, the renewal of fixed-term contracts for several years may affect the exercise of trade union rights [see **Compilation**, *op. cit.*, para. 1094]. In the absence of evidence to assess the impact of the issuance of the ministerial agreements on the exercise of freedom of association and the right to bargain collectively in the banana sector, the Committee invites the Government to examine, together with the organizations of employers and workers concerned, the impact of the reform on the exercise of freedom of association. The Committee requests the Government to keep it informed in this respect.

The Committee's recommendations

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

- (a) The Committee once again requests the Government to take the necessary measures to ensure that ASTAC is registered as a trade union organization if the organization so requests it again and to ensure that, in the meantime, the necessary guarantees and protections are provided to its members.**
- (b) In connection with the complaints filed by ASTAC on 8 November 2017, and 8 November and 28 March 2018 concerning blacklisting and anti-union acts, the Committee requests the Government to conduct the respective inquiries, to provide a copy of the findings of the inquiries and, if it is confirmed that anti-union acts were committed, to take measures with sufficient dissuasive effect to penalize those responsible.**
- (c) As to the allegations concerning anti-union acts perpetrated against the leaders and members of the 7 February Association of Banana Plantation Workers and ASTAC, the Committee urges the Government to meet with representatives of both complainant organizations to examine the allegations of anti-union discrimination in the banana sector outlined in the complaint.**
- (d) The Committee urges the Government to communicate without delay specific information on the alleged death threats against the general secretary of the 7 February Association of Banana Plantation Workers, Mr Luis Ochoa, and to keep it informed in this respect.**
- (e) The Committee urges the Government to ensure that the complaint filed by the secretary general of ASTAC, Mr Jorge Washington Acosta Orellana, on 7 March 2018, is investigated, that the Government takes any action necessary**

to prevent any repetition of those acts in the future and to ensure his safety, and that it keeps the Committee informed in this respect.

- (f) *As to the alleged anti-union effects of the three ministerial agreements issued by the Ministry of Labour (MDT-2017-0029, MDT-2018-0096 and MDT-2018-0074), the Committee invites the Government to examine, together with the organizations of employers and workers concerned, the impact of the reform on the exercise of freedom of association. The Committee requests the Government to keep it informed in this respect.*

CASE NO. 3279

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

**Complaint against the Government of Ecuador
presented by
the National Union of Educators (UNE)**

Allegations: the complainant alleges that the Government has been attacking the UNE for almost a decade, culminating in its administrative dissolution in 2016

253. The complaint is contained in a communication from the National Union of Educators (UNE) dated 15 May 2017.
254. The Government submitted its observations in communications dated 28 February and 24 October 2018.
255. 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

256. In its communication dated 15 May 2017, the UNE, the complainant indicates that it is an organization that has united teachers since 1944 and that has a broad history of defending education and the rights of education workers. It states that in 2009, the Government tried to implement a system of teacher evaluation that provided for potential loss of employment and that, since the Government had refused dialogue on the matter, the UNE called a national stoppage that ended after several weeks, when the potential loss of employment for teachers was eliminated. The complainant alleges that since then, the Government has taken actions against it with a view to damaging public opinion against it, through campaigns of persecution, making use of the national radio, press and television channels, condemning its trade union activities.
257. The complainant alleges that the Government has refused to register its national leadership, elected in November 2013, as well as the leadership in the 23 provinces where it has branches. The complainant states that registration was denied on the basis of supposed

failures and that it has responded to each of them. The complainant also alleges that its leaders do not have union leave or collect union dues, an issue that was raised in Case No. 2755, the recommendations from which the Government has not complied with. The complainant states that administrative proceedings have been brought against teachers and leaders, they have been dismissed, transferred or had their working hours reduced or increased excessively. They also state that Ms Mery Zamora, former president of the UNE, has been subjected to criminal persecution by the public authorities. The complainant adds that in 2015, the Ministry of Education created a parallel organization, called the “Teachers’ Network for a Revolution in Education” and that the Government has pressured teachers to leave the UNE and join the new union.

258. The complainant alleges that, faced with the continued refusal by the authorities to register its leadership, the teachers themselves convened an extraordinary conference on 14 May 2016 to restart the process of registering its leadership and that, in July 2016, on the basis of Executive Order No. 16, the Undersecretariat of Education began the process for the administrative dissolution of the UNE, declaring it dissolved in a resolution dated 18 August 2016. The complainant indicates that, with a view to beginning the process of liquidating its assets, the national police raided and occupied the UNE’s union headquarters. They also state that a liquidation committee was set up which dismissed the workers, sold the buildings and blocked the current accounts containing teachers’ retirement money. The complainant notes that, prior to this, it had lodged an administrative appeal and an extraordinary protection order, which was denied. They also state that the Government appropriated US\$400 million from the Ecuadorian Teaching Profession Pension Fund, bringing it under the administration of the Ecuadorian Social Security Institute Bank, unjustifiably interfering in the activities, property and administration of the fund, which it had set up in 1991.

B. The Government’s reply

259. In its communications dated 28 February and 24 October 2018, the Government states that the UNE is a social organization and not a trade union organization, and that the Ministry of Labour does not have the competence or jurisdiction to repeal the act of dissolution issued by the Ministry of Education. It notes that, without prejudice to the foregoing, as part of its commitment to dialogue, contacts have been made between the Ministry of Labour and the lawyer for the UNE to explore alternatives to the dissolution and liquidation of the organization and that in those meetings it was noted that an administrative appeal against the administrative act of dissolution was pending.

260. The Government reports that, in October 2017, Decree No. 16 was repealed, which was one of the legal grounds for the dissolution of the UNE, and Executive Decree No. 193 was drawn up in its place, which reduced the requirements for obtaining legal personality for social organizations. The Government also states that, as a result of Constitutional Court ruling No. 018-18-SIN-CC (1 August 2018), public sector workers became subject to the Labour Code, and thereby entitled to establish trade unions. The Government reports that it has invited the UNE to begin the administrative process of registering as a trade union with the Ministry of Labour. The Government also states that it promotes tripartite dialogue and agreement and that, as a result of this opening of dialogue, the UNE has begun the process of registering its social organizations in various provinces around the country, through seven regional branches: 42 of the UNE’s social organizations have been registered and 28 are still in the process of being registered.

C. The Committee's conclusions

- 261.** *The Committee observes that in this case the complainant alleges that the Government has been attacking the UNE for almost a decade, culminating in its administrative dissolution in 2016.*
- 262.** *The Committee notes that, according to the complainant: (i) since 2009, when the UNE called a strike to protest the system of teacher evaluation that the Government wanted to implement, the Government began a campaign to discredit the organization, refusing to register its leadership, bringing administrative proceedings against teachers and leaders, ordering dismissals, transfers and even bringing criminal proceedings; (ii) in 2015, the Government created a parallel teachers' union and pressured teachers to leave the UNE and join the new union; and (iii) in July 2016, the Ministry of Education declared the UNE dissolved for supposed failure to comply with its own statute and appointed a liquidation committee which dismissed the workers, sold the buildings, blocked the accounts and also brought the Teaching Profession Pension Fund under the administration of the Social Security Institute Bank. The Committee notes that, according to the information provided, the UNE lodged an administrative appeal and an extraordinary protection order, which was denied. The Committee also notes that it is alleged that the UNE does not collect union dues, which was the subject of Case No. 2755, the recommendations from which the Government has not complied with [see 359th Report of the Committee on Freedom of Association, paras 52–55].*
- 263.** *The Committee notes that, for its part, the Government states that: (i) the UNE is a social organization and not a trade union organization, and the Ministry of Labour does not have the competence or jurisdiction to repeal the act of dissolution issued by the Ministry of Education; (ii) without prejudice to the foregoing, contacts have been made between the Ministry of Labour and the lawyer for the UNE to explore alternatives to the dissolution and liquidation of the UNE and they are expecting a pending administrative appeal; (iii) in October 2017, Decree No. 16 was repealed, which was one of the legal grounds for the dissolution of the UNE, and Executive Decree No. 193 was drawn up in its place, which reduced the requirements for obtaining legal personality for social organizations, and (iv) the Ministry of Labour has invited the UNE to begin the administrative process of registering as a trade union with the Ministry of Labour and as of April 2018 the UNE had registered 42 social organizations around the country and 28 were in the process of being registered.*
- 264.** *The Committee observes that, according to the information provided by the complainant and by the Government, the act of dissolution of the UNE issued by the Ministry of Education in 2016 has not been repealed. It also notes that the legal proceedings brought by the UNE with a view to repealing said act of dissolution have not been successful: (i) according to the complainant, an extraordinary protection order was rejected, and (ii) according to publicly available information, the case brought before the Administrative Tribunal was closed on 20 September 2017.*
- 265.** *The Committee also observes that, according to publicly available information, the UNE liquidation committee has finished its work and on 25 April 2019 the Ministry of Education sent a copy of the committee's report to the people who had been the leaders of the UNE at the time of its dissolution. The Committee observes that the Ministry of Education should have returned the property that had been seized from the UNE to those leaders and asked them to determine what to do with it, since it belongs to an organization that is still in the process of liquidation.*

266. While duly noting that the Government states that it is open to dialogue and agreement, the Committee regrets to observe that, according to the foregoing information, the UNE, as a national organization, remains dissolved. Observing that, in its reply, the Government has simply stated that the Ministry of Labour does not have the competence or jurisdiction for the act of dissolution, since it was an act issued by the Ministry of Education, the Committee emphasizes that teachers, like all other workers, should benefit from the right to freedom of association [see: **Compilation**, *op. cit.*, para. 362] and that it is not only the Ministry of Labour that is obliged to guarantee respect for that right, but all the authorities and institutions in the country. The Committee also observes that the dissolution at issue in this case affected the largest teachers' union in the country, which had been working on education issues and defending the interests of workers in that sector for over 70 years, and that its administrative dissolution meant not only the disappearance of the organization in its entirety, but also the loss of the various benefits and agreements that had been made throughout the organization's history
267. In addition, noting that the UNE has been registering organizations in various provinces around the country and that the Government states that it has invited the UNE to begin the administrative process of registering as a trade union with the Ministry of Labour again, the Committee trusts that the necessary measures will be taken to ensure that this happens, if the UNE so requests. The Committee further urges the Government to take all necessary measures to ensure the full return of the property seized from the organization as well as the elimination of any other consequences resulting from the administrative dissolution of the UNE. The Committee requests the Government to keep it informed in that respect.
268. Lastly, with regard to the allegation that the Government has not implemented the recommendations made in response to Case No. 2755 relating to the collection of union dues, the Committee recalls that those recommendations remain fully in force.

The Committee's recommendation

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

The Committee trusts that the necessary measures will be taken to ensure that the UNE can register as a trade union with the Ministry of Labour, if the organization so requests. The Committee further urges the Government to take all necessary measures to ensure the full return of the property seized from the organization as well as the elimination of any other consequences resulting from the administrative dissolution of the UNE. The Committee requests the Government to keep it informed in this respect.

CASE NO. 2609

INTERIM REPORT

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

- **the Indigenous and Rural Workers’ Trade Union Movement of Guatemala (MSICG)**
- **the Autonomous Popular Trade Union Movement of Guatemala**
- **Global Unions of Guatemala**
- **the Trade Union Confederation of Guatemala (CUSG)**
- **the General Confederation of Workers of Guatemala (CGTG)**
- **the Trade Union of Workers of Guatemala (UNSITRAGUA)**
- **the Movement of Rural Workers of San Marcos (MTC)**

supported by

the International Trade Union Confederation (ITUC)

Allegations: The complainant organizations allege numerous murders and acts of violence against trade union members and flaws in the system that result in criminal and labour-related impunity

- 270.** The Committee last examined this case (submitted in October 2007) at its October 2018 meeting, when it submitted an interim report to the Governing Body [see 387th Report, approved by the Governing Body at its 334th Session (October 2018) paras 367 to 414]. [Link to previous examinations](#)
- 271.** The Government sent its observations in communications dated 23 January, 4 May, 23 May, 23 July and 28 August 2019.
- 272.** Guatemala has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Collective Bargaining Convention, 1981 (No. 154).

A. Previous examination of the case

- 273.** At its October 2018 session, the Committee made the following recommendations [see 387th Report, para 414]:
- (a) The Committee expresses once again its deep concern over the seriousness of this case, given the many instances of murder, attempted murder, assaults and death threats and the climate of impunity.
 - (b) The Committee again urges the Government to continue to take and intensify, as a matter of urgency, all the necessary measures to ensure that, in the planning and conducting of investigations, the possible anti-union motive for the murders of members of the trade union movement and the links that may exist between the murders of the members of the same trade union are fully and systematically taken into account, and to ensure that the investigations focus on both those who instigated and perpetrated the acts. Trusting in the contributions of the new subcommittee on implementation of the roadmap in this respect, the Committee requests the Government to keep it informed, without delay, of the

measures taken and the results obtained in this respect, particularly in the cases mentioned in paragraph 29 above.

- (c) The Committee requests the Government to keep it informed of the findings of the investigation into the murder of Mr Jorge Barrera Barco.
- (d) The Committee requests the Government to keep it informed of the findings of the investigation into the murder of Mr Carlos Antonio Hernández Mendoza.
- (e) The Committee requests the Government to keep it informed of the findings of the investigation into the murder of Mr Estrada Navas, duly taking into account the possible links between his trade union activity and the murder.
- (f) Concerning Mr De la Cruz Aguilar, the Committee requests the complainant organization to provide additional information relating to his alleged murder to the Public Prosecutor's Office.
- (g) Underscoring the importance of ensuring that the joint investigations being conducted into the murder of three members of the Union of Commercial Workers of Coatepeque take into consideration the possible links between the murders and the union activities of the victims, the Committee requests the Government to keep it informed of the progress and findings of said investigations.
- (h) The Committee requests the Government to keep it informed of the collection of the ballistics findings in relation to the murder of Mr Julian Capriel Marroquin.
- (i) The Committee requests the Government to provide information on the reasons why the witness protection mechanism is not being used with regard to the criminal investigations being examined in the present case.
- (j) The Committee urges the Government to ensure, in the implementation of General Directive No. 1/2015, that all necessary measures are taken with the greatest diligence to identify and bring to justice without delay those who perpetrated and instigated the murders of Mr Alejandro García Felipe, Mr Domingo Nach Hernández and Mr Juan Carlos Chavarría Cruz, and to ensure that the investigations take due account of possible links between the murders and the union activities of the three victims. The Committee requests the Government to keep it informed in this respect.
- (k) Noting that three of the four most recently reported murders in the context of this case involved leaders and members of municipal trade unions, the Committee urges the Government to take specific steps to ensure full respect for freedom of association in municipalities and to prevent further acts of violence against members of municipal trade unions. The Committee requests the Government to keep it informed in this respect.
- (l) The Committee urges the Government to promptly re-examine the mechanisms for ensuring the protection of members of the trade union movement who might be at risk, through the use of existing spaces for dialogue between the Ministry of the Interior and trade union organizations, and of the new subcommittee on implementation of the roadmap. The Committee requests the Government to keep it informed in this respect.
- (m) The Committee once again urges the Government to take the necessary measures to ensure that the death threats reported to the Public Prosecutor's Office in relation to various members of the Union of Organized Municipal Employees of Tiquisate (SEMOT) be examined with due promptness and that SEMOT members who have received threats are provided with the appropriate protection measures. The Committee requests the Government to keep it informed in this respect.
- (n) The Committee urges the Government to take the necessary measures to ensure that the ongoing investigations to identify the criminal trend which affected the members of the Union of Commercial Workers of Coatepeque also take into account the aforementioned allegations of attempted killings and death threats. The Committee requests the Government to keep it informed in this respect.
- (o) In general, the Committee particularly urges the Government, after consultation with the most representative social partners, to: (i) significantly increase the human and financial resources of the Special Investigation Unit; (ii) strengthen and perpetuate collaboration

between the Special Investigation Unit and the Specialized Criminal Investigation Division (DEIC) of the Civil Police; (iii) ensure the full implementation of General Directive No. 1/2015 of the Public Prosecutor's Office so that the possible anti-union motive for the murder of members of the trade union movement is fully and systematically taken into account in planning and conducting investigations; (iv) take full advantage of its collaboration with the International Commission against Impunity in Guatemala (CICIG) with respect to the investigations into the murders of members of the trade union movement; (v) give fresh impetus to the collaboration between the Public Prosecutor's Office and the trade union movement; (vi) take the necessary measures to ensure that as many cases as possible of murders of members of the trade union movement are brought before courts for high-risk cases; and (vii) ensure the prompt adoption of all personal security measures necessary to ensure the protection of members of the trade union movement who may be at risk. Recalling that the Government may continue to seek technical assistance from the Office in this connection, the Committee requests the Government to keep it informed in this respect.

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

B. The Government's replies

274. In its communications dated 23 January, 4 May, 23 May, 23 July and 28 August 2019, the Government provides information on the institutional initiatives taken to investigate the reported acts of anti-union violence in the context of this case and to protect trade union members, as well as specific data on the progress of the investigations and the criminal proceedings concerning concrete cases of murder and death threats.

275. The Government reports that on 18 December and 13 August 2019, the subcommittee on implementation of the road map of the National Tripartite Committee on Labour Relations and Freedom of Association met with the judiciary, the Public Prosecutor's Office and the Ministry of the Interior to follow-up on the matters in this case. During the meeting of 13 August 2019, the Public Prosecutor's Office reported that on 24 and 31 July, 2019, prison sentences were handed down to the perpetrators of the murders of Mr Tomás Francisco Ochoa Salazar (an official of the SITRABREMEN trade union organization) and Mr David Figueroa García (Chairman of the Executive Board of the Workers' Union of San Carlos of Guatemala University, Petén) which occurred in September of 2017 and June of 2018, whereby, to date, a total of 20 convictions and four acquittals have been handed down in respect of 90 murders of members of the trade union movement registered since 2004. The Government states that one of the factors that contributed to a prompt sentence being passed in the two aforementioned cases was availability in the judiciary's agenda.

276. The Government indicates that the Special Investigation Unit for Crimes against Trade Unionists (hereinafter the Special Investigation Unit) of the Public Prosecutor's Office has grown in recent years, that the budgetary allocation to the Public Prosecutor's Office has increased fivefold, and that there were plans to have an additional investigator and assistant prosecutor in the Special Investigation Unit. The Government also states that the meeting held on 13 August 2019 addressed the full implementation of General Directive No. 1/2015 of the Public Prosecutor's Office so that the possible anti-union motive for the murders of members of the trade union movement would be fully and systematically taken into account in planning and conducting investigations. The Government reports that necessary steps are being taken in the cases to determine the victims' union background, and thereby establish whether there was a link between their union activity and the specific causes which gave rise to the crime under investigation. The Government further points out that the subcommittee on implementation of the road map will be responsible for reactivating the trade union committees of the Public Prosecutor's Office and the Ministry of the Interior.

- 277.** The Government also notes that, in coordination with the National Civil Police in charge of investigations, the DEIC and the Criminal Investigation Directorate of the Public Prosecutor's Office were requested to carry out investigations into various cases in order to set-up an inquiry into the crime, the circumstances in which it may have been committed and the involvement of the perpetrators and instigators. Upon learning of the crimes, investigators coordinate with the assistant prosecutor in charge of the case.
- 278.** Moreover, the Government highlights that, owing to the collaboration between the Public Prosecutor's Office and the CICIG, significant findings had been obtained in the investigations into murders of members of the trade union movement. Out of the 12 cases selected by trade organizations in the trade union technical committee, the proceedings in four cases already have an outcome (two convictions and two terminations of the criminal prosecution proceedings, due to the death of the person who committed the crime), and the eight other cases are under investigation.
- 279.** The Government indicates that five cases of murders of trade union movement members are being heard by courts for high-risk cases: three in Izabal, one in Jalapa and one in Retalhuleu, and that the imminent risk identified stems from the criminal structures operating in the area. Arrest warrants were issued in three of the five cases.
- 280.** With regard to the mechanisms for ensuring the protection of members of the trade union movement who might be at risk, the Government indicates that 133 requests were received from the Public Prosecutor's Office, the Ministry of Labour, the Human Rights Ombudsman and the Ministry of the Interior in 2018, and 14 were received in 2019. In 2017, 106 perimeter security measures and one personal security measure were implemented, and in 18 cases, no action was taken as the assessment revealed a low level of risk. In 2018, 129 perimeter security measures and two personal security measures were implemented, and in two cases no measures were taken. In 2019, of the total 14 requests received, 12 perimeter security measures and one personal security measure were implemented, and one was rejected. The Government further indicates that, during the discussions held in the subcommittee on implementation of the road map, a number of proposals were put forward to improve the coordination and granting of protection mechanisms, including: increasing direct contact between the Public Prosecutor's Office and the Ministry of the Interior to enable immediate access to the complaints filed by the trade union leaders and labour rights activists, and unifying these complaints or assigning them a file number within the Special Investigation Unit; and identifying which security measure was granted by the Ministry of the Interior. The Government also refers to the operational launch of the 1543 emergency helpline which provides assistance to trade union members, journalists, activists, judicial officials, human rights advocates, and lesbian, gay, bisexual, transgender and queer persons. The Government indicates that it is possible to determine whether the emergency stems from an anti-union case and that there has already been a case in which the threat was suspected to have come from the victim's union involvement.
- 281.** The Government hereafter refers to the discussions regarding the operation of the Special Investigation Unit for the analysis of attacks against human rights advocates, which took place in the subcommittee on implementation of the road map. During said discussion, the Ministry of the Interior noted that the above-mentioned Special Investigation Unit had ceased operations in October 2018 because certain organizations sought to have specific cases examined in this forum, which fell under the jurisdiction of the Public Prosecutor's Office. Together with the Presidential Coordinating Commission for Executive Policy in the Field of Human Rights (COPREDEH), the Ministry of the Interior is taking the necessary steps to reactivate the Special Investigation Unit in line with the purpose for which it was created.

- 282.** Furthermore, the Government indicates that persons who cooperate with criminal investigations are entitled to use the witness protection mechanism of the Office for the Protection of Witnesses within the Public Prosecutor's Office. In order to activate said mechanism, the need, importance and urgency are assessed in relation to the probative value of the person's testimony. The Government states that, even though this protection mechanism could be applied to cases before the Special Investigation Unit, to date, no one has provided verifiable information that might help to shed light on the crimes, without which their admission process cannot begin, nor has any person given their consent or commitment to begin the admission process into the protection programme.
- 283.** The Government also states that, in order to prevent crimes against unionized workers in the country's municipalities who may be at risk as a result of their trade union activities, the following protection measures are provided: (i) as of 17 March 2017, perimeter security measures are afforded to members of the Municipal Workers' Union of the Municipality of Villa Canales; this security is provided by performing continuous patrols in residences and trade union workplaces, with a view to avoiding attempts on the lives of these individuals; (ii) as of 11 August 2018, perimeter security is afforded to members of the Trade Union of Workers of the Municipality of Melchor de Meneos, Petén; this security is provided by the police unit of the area, which carries out continuous patrols, in order to protect members from any regrettable events that may arise; (iii) as of 7 June 2018, security measures are afforded to members of the Union of Workers of the Municipality of Jalapa consisting of constant patrols in order to provide security through the police unit; and (iv) as of 16 December 2016 perimeter security measures are afforded to SEMOT members; this service is provided by the responsible police units on a rotating and periodic basis.
- 284.** The Government provides the following specific information on the progress of the investigations and the criminal proceedings concerning concrete cases of murder and death threats: (i) with regard to the murder, on 10 August 2010, of Mr Bruno Ernesto Figueroa, an official of a subsidiary of the National Union of Health Workers of Guatemala (SNTSG), the Government states that one person was charged with concealment and unlawful association; eight persons were prosecuted for murder and attempted murder, and the evidentiary hearing was scheduled for 27 February 2019; (ii) concerning the murder, on 2 March 2008, of Mr Miguel Ángel Ramírez Enríquez, co-founder of the Southern Banana Workers' Union (SITRABANSUR), the Government states that it arrested one of the perpetrators of the murder and that the hearing was scheduled for 5 February 2019; (iii) regarding the murder, in 2016, of Ms Brenda Marleni Estrada Tambito, Legal Adviser to UNSITRAGUA, the Government indicates that the investigation into her murder was passed onto the Special Prosecutor for Offences Against Life and that the case would be heard in a specialized court for cases of femicide, in which her former partner would be tried; (iv) with regard to the murder, on 6 May 2008, of Mr Marvin Leonel Arévalo, board member of the Heavy Goods Transport Workers' Union, the person charged with culpable homicide had been arrested and the hearing was scheduled for February 2019; (v) the investigation into the murder, on 9 November 2016, of Mr Eliseo Villatoro Cardona, member of the Executive Committee of SEMOT in the department of Escuintla, is under way and the case is being handled by the Special Investigation Unit; (vi) the case regarding the murder, on 1 June 2012, of Mr Manuel de Jesús Ramírez, Secretary General of the Union of Technical and Administrative Support Workers of the Criminal Public Defence Institute, was referred to a court for high-risk cases since the criminal offence of homicide was modified to the criminal offence of murder; as of 23 April 2019 the person accused of the murder is being held in preventive detention as the perpetrator; (vii) with regard to the murder, in 2013, of Mr Jorge Barrera Barco, member of the CUSG, it was concluded in the proceedings that it was impossible to identify the perpetrators of the crime, whereupon the case was archived; (viii) regarding the murder, in 2013, of Mr Carlos Antonio Hernández Mendoza, member of the Executive Board of the SNTSG, the Government reports that although statements were

made by persons who were alleged witnesses, the trial was dismissed after it had been revealed that these persons had not told the truth, whereupon the investigation is being reviewed in order to identify the other persons involved in the crime; (ix) the investigation into the murder, in March 2014, of Mr José Estrada Navas, member of the CUSG, is still ongoing; (x) with regard to the murder, on 14 May 2014, of Mr De la Cruz Aguilar, member of the CUSG, the Public Prosecutor's Office has summoned trade union representatives to participate in a trade union technical committee with the Public Prosecutor's Office, including representatives from the CUSG, and to provide the investigators with additional information regarding the alleged murder, since the Public Prosecutor's Office has reiterated that Mr De La Cruz Aguilar appeared only as a witness in another case in the Office's computer system for monitoring investigations; (xi) with regard to the murders of Mr Luis Haroldo García Ávila, Mr Amado Corazón Monzón and Mr Armando Donald Sánchez Betancourt, members of the Union of Commercial Workers of Coatepeque, it has been noted that although proceedings in connection with the investigations continue, the investigations conducted have thus far failed to identify those responsible; (xii) with respect to the crime trend which affected the members of the Union of Commercial Workers of Coatepeque, there has been constant communication with the trade union members and the subcommittee on implementation of the road map will make a request to the Public Prosecutor's Office, that the Criminal Analysis Unit of the Human Rights Prosecutor's Office (in which the Special Investigation Unit operates), include the analysis of said crime trend in its agenda; (xiii) regarding the murder, on 16 July 2009, of Mr Julián Capriel Marroquín, Deputy Secretary General of the Union of Traders of the Public Square of Jocotán, the investigation is ongoing and ballistics evidence are being used to try to clarify who owns the weapon with which he was killed; (xiv) with regard to the murder, on 29 April 2018, of Mr Alejandro García Felipe, General Secretary of the Santa Rosa Department local branch of the SNTSG; the murder, between 15 and 20 June 2018, of Mr Domingo Nach Hernández General Secretary of the Workers' Union of the Municipality of Villa Canales; and the murder, on 21 June 2018, of Mr Juan Carlos Chavarría Cruz, General Secretary of the Trade Union of Workers of the Municipality of Melchor de Mencos, Petén, the Government reports that although the investigations are still ongoing, it has not been possible to identify the perpetrators of the murders. With regard to Mr Juan Carlos Chavarría Cruz, it had been established that the victim was the General Secretary of his Union, and that witness statements were received from the current General Secretary of the Union and the 16 members of the Executive Board with respect to the events which occurred and the victim's union activity; and (xv) in relation to the attempted murder, in September 2016, of Mr José Alejandro Chinchilla, General Secretary of the Union of the Municipality of Petapa, the Government indicates that although the Public Prosecutor's Office brought charges against two individuals, the defence argued that the Public Prosecutor's Office could not substantiate the attacks with conclusive evidence, and consequently the case was dismissed, whereupon the Public Prosecutor's Office lodged an appeal which was denied and recently a cassation appeal was filed.

C. The Committee's conclusions

- 285.** *The Committee recalls that, in the present case, the complainant organizations report numerous murders and acts of violence against trade union leaders and members, as well as impunity in that regard.*
- 286.** *The Committee also recalls that the situation of anti-union violence examined in the present case was part of the allegations of the complaint filed in 2012 against Guatemala under article 26 of the ILO Constitution concerning the alleged breach of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). The Committee observes that since its last consideration of the case, the ILO Governing Body decided at its November 2018 session to: (i) declare closed the procedure initiated under*

article 26 of the ILO Constitution concerning the above-mentioned complaint; (ii) firmly call on the Government, together with Guatemala's social partners, and with the technical assistance of the Office, to continue to devote all necessary efforts and resources to achieve a sustained and comprehensive implementation of the road map adopted in October 2013 as part of the follow-up to the above-mentioned complaint; and (iii) establish that the Government of Guatemala shall report to the Governing Body, at its October-November 2019 and October-November 2020 meetings, on the additional measures taken to implement the Road Map.

- 287.** *The Committee takes note of the Government's observations sent in communications dated 23 January, 4 May, 23 May, 23 July and 28 August 2019. The Committee once again deeply regrets the number of murders of members of the trade union movement since 2004 that, according to the data provided by the Government in October 2018 in the context of the follow-up by the Governing Body to the aforementioned complaint under article 26 of the ILO Constitution, has risen to 90 (the most recent murder reported by the Government and the trade unions being that of Mr David Figueroa García, Chairman of the Executive Board of the Workers' Union of San Carlos of Guatemala University, Petén, which occurred in July 2018). The Committee also notes with deep concern the numerous acts of violence reported in the complaint. The Committee once again draws the Government's attention to the fact that union rights can only be exercised in a climate free from violence, pressure and threats of any kind against trade union members, and that it is for governments to ensure that this principle is respected [see **Compilation of decisions and principles of the Freedom of Association Committee**, sixth edition, 2018, para. 84].*

Allegations of murder of members of the trade union movement and other acts of anti-union violence

- 288.** *The Committee takes note that according to the information provided by the Government, of the total 90 cases involving the deaths of trade union officials and members registered since 2004, 20 convictions were handed down in relation to 18 cases (two cases involving two rulings each) and four acquittals were issued. The Committee notes in particular that, since it last examined the case, prison sentences have been handed down in July 2019 to the perpetrators of the murders of Mr Tomás Francisco Ochoa Salazar, (leader of the SITRABREMEN trade union organization, murdered in 2017) and Mr David Figueroa García (Chairman of the Executive Board of the Workers' Union of San Carlos of Guatemala University, Petén, murdered in July 2018).*
- 289.** *The Committee also takes note that the Government mentions several institutional efforts aimed at increasing the effectiveness of investigations and criminal proceedings concerning murders of trade union officials and members, such as: (i) meetings held in December 2018 and August 2019 by the subcommittee on implementation of the road map (a tripartite body established in 2018 to ensure the implementation of the commitments made by the Government in 2013 following the complaint concerning non-observance by Guatemala of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), made by delegates to the 101st Session (2012) of the International Labour Conference under article 26 of the ILO Constitution), with the judiciary, the Public Prosecutor's Office and the Ministry of the Interior; (ii) plans to strengthen the Public Prosecutor's Special Investigation Unit with an additional investigator and assistant prosecutor; (iii) full implementation of the General Directive No. 1-2015 to ensure that the possible anti-union motive for the murders of members of the trade union movement are fully and systematically taken into account, as shown by the measures taken in investigations into recent murders; (iv) continued cooperation and joint investigations between the DEIC and the Public Prosecutor's Office; (v) collaboration in recent years with the CICIF regarding 12 murders of members of the trade union movement; (vi) the examination of five murder*

cases concerning trade union movement members by courts for high-risk cases and the availability of the judiciary to promptly examine two recent murder cases; and (vii) plans to reactivate trade union committees of the Public Prosecutor's Office and the Ministry of the Interior with a view to facilitate dialogue between the trade union movement and said institutions on the prevention and investigation of acts of anti-union violence.

- 290.** *The Committee also takes note of the information provided by the Government with respect to the progress of the investigations and criminal proceedings concerning specific murder cases of members of the trade union movement. In addition to the aforementioned convictions handed down in July 2019 concerning two recent murder cases, the Committee also takes note of the progress reported in January 2019 with respect to five other cases: (i) the prosecution of eight persons for murder and attempted murder in the case of the killing, in 2010, of Mr Bruno Ernesto Figueroa, an official of a subsidiary of the SNTSG; (ii) the arrest of one of the perpetrators of the murder, in 2008, of Mr Miguel Ángel Ramírez Enríquez co-founder of SITRABANSUR; (iii) the preparation for trial, before a court for cases of femicide, of the partner of Ms Brenda Marleni Estrada Tambito, Legal Adviser to UNSITRAGUA, who was murdered in 2016; (iv) the arrest of the person charged with culpable homicide of Mr Marvin Leonel Arévalo, board member of the Heavy Goods Transport Workers' Union, who was killed in 2018; and (v) the pre-trial detention, since April 2019, of the accused perpetrator of the murder of Mr Manuel de Jesús Ramírez, Secretary General of the Union of Technical and Administrative Support Workers of the Criminal Public Defence Institute. The Committee observes that with respect to four out of five cases, the Government has stated that the next steps of the proceedings would take place in February 2019, however, at present, no additional information has been received on the outcomes of these proceedings.*
- 291.** *The Committee also takes note that, following the request in its most recent report for specific information concerning the ongoing investigations regarding other murder cases, the detailed information provided by the Government does not report any specific progress (concerning the murder, in 2016, of Mr Eliseo Villatoro Cardona, Leader of SEMOT; the murder, in 2013, of Mr Carlos Antonio Hernández Mendoza, of the SNTSG; the murder, in 2014, of Mr José Estrada Navas, member of the CUSG; the murders of Mr Luis Haroldo García Ávila, Mr Amado Corazón Monzón and Mr Armando Donald Sánchez Betancourt, members of the Union of Commercial Workers of Coatepeque; the murder, in 2009, of Mr Julián Capriel Marroquín, Deputy Secretary General of the Union of Traders of the Public Square of Jocotán; the murders, in 2018, of Mr Alejandro García Felipe, General Secretary of a branch of the SNTSG, of Mr Domingo Nach Hernández and Mr Juan Carlos Chavarría Cruz, general secretaries of municipal workers' unions; and the attempted murder, in 2016, of Mr José Alejandro Chinchilla) nor did it indicate the closure of the investigations for having failed to identify the perpetrators (with respect to the murder, in 2013, of Mr Jorge Barrera Barco, member of the CUSG).*
- 292.** *The Committee takes due note of the range of information transmitted by the Government and appreciates the level of detail of the data provided on the status of the ongoing murder investigations. The Committee takes due note of the institutional initiatives reported and welcomes in particular the substantial tripartite and inter-institutional discussions held within the subcommittee on implementation of the road map. The Committee highlights the essential role that the subcommittee can play in conducting, through a tripartite approach, regular monitoring of the actions taken on anti-union violence and impunity, and to foster synergies between the various competent government institutions. In this regard, the Committee trusts that the subcommittee will achieve its objective of revitalizing the trade union committees of the Public Prosecutor's Office and the Ministry of the Interior. The Committee underlines that the inter-institutional efforts to improve efficiency in the investigations of acts of anti-union violence are particularly relevant given that the*

Government authorities are no longer supported by the CICIG, whose activities ceased on 3 September 2019.

- 293.** *Furthermore, the Committee welcomes the convictions handed down in July 2019 regarding two recent murders, as well as the Government's indication that the General Directive No. 1/2015 of the Public Prosecutor's Office is being applied more systematically, particularly with respect to recent murders. While also taking due note of the progress reported in respect of five other homicides, the Committee underlines that some of them occurred more than ten years ago, which is why it is of the utmost importance that all necessary measures be taken to speed up the resolution of such cases.*
- 294.** *The Committee has to further consider that, since it last examined the case in October 2018, the overall findings obtained in the investigation and the clarification of acts of anti-union violence show no significant change and that most of the issues that caused its deep concern at that time remain, particularly in relation to the fact that: (i) the number of murders that have led to convictions remains very low (18 out of 90 as well as one compulsory committal to a psychiatric hospital) despite the time that has elapsed since the events; (ii) the even smaller number of convictions (two) against those who instigated the crimes; and (iii) the very high number of cases being investigated, which, based on the description provided by the Government, show no immediate prospects of identifying those who instigated or perpetrated the crimes. In that connection, the Committee recalls once again that the absence of judgments against the guilty parties creates, in practice, a situation of impunity, which reinforces the climate of violence and insecurity, and which is extremely damaging to the exercise of trade union rights. [See **Digest**, *op. cit.*, para. 52]*
- 295.** *Additionally, in its three prior examinations of the case, the committee had observed with particular concern the lack of progress made in investigating the murders for which evidence of possible anti-union motives had been found (whether because numerous members of the same union had been killed, the CICIG or the Public Prosecutor's Office itself had already specifically identified a possible anti-union motive, or the victims were members of trade unions which, to the Committee's knowledge, were being targeted by anti-union attacks at the time of the events). In that connection, the Committee had referred to 20 victims who were members of the Union of Izabal Banana Workers (SITRABI); the Union of Workers of the Municipality of Coatepeque; the Union of Commercial Workers of Coatepeque; the Union of Minibus Drivers of the Camposanto Magnolia District; the SNTSG; the Union of Municipal Workers of Malacatán, San Marcos; the Union of Technical and Administrative Support Workers of the Criminal Public Defence Institute; and the Union of Migration Clerks [see 387th Report, para. 399, 382nd Report, para. 339 and 378th Report, para. 310]. In that respect, the Committee takes due note of the above-mentioned progress in investigations reported by the Government concerning the murder of Mr Bruno Ernesto Figueroa, of the SNTSG and the murder of Mr Miguel Ángel Ramírez Enríquez, of the Union of Technical and Administrative Support Workers of the Criminal Public Defence Institute. Nevertheless, the Committee regrets the fact that: (i) to date, of the 20 murders mentioned above, and despite the number of years that have passed since they were committed, only two convictions have been handed down; (ii) with the exception of the murders of Mr Bruno Ernesto Figueroa and Mr Miguel Ángel Ramírez Enríquez, the Government provides no specific information concerning the progress made in the investigations or the initiatives undertaken with respect to the other cases; (iii) with the exception of the Union of Commercial Workers of Coatepeque, the Committee still has no evidence of links being made between the investigations into the murders of several members of the same trade union; and (iv) despite its previous requests, the Committee still has no indication that the ongoing investigations are being reframed to take fully into account the victims' union activities.*

296. *In light of the foregoing, duly noting the continuing efforts of the Government, the findings reported and the difficulty involved in shedding light on the oldest cases of murder being examined in the present case, and also maintaining its deep concern with respect to the high level of impunity that prevails in relation to the allegations of numerous murders and acts of anti-union violence in the context of this complaint, the Committee again urges the Government, with the active participation and monitoring by the subcommittee on implementation of the road map, to continue to take and intensify, as a matter of urgency, all necessary measures to ensure efficiency in the investigations of all acts of violence against trade union leaders and members, with a view to identifying those responsible and punishing the perpetrators and instigators of such acts, taking the trade union activities of the victims fully into consideration in the investigations. In that connection, the Committee specifically urges the Government to: (i) maintain and strengthen the role of the subcommittee on implementation of the road map; (ii) facilitate, with the support of the subcommittee, the reactivation of the trade union committees in the Public Prosecutor's Office and the Ministry of the Interior; (iii) significantly increase the human and financial resources of its Special Investigation Unit; (iv) maintain and continue to strengthen the collaboration between the Special Investigation Unit and the DEIC of the Civil Police; (v) take the necessary measures to ensure the competent authorities dedicate the attention and resources required for the investigations of the murders indicated in paragraph 23 of this report; and (vi) continue to strengthen dialogue with the judiciary to ensure, through the courts for high-risk cases or other appropriate mechanisms, that cases of anti-union violence are promptly examined by criminal courts. The Committee requests the Government to keep it informed in this respect.*

Protection for members of the trade union movement who may be at risk

297. *In its previous examination of the case, taking note of the requests by the trade union movement to reassess the mechanisms for granting security measures, considering the concern over the upsurge in reported murders of members of the trade union movement between April and July 2018, and noting that the security measures granted were almost entirely to ensure perimeter protection and not personal protection, the Committee had urged the Government to re-examine, as soon as possible, the mechanisms for ensuring the protection of members of the trade union movement who may be at risk.*

298. *In that connection, the Committee takes notes that, according to the Government, the improvement of mechanisms for ensuring the protection of members of the trade union movement who may be at risk has given rise to substantial discussions in the subcommittee on implementation of the road map, particularly in relation to the possibilities of ensuring greater and more direct coordination between the Public Prosecutor's Office and the Interior Ministry in that regard. The Committee also takes note that, before said subcommittee, the Ministry of the Interior indicated that it was taking the necessary steps to reactivate the Special Investigation Unit for the analysis of attacks against human rights advocates, inoperative since 2018. The Committee also took note of the information on continuing operations of the 1543 emergency helpline and on the accessibility of protection for witnesses in cases of anti-union violence.*

299. *In addition, the Committee takes note of the general data provided by the Government in July 2019 on the protection measures afforded to members of the trade union movement who may be at risk, according to which: (i) in 2018, out of the 133 requests for protection measures received, 129 perimeter protection measures and two personal security measures were granted, and in two cases no measures were taken; and (ii) so far in 2019, out of the 14 protection measures requested, 12 perimeter security measures and one personal security measure were granted, and one request was rejected.*

- 300.** *The Committee takes due note of this information. The Committee's attention is drawn to the sharp decline in the requests for protection measures registered from January to August 2019, compared to 2017 and 2018; the persistence of a very low percentage of personal security measures granted, as well as the suspension of operations of the Special Investigation Unit for the analysis of attacks against human rights advocates of the Ministry of Interior since October 2018. Recalling that trade union rights can only be exercised in a climate that is free from violence, pressure or threats of any kind against trade union members, and that it is for governments to ensure that this principle is respected [see **Digest**, op. cit., para. 84], the Committee urges the Government, with the active participation and monitoring by the subcommittee of the implementation of the road map, to take the necessary steps to: (i) resume and strengthen the trade union committees and the Special Investigation Unit for the analysis of attacks against human rights advocates of the Ministry of the Interior; (ii) improve coordination between the Public Prosecutor's Office and the Ministry of the Interior in the granting and handling of security measures for member of the trade union movement; and (iii) provide the necessary funds to ensure that all security measures required, including personal measures, are granted as soon as possible to members of the trade union movement who may be at risk. The Committee requests that the Government be kept informed in this respect.*
- 301.** *In its previous examination of the case, having established that three of the four most recently reported murders in the context of this case involved leaders and members of the municipal trade unions, the Committee had urged the Government to take specific steps to ensure full respect for freedom of association in municipalities and to prevent further acts of violence against members of municipal trade unions. Furthermore, the Committee had also specifically urged the Government to immediately provide the appropriate protection measures to members of SEMOT who have received threats. The Committee takes note that, according to the Government, perimeter security measures are currently being provided to members from four municipal trade unions, including SEMOT. Taking note of the municipal elections taking place throughout the country on 16 June 2019, and that in the past, the establishment of new municipal authorities has, in some municipalities, been accompanied by acts of violence against local municipal trade unions, the Committee requests the Government to maintain full vigilance and take all the necessary measures, including through the provision of personal protection measures, to prevent and stop homicides and all acts of violence against municipal trade unions.*

The Committee's recommendations

- 302.** *In light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) The Committee expresses once again its deep concern over the seriousness of this case, given the many instances of murder, attempted murder, assaults and death threats and the climate of impunity; the Committee urges the Government to take all necessary measures to prevent the commission of any further acts of anti-union violence.*
 - (b) The Committee again urges the Government, with the active participation and monitoring by the subcommittee on implementation of the road map, to continue to take and intensify, as a matter of urgency, all the necessary measures to ensure efficiency in the investigations of all acts of violence against trade union leaders and members, with a view to identifying those responsible and punishing the perpetrators and instigators of such acts, taking the trade union activities of the victims fully into consideration in the*

investigation. In that connection, the Committee specifically urges the Government to: (i) maintain and strengthen the role of the subcommittee on implementation of the road map; (ii) facilitate, with the support of the subcommittee, the reactivation of the trade union committees of the Public Prosecutor's Office and the Ministry of the Interior; (iii) significantly increase the human and financial resources of its Special Investigation Unit; (iv) maintain and continue to strengthen collaboration between the Special Investigation Unit and the DEIC of the Civil Police; (v) take the necessary measures to ensure the competent authorities dedicate the attention and resources required for investigations of murders indicated in paragraph 295 of this report, and (vi) continue to strengthen dialogue with the judiciary to ensure, through the courts for high-risk cases or other appropriate mechanisms, that cases of anti-union violence are promptly examined by criminal courts. The Committee requests the Government to keep it informed in this respect.

- (c) The Committee urges the Government to, with the active participation and monitoring of the subcommittee of the implementation of the road map, to take the necessary steps to: (i) resume and strengthen the trade union committees and the Special Investigation Unit for the analysis of attacks against human rights advocates of the Ministry of the Interior; (ii) improve coordination between the Public Prosecutor's Office and the Ministry of the Interior in the granting and handling of security measures for member of the trade union movement; and (iii) provide the necessary funds to ensure that all security measures required, including personal measures, are granted as soon as possible to members of the trade union movement who may be at risk. The Committee requests that the Government keep it informed in this respect.*
- (d) The Committee requests the Government to maintain full vigilance and take all the necessary measures, including through the provision of personal protection measures, to prevent and stop homicides and all acts of violence against municipal trade unions.*
- (e) The Committee once again draws the special attention of the Governing Body to the extremely serious and urgent nature of this case.*

CASE NO. 3266

DEFINITIVE REPORT

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

Allegations: The complainant organization alleges that the requirement for trade unions to obtain a tax identification number undermines the principles of free association since it grants the administrative authorities excessive knowledge of and control over the activities and internal administration of trade unions

- 303.** The complaint is contained in a communication from the Indigenous and Rural Workers' Trade Union Movement of Guatemala (MSICG) dated 20 February 2017.
- 304.** The Government sent its reply in two communications dated 20 December 2017 and 3 May 2019.
- 305.** Guatemala has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Collective Bargaining Convention, 1981 (No. 154).

A. The complainant's allegations

- 306.** In its communication dated 20 February 2017, the MSICG alleges that the requirement to provide a tax identification number (NIT) to open bank accounts and to deduct taxes on donations to trade unions grants the tax authorities excessive knowledge of and control over the activities and internal administration of trade unions, which undermine the right of trade unions to freely organize their activities and internal matters without interference.
- 307.** The complainant indicates that, for many years, the ILO's supervisory bodies have called into question the existence of a system of supervision over trade unions in Guatemala, which obliged unions to report on the management of their resources once a year to the General Directorate for Labour. The ILO's observations had led to the approval of a series of reforms to the Labour Code in 2001 that, while not completely eliminating supervision over trade unions, temporarily alleviated the pressure exerted over them. However, the tax administration soon replaced this supervisory system and began to request trade unions to provide an NIT to process their members' trade union dues, requiring: (i) the appointment of an accountant to apply for registration on the tax register; (ii) the approval of books and evidence different from those required under the Labour Code; and (iii) the subjection of trade unions to tax controls by the Superintendent for Tax Administration (SAT). This practice was the subject of a complaint to the Committee on Freedom of Association, which made its recommendations under Case No. 2259. The complainant indicates that although the Government has not complied with the recommendations of the case mentioned, it has in practice stopped requiring trade unions to undergo the aforementioned tax controls.

- 308.** However, the complainant alleges that the Government has recently started to require trade unions to provide an NIT to open accounts within the banking system, which has a bearing on the management and handling of trade union funds. The complainant also states that Decree No. 10-2012 and governmental agreement No. 223-2013 impose the legislative obligation to provide an NIT in order to deduct taxes on donations made to trade unions. The complainant states that the SAT requires trade unions to undergo the aforementioned tax controls to be assigned an NIT (article 19 of Decree No. 6-91, of the Tax Code), indicating in that regard that article 30 of the Tax Code obliges “all natural and legal persons, including the State and its decentralized and independent agencies” to provide SAT employees with “information on records, contracts and commercial, professional and other activities with third parties, which is required for the purposes of calculating and generating taxes” and that the powers described therefore allow the tax administration to review the trade union’s assembly decisions, bylaws, executive board agreements and accounts.
- 309.** The complainant states that the regulation preceding Decree No. 10-2012 and Governmental Agreement No. 223-2013 exempt trade unions from taxes and permitted affiliates to deduct ordinary and extraordinary dues from income tax arising from donations and other contributions, clarifying that interested parties had the subjective right to report and pursue those deductions if desired. It also states that, by subjecting trade unions to tax controls, they are simultaneously subjected to the obligations envisaged under the Labour Code as well as tax legislation, in contravention of article 210 of the Labour Code, which establishes that trade unions are not subject to tax obligations. This also undermines the principle of speciality since the Labour Code governs trade unions and their relations with affiliates.
- 310.** Finally, the complainant criticizes the absence of remedy against inspection by the SAT in the light of the powers conferred to that institution by law, and states that the trade unions concerned are unable to demonstrate any resistance to this legislation since there is a system of civil penalties that could allow the raiding of trade union offices and the seizure of all physical and electronic records, files, computing equipment and other documentation related to their activities (articles 69 and 71 of the Tax Code and article 358, D of the Criminal Code).

B. The Government’s reply

- 311.** In its communications dated 20 December 2017 and 3 May 2019, the Government, referring to the requirement for trade unions to submit an NIT, indicates that: (i) in accordance with article 120 of the Tax Code, all contributors and officials are obliged to register with the tax administration before initiating the activities in question; (ii) to date, most trade unions legally established in Guatemala have joined the register of contributors in order to comply with their tax obligations (accreditation of trade union dues) or to receive domestic or foreign donations, goods or services, since such organizations could not receive such donations, goods or services without an NIT; (iii) to date, no trade unions registered on the Unified Tax Register have demonstrated any opposition to registration since they fulfilled the requirements, stating that the process was free, and those that have sought exemption from the different taxes set forth in law have been granted such exemptions through the corresponding resolution; (iv) in this case, the reluctance of the MSICG to register with the SAT is due to the fact that the organization has no legal status even though it has been requested to provide documentation demonstrating its legal establishment and give the name of its legal representative to the Trade Union Register of the Ministry for Labour and Social Welfare; (v) the SAT does not seek to hinder and/or inspect trade union activity as the control and inspection of trade union activity is not within its remit; (vi) the NIT is a tax obligation enshrined in Guatemalan legislation that requires all natural and legal persons to fulfil their obligations before the SAT to ensure transparency in the management of funds; and (vii) pursuant to article 8 of Convention No. 87, trade unions are obliged to respect the law,

and the Committee on Freedom of Association had previously declared that questions concerning general tax legislation fall outside its competence unless such legislation is used in practice to interfere in trade union activities.

C. The Committee's conclusions

- 312.** *The Committee notes that, in this complaint, the complainant alleges that the requirement for trade unions to obtain a NIT to open bank accounts and to deduct taxes on donations to trade unions in practice implies that trade unions are subjected to tax controls by the SAT, which undermines the right of trade unions to freely organize their activities and internal matters without interference from the authorities. The Committee also notes that the complainant states that, in Case No. 2259, the Committee on Freedom of Association had already issued recommendations on tax control over trade unions but that the need to obtain an NIT to open bank accounts and deduct taxes on donations to trade unions are new elements that should be examined by the Committee.*
- 313.** *The Committee notes the complainant's allegations that: (i) the allocation of an NIT subjects trade unions to tax controls; (ii) decree no. 10-2012 and Governmental Agreement No. 223-2013 establish the obligation to provide an NIT in order to deduct taxes on donations to trade unions; (iii) article 30 of the Labour Code creates the obligation to provide SAT employees with information on records, contracts, commercial and professional activities with third parties, including the collection of trade union dues, third-party donations and any expenses exceeding 100 quetzales, which are subject to inspection by the administrative authority if they are to be deducted from income tax; (iv) the inspection powers of the SAT extend to the review of the trade union's assembly decisions, bylaws, executive board agreements and accounts, to the extent that it is possible for this institution to exercise de facto supervision and control over trade unions; (v) article 225 of the Labour Code, in accordance with all legislation prior to decree no. 10-2012 and Governmental Agreement No. 223-2013, establishes income tax exemption for trade unions; (vi) as trade unions are subject to tax controls and the obligations of the Labour Code, they are therefore subject to two forms of control; and (vii) in accordance with the powers conferred to the SAT by law, the trade unions concerned cannot demonstrate any resistance to their inspection activities since there is a system of civil penalties that may permit, among other actions, the raiding of trade union offices and the seizure of records under the Tax Code and the Criminal Code.*
- 314.** *The Committee observes that the Government, for its part, states that: (i) in the interest of transparency in the management of funds, article 120 of the Tax Code establishes that all contributors and officials are obliged to register with the tax administration; (ii) most trade unions legally established in Guatemala have joined the register of contributors in order to comply with their tax obligations or to receive domestic or foreign donations, goods or services; (iii) to date, no trade unions registered in the Unified Tax Register have demonstrated any opposition to registration since they meet the established requirements and have been granted exemptions from the different taxes as conceded by law; and (iv) the reluctance of the MSICG to register with the SAT is due to the fact that the organization has no legal status, despite that it has been requested to provide documentation demonstrating its legal establishment and naming its legal representative to the Trade Union Register of the Ministry for Labour and Social Welfare.*
- 315.** *In relation to Case No. 2259 (closed) described by the complainant, the Committee recalls that, in the last follow-up to the case, while taking note of the information communicated by the Government regarding the State's alleged supervision and interference in the management of trade union funds, the Committee concluded that there had been no interference of the public authorities in the financial affairs of trade unions [see 348th*

Report, Case No. 2259, November 2007], and therefore the Committee did not pursue the examination of these allegations.

- 316.** *The Committee observes that in this case the complainant alleges the existence of two new elements in comparison with the situation examined by the Committee in Case No. 2259, namely: (i) the practical requirement of requesting an NIT to open a bank account; and (ii) the legislative requirement to provide an NIT to obtain exemption for donations made to trade unions under decree no. 10-2012 and Governmental Agreement No. 223-2013. The Committee observes, however, that the allegations presented by the complainant only indicate that, in the context of the situation described, the powers of the tax authority may constitute a potential risk to trade unions and that the complaint contains no concrete allegations that the SAT would exercise any supervision or interfere in the internal affairs of trade unions. Recalling that questions concerning general tax legislation fall outside its competence unless such legislation is used in practice to interfere in trade union activities [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 28] and given the absence of concrete allegations of interference in trade union activities, the Committee will not pursue its examination of this case.*

The Committee's recommendation

- 317.** *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. 3135

DEFINITIVE REPORT

Complaint against the Government of Honduras presented by the Single Confederation of Workers of Honduras (CUTH)

Allegations: the complainant organization alleges the initiation of disciplinary proceedings for the imposition of penalties and dismissals, other anti-union acts, and the refusal by the state entity Executive Directorate of Revenues (DEI) to negotiate with the trade union

- 318.** The Committee last examined this case (submitted in August 2015) at its June 2016 session, when it submitted an interim report to the Governing Body [see 378th Report, approved by the Governing Body at its 327th Session (June 2016), paras 401–419]. [Link to previous examinations](#)
- 319.** The Government sent its observations in communications dated 28 September 2016 and 28 February 2019.
- 320.** Honduras 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

321. At its June 2016 session, the Committee made the following recommendations [see 378th Report, para. 419]:

- (a) The Committee requests the Government to inform it of the results of: (i) the appeal for the protection of constitutional rights (*amparo*) lodged with the Constitutional Chamber of the Supreme Court in respect of the dismissal of Mr Jorge Alberto Argueta Romero and Mr Carlos Alberto Rodríguez; and (ii) the action of unconstitutionality lodged by the Workers' Union of the Executive Directorate of Revenues (SITRADEI) against the use of polygraph tests.
- (b) The Committee requests the complainant organization to provide more detail about the allegations concerning: (i) the initiation of disciplinary proceedings for the purpose of dismissing trade unionists who do not agree to a polygraph test; and (ii) the detention of trade unionists, as a result of the intervention of police and military officials at the country's customs posts, claiming alleged acts of corruption.

B. The Government's reply

322. In its communications dated 28 September 2016 and 28 February 2019, the Government states the following:

- (i) On 23 January 2015, the Constitutional Chamber of the Supreme Court ordered the dismissal of the appeal for *amparo* filed by the representative of Mr Jorge Alberto Argueta Romero in respect of the decision issued by the Labour Court of Appeal, finding that the decision of the competent judicial body was duly justified.
- (ii) As to the dismissal of Mr Carlos Alberto Rodríguez Espinal, on 21 June 2016, the Constitutional Chamber of the Supreme Court denied the appeal for *amparo* for the union leader, thus confirming the decision of the Labour Court of Appeal.
- (iii) With regard to the action of unconstitutionality lodged by SITRADEI against the use of polygraph tests, the Government reports that in its decision dated 30 March 2016, the Supreme Court ended the stay in proceedings by finding a previous judgment from the same chamber, on the same grounds, in which it had ruled that such tests did not violate constitutional rights and guarantees.

323. Lastly, the Government indicates that the Executive Directorate of Revenues (DEI) was closed and liquidated through Executive Decree No. PCM-083-2015 of 26 November 2015 and that the Presidential Commissioner for Tax Administration now exercises tax-related powers and functions.

C. The Committee's conclusions

324. *The Committee recalls that the present case refers to alleged actions or omissions by the DEI, which occurred between August 2011 and January 2015, consisting of: the intention to destroy SITRADEI through anti-union harassment of SITRADEI officials and members; the initiation of disciplinary proceedings, with the aim of dismissing trade unionists who would not agree to a polygraph test; and the arrest of trade union members following the intervention of police and military officials at the country's customs posts, claiming alleged acts of corruption.*

325. *With regard to the allegations concerning the anti-union dismissals of Mr Jorge Alberto Argueta Romero and Mr Carlos Alberto Rodríguez, the Committee duly notes that on*

23 January 2015, the Constitutional Chamber of the Supreme Court ordered the dismissal of the appeal for amparo lodged by Mr Jorge Alberto Argueta Romero and that on 21 June 2016, it denied the appeal for amparo for Mr Carlos Alberto Rodríguez, thus upholding their dismissals.

- 326.** *As to the action of unconstitutionality lodged by SITRADEI against the use of polygraph tests, the Committee duly notes that the Supreme Court ended the stay in proceedings by finding a previous judgment from the same chamber, in which it had ruled that such tests did not violate constitutional rights and guarantees. Recalling that in its previous examination of the case, the Committee recognized the workers' fear that polygraph tests could be used for anti-union purposes, the Committee trusts that should the Government receive any complaints relating to the use of polygraph tests for anti-union purposes, it will ensure that the appropriate investigations are conducted as soon as possible.*
- 327.** *With respect to the allegations concerning the initiation of disciplinary proceedings and the arrest of trade union members, the Committee observes that the complainant organization does not provide the requested information. In these circumstances, in the absence of any additional information from the complainant, the Committee will not pursue the examination of these allegations.*

The Committee's recommendation

- 328.** *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. 3261

DEFINITIVE REPORT

Complaint against the Government of Luxembourg presented by the Confederation of Christian Trade Unions of Luxembourg (LCGB)

Allegations: The complainant organization alleges that the refusal of the National Conciliation Service to grant a request for failure to reach an agreement constitutes an infringement of the right to strike

- 329.** This complaint is contained in a communication from the Confederation of Christian Trade Unions of Luxembourg (LCGB) dated 21 March 2017.
- 330.** The Government sent its observations on 2 June 2017 and 26 July 2019.
- 331.** Luxembourg 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

- 332.** In a communication dated 21 March 2017, the LCGB indicates that in September 2014, together with the Independent Trade Union Confederation of Luxembourg (OGB-L), it requested negotiations on the renewal of the collective agreement for staff of Cargolux Airlines International (“the company”).
- 333.** The complainant explains that the company’s management terminated the collective agreement dated 29 December 2014 on the basis of article L. 162-10 (1) of the Labour Code, such that under article L. 162-10 (2), the agreement ceased to have effect on 1 December 2015.
- 334.** By a letter dated 15 January 2015, the unions that had signed the complaint, namely, the LCGB and the OGB-L, referred the matter to the National Conciliation Service (ONC) set up under the Minister responsible for labour in accordance with L. 163-2 of the Labour Code, considering that after eight meetings the negotiations could be considered to have failed.
- 335.** The complainant alleges that after the matter was referred to the ONC, the latter proposed several dates for the initial meeting of the Joint Committee (26 February, 5 March and 12 March 2015) but that all of the meetings arranged by the ONC were cancelled at the express request of Cargolux.
- 336.** The LCGB states that: (i) no settlement of the dispute was reached within the time limit established by law, namely, under article L. 164-5 (4) in conjunction with article L. 164-2 (3) of the Labour Code; and (ii) consequently, as a majority union and a party to the dispute, it sent a letter to the ONC on 9 December 2015 in which it declares, on the basis of article L. 164-5 of the Labour Code, that there has been failure to reach an agreement and requests the ONC to issue an official report of failure to reach an agreement in accordance with article L. 164-5 (4) of the Code. The LCGB states that:

According to article L. 164-5:

- (1) The conciliation process shall be concluded either by the signature of a collective agreement or an agreement in accordance with chapter V of this Title, or by an official report of failure to reach an agreement.
- (2) The settlement of a dispute shall result from the signature of an agreement between the parties to the dispute that are qualified to sign and ratified, as appropriate, by their competent bodies.

In the absence of agreement of all unions in the workers’ delegation, the agreement shall be valid if signed by those unions that have a majority mandate, in accordance with article L. 162-4 (4).

Failure to reach an agreement can be recorded by a unanimous vote of both groups within the Joint Committee.

- (3) If a settlement is not reached within 16 weeks from the initial meeting of the Joint Committee, a party or the parties to the dispute may declare failure to reach an agreement.
- (4) The Secretary shall draft minutes signed by the Chairperson.

According to article L. 164-2 (3), the initial meeting of the Joint Committee must take place no later than the first day of the sixth week following the date on which the request is received by the President of the ONC.

In the event of an appeal, the initial meeting shall take place no later than 15 days after the decision of the administrative courts becomes final.

- 337.** The complainant alleges that the ONC, by its decision of 10 December 2015, refused to grant the request for an official report of failure to reach an agreement on the grounds that the necessary conditions had not been met since, on the one hand, the 16-week period from the initial meeting of the Joint Committee had not started to elapse, as such a meeting had never taken place and, on the other hand, the LCGB was not considered to be a party to the dispute. An administrative appeal against this decision was lodged on 11 January 2016.
- 338.** The LCGB considers that such an administrative practice is patently inconsistent with the principles of freedom of association and collective bargaining in that it clearly infringes the right to strike.

B. The Government's response

- 339.** In a communication dated 6 June 2017, the Government conveys its position concerning the appeal of the LCGB against the decision of the ONC (Appeal No. 37.395: Trade union organization LCGB et al. v. Minister for Labour, Employment and the Social and Solidarity Economy – National Conciliation Service).
- 340.** The Government acknowledges the difficulty of setting a date for the ONC meeting, both on the part of the employer and of the unions themselves, and highlights a clear disagreement between the LCGB and the OGB-L. The Government observes that the parties have never had the serious and unanimous will to take part in an ONC meeting. In the Government's view, the parties have therefore placed themselves outside the conciliation process provided for by law.
- 341.** The Government states that on 9 December 2015, the LCGB declared failure to reach an agreement, whereas in its view it was not qualified to do so. The Government underscores that in order to declare failure to reach an agreement under article L. 164-5 (3) of the Labour Code, one or more trade unions that were members of the negotiating committee must meet the majority conditions established under article L. 162-4 (4) of the Labour Code which would allow them to sign a collective labour agreement.
- 342.** On the basis of this text, the Government indicates that a trade union or unions that wishes to sign a collective agreement must have obtained at least 50 per cent of votes at the most recent elections to the staff delegations of the enterprises or establishments that fall within the scope of the collective agreement; only votes won by candidates who run under the banner of the applicant trade union or unions shall be taken into consideration, excluding so-called neutral candidates. In the present case, the Government demonstrates, supported by figures, that the LCGB does not meet this condition:

At the elections to the staff delegations of 3 August 2011, the LCGB obtained 6,034 votes, whereas the 50 per cent threshold was $(5,626 + 6,034 + 3,066 = 14,726 \div 2)$ 7,363 votes.

At the elections to the staff delegations of 13 November 2013, la LCGB obtained 9,447 votes, whereas the 50 per cent threshold was $(7,364 + 9,447 + 2,852 = 19,663 \div 2)$ 9,831.5 votes.

343. In a communication dated 26 July 2019, the Government indicated that the Administrative Court, in a ruling of 17 October 2017, had upheld the decision of the Administrative Tribunal of the Grand Duchy of 4 April 2017 declaring the LCGB's appeal inadmissible.

C. The Committee's conclusions

344. *The Committee notes that, according to the complainant, the refusal of the ONC to grant its request for failure to reach an agreement constitutes an infringement of the right to strike and that, in this case, the refusal to record failure to reach an agreement is the result of the employer's intent to delay the work of the Joint Committee, and thus the date from which the parties to the dispute, or one of the parties thereto, is able to declare failure to reach an agreement.*

345. *The Committee notes that the Government acknowledges the difficulty of establishing the date of the first ONC meeting, but that according to the Government both the employer and the unions themselves bear responsibility in this regard. The Government also suggests that the LCGB and the OGB-L are divided on this matter. The Committee also notes the Government's indication that the LCGB did not meet the requirement of obtaining at least 50 per cent of votes at the most recent elections to the staff delegation of the enterprises or establishments that fall within the scope of the collective agreement and that the LCGB was therefore not entitled to declare failure to reach an agreement.*

346. *The Committee notes that the judgments provided by the Government do not address the substance and do not lead to the conclusion that there has been any administrative wrongdoing on the part of the ONC with regard to the failure to reach an agreement. In this respect, the Committee observes according to these judgments that the ONC does not establish but merely "records" failure to reach an agreement. The Committee considers, in view of the information before it, that it does not have sufficient evidence to call into question the conclusions of the administrative court and to consider that the delay caused and the action of the ONC constituted a procedural irregularity and infringed the principles of freedom of association.*

347. *Furthermore, the Committee takes note of a statement published by the LCGB on 6 August 2019 stating that the LCGB, the OGB-L and the management of the company had signed two new collective agreements, the first covering the period from 1 December 2018 to 31 December 2019 and the second covering the period from 1 January 2020 to 31 December 2022. Under these circumstances, the Committee considers that this case does not call for further examination.*

The Committee's recommendation

348. *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. 3334

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

**Complaint against the Government of Malaysia
presented by
the International Union of Food, Agricultural, Hotel, Restaurant, Catering,
Tobacco and Allied Workers' Associations (IUF)**

*Allegations: The complainant alleges violations
of freedom of association and collective
bargaining rights*

- 349.** The complaint is contained in a communication dated 16 July 2018 from the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF).
- 350.** The Government provided its observations in communications dated 12 March and 10 September 2019.
- 351.** 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

- 352.** In its communication dated 16 July 2018, the IUF alleges violations of freedom of association and collective bargaining rights by the management of the Hilton Kuala Lumpur Hotel (hereafter "the hotel").
- 353.** The IUF alleges that the Government of Malaysia has failed to effectively uphold its obligations under Conventions Nos 98 and 87 by allowing the management of the hotel to exploit the weakness of the legal industrial relations system for the past five years to prevent workers employed at the hotel from legally forming and registering a trade union and exercising their right to collective bargaining. The IUF points out that these obstacles to the exercise of freedom of association and collective bargaining are systemic and are not limited to this case, the details of which, it outlines as follows.
- 354.** On 8 April 2013, the hotel workers submitted a claim for recognition of the National Union of Hotel, Bar and Restaurant Workers (NUHBRW) as their collective bargaining representative in a letter to the management. Following the request for recognition, on 30 April 2013, the union informed the Director-General of Industrial Relations that the hotel management had not responded to their letter within the required 21 days. The hotel had eventually responded to the union on 6 May 2013 by denying the recognition on the grounds that the management was unconvinced that the union had recruited a majority of the employees as members.
- 355.** The union wrote to the Director-General of Industrial Relations on 3 June 2013 requesting that a secret ballot be held as soon as possible. On 19 June 2013, the union received a letter dated 23 May 2013 from the Director-General of Industrial Relations requesting specific documents; the union provided the requested documents that same day.

- 356.** On 24 July 2013, the union wrote to the Director of Trade Unions requesting the results of the investigation to determine the scope of union representation so that the union could formally request the Director-General of Industrial Relations to fix a date for a secret ballot election. On 15 August 2013, the union received a reply from the Director of Trade Unions stating that the conclusions of the investigation had been forwarded to the Director-General of Industrial Relations on 10 July 2013. The union accordingly wrote to the Director-General of Industrial Relations on 20 August 2013 requesting it to hold a meeting to fix the date for the secret ballot as soon as possible.
- 357.** On 13 September 2013, the union once again wrote to the Director of Industrial Relations Kuala Lumpur stating that it had been informed that the Department was waiting for the hotel to submit a list of its employees before calling a meeting to fix the date for the secret ballot. The union emphasized that the hotel could easily furnish the list of names since it was computerized, hence, there was no acceptable reason for the delay.
- 358.** The Director of Industrial Relations Kuala Lumpur wrote to the union and the hotel on 22 October 2013 advising that a meeting was scheduled for 11 November 2013. During the meeting, the union was informed that the hotel had disputed the inclusion of employees in the position of team leader/supervisor. The hotel claimed that they should be excluded from the union membership and representation as their positions entail serving in a managerial, executive, confidential or security capacity, categories referenced in section 9 of the Industrial Relations Act (IRA), 1967. The union offered to exclude the workers in disputed positions from the secret ballot and to proceed with the election on the understanding that the status of the contested employees could be resolved subsequently. The hotel maintained, however, that once excluded from the secret ballot, the disputed employees were to be definitively excluded from the possibility of union membership and representation. The union rejected this proposal and requested the hotel to provide a list of names and job descriptions of the team leaders/supervisors for the next meeting scheduled for 22 November 2013.
- 359.** During the 22 November 2013 meeting, the hotel management declared that out of a total workforce of 750 employees, 200 were in the position of team leaders/supervisors and ineligible for union membership; it rejected the union's request to furnish a list of their names, positions and responsibilities. The management has also insisted that no secret ballot could be held until the scope of union representation was defined. A Government representative chairing the meeting indicated that she would interview the employees and submit an official report.
- 360.** In a letter dated 19 March 2014, the Director of Industrial Relations Kuala Lumpur informed both parties that she had officially reported her findings for further action. Following further delay and communication by the union, on 14 July 2014, the Director-General of Industrial Relations informed both parties that the Government had determined, pursuant to section 9 of the IRA, that the positions of team leader (food and beverages operations), kitchen coordinator (culinary department), secretary (engineering department) and bell captain involved managerial, executive, confidential and security capacity and therefore, these employees were ineligible for union membership.
- 361.** On 17 July 2014, the union acknowledged receipt of the decision and once again requested the Director of Industrial Relations Kuala Lumpur for a meeting to schedule a secret ballot. On 24 September 2014, when the union inquired by phone why their letter remained unanswered, it was informed that the hotel had failed to respond and would face prosecution. On 30 September 2014, the union sent a letter inquiring as to the progress of the prosecution. In his reply, the Director-General of Industrial Relations indicated that the investigation had been suspended due to the judicial review of the scope of representation sought by the hotel

in the Court of Appeal and that the investigation would continue following the outcome of the appeal.

- 362.** On 15 July 2017, more than four years after the union's application to register, it was informed by the Department of Industrial Relations Kuala Lumpur that the appeal filed by the hotel was still pending. A conciliation meeting between the parties was scheduled for 25 July 2017. As the hotel management failed to attend it, another meeting was scheduled for 5 September 2017. However, the management failed to attend it as well.
- 363.** When representatives of the management and the union met at the Department of Industrial Relations Kuala Lumpur on 2 October 2017 to sign a memorandum for a secret ballot to take place at the hotel on 29 November 2017 between 10 a.m. and 4.30 p.m., the management objected to the election venue. On 30 October 2017, the Department of Industrial Relations informed the hotel in writing that the ballot would be held as scheduled at the hotel premises and requested its full cooperation, failing which it would face prosecution for violation of the IRA and Regulations (2003). The voting process was prevented from proceeding when the hotel management announced that they had filed a court application challenging the use of the company as the election venue.
- 364.** On 22 May 2018, the High Court dismissed the hotel application and authorized the secret ballot to take place at the hotel premises. The complainant points out that assuming that there are no further legal obstacles, if the election takes place it will be on the basis of an employee list agreed to in 2013, which does not take into account the changes that occurred in the hotel staffing and arbitrarily excludes a large number of staff on the basis of an imputed managerial authority, confidentially and security grounds.
- 365.** The IUF alleges that the requirement that both parties agree on a list of workers in order for a secret ballot to be held allows an employer to block the recognition of a union for an indefinite period. It further alleges that the Department of Industrial Relations lacks sufficient authority to compel the employer to cease repeatedly challenging the list. According to the IUF, such an abuse of the system is not limited to the present case. On 31 May 2000, the NUHBRW applied for recognition at the Kuala Lumpur Hotel Istana; the legal recognition was only granted on 28 February 2017. Similarly, it applied for recognition at the KLIA Airport Hotel on 26 July 2005; the recognition was approved only on 18 July 2013. The IUF thus considers that violations of freedom of association and collective bargaining are systemic.
- 366.** In addition, the IUF considers that the broad definition of "team leader/supervisor" allowing the exclusion from union eligibility of some 200 workers at the hotel constitutes an egregious violation of freedom of association. The complainant also alleges that the system of secret ballot elections, as currently established in practice, may allow for workers to be denied their rights. In this respect, it considers that the decision by the Department of Industrial Relations to hold the secret ballot in a large establishment where workers are employed on continual shifts for a mere six-and-a-half hours effectively disenfranchises many employees and allows the employer to limit participation through scheduling, rostering, etc. According to the IUF, any election, if it is to have democratic legitimacy, must clearly take place over a longer period and in a manner which permits a maximum number of workers to take part without undue inconvenience. The IUF questions whether the secret ballot process, as currently practised, meets this criterion.
- 367.** The complainant believes that to remedy the ongoing violations at the hotel, the Government needs to engage in a fundamental review of the current laws and procedures regarding the establishment of trade unions.

B. The Government's reply

- 368.** In its communications dated 12 March and 10 September 2019, the Government indicates that the IRA recognizes the right of workers to form a trade union and exercise their bargaining rights. For the purpose of collective bargaining, the law requires the trade union to seek recognition before inviting the employer to commence collective bargaining. The Government explains that the NUHBRW is a registered national union since 3 January 1963. However, the existing legislation (section 9(4) of the IRA) allows the management to challenge the union claim for recognition if it believes the union does not represent the majority of workers.
- 369.** The Government indicates that in the present case, the Department of Industrial Relations requested, on 20 May 2013, the Director-General of Trade Unions to instigate the issue of competency under 9(4B) of the IRA. The union was informed that the Department had not received Form B (Particulars of workmen) from the employer. Reminders were sent to the hotel on 22 August and 13 September 2013.
- 370.** The Department then conducted a meeting between the parties on 11 November 2013 during which the management claimed that workers employed as “team leaders” should be excluded from the union representation as they are employed under executive capacity and are not supposed to be represented by the union as per section 9(1) of the IRA. As a dispute arose regarding this matter, the Department requested the employer to lodge an official complaint under section 9(1A) of the IRA and the meeting was rescheduled for 22 November 2013. During that meeting, the Department informed the union and the hotel that an investigation regarding the capacity issue of “team leader” would be carried out. On 10 July 2014, the Minister of Human Resources made a decision that workers employed as team leaders are engaged in executive capacity and therefore ineligible for union membership. Afterwards, the Department could not proceed with a secret ballot as the management challenged the Minister’s decision on the capacity issue through a judicial review.
- 371.** Since the hotel management failed to attend several meetings, the Department decided that a secret ballot should be held on 29 November 2017 from 10 a.m. to 4.30 p.m. However, the Department had to stop the secret ballot process at 3 p.m. upon notification by the Attorney General that the hotel management obtained a stay order from the High Court. The Department is now awaiting feedback from the Attorney General’s Chamber regarding actions to be taken after the High Court’s decision. The Government indicates that the union did not raise any objection after the Department made the decision on the time allotted for the secret ballot.
- 372.** The Government emphasizes that the law does not deny the right to form a trade union and to bargain collectively to employees in managerial, executive, confidential or security capacity; the law only prohibits trade unions for managerial, executive, confidential or security capacity to represent employees that are not confined to their own categories.
- 373.** The Government indicates that the Ministry is embarking on the review of the recognition process both in the IRA and the Trade Union Act (1959). The review is being done with the ILO technical assistance through the Labour Law and Industrial Relations Reform Project.

C. The Committee's conclusions

- 374.** *The Committee notes that the complainant in this case, the IUF, alleges that for the past five years, the employer has been exploiting the weaknesses of the industrial relations system to prevent the workers of the hotel from legally forming and registering a trade union and exercising their right to collective bargaining. The Committee further notes that the*

allegations refer to the delays caused by the employer to recognize the union, an excessively broad definition of “team leader/supervisor”, which precludes many workers from exercising freedom of association and collective bargaining rights, and the existing secret ballot system, which, according to the complainant, allows employers to limit the participation of workers through various means. The Committee observes that while this case involves a particular company, the IUF alleges that due to the existing legislation and practice, violation of freedom of association and collective bargaining rights are systemic and that a fundamental review of the laws and procedures needs to be carried out.

- 375.** *The Committee notes that the Government does not dispute the particulars of the case as described by the IUF and which can be summarized as follows. The workers of the hotel first submitted a claim for recognition of the NUHBRW as their collective bargaining agent on 8 April 2013. On 6 May 2013, the management of the hotel denied the requested recognition on the grounds that the union had not recruited a majority of the employees as members. On 3 June 2013, the union requested the Director-General of Industrial Relations to hold a secret ballot. Once the Department of Trade Unions has carried out its investigation to determine the scope of the union representation, the union requested the Department of Industrial Relations to fix the date for the secret ballot by a letter of 20 August 2013. Having learned that the hotel management was delaying the submission of the list of its employees, the union wrote to the Director of the Industrial Relations Kuala Lumpur once again on 13 September 2013. On 22 October 2013, the Director of Industrial Relations Kuala Lumpur wrote to both parties informing them that a meeting was scheduled for 11 November 2013. During the meeting, the company disputed the inclusion of employees in the position of a “team leader/supervisor” in the scope of representation of the union, claiming that their positions entailed serving in managerial, executive, confidential or security capacity. Despite the union’s offer to exclude workers in the disputed positions from the secret ballot and to proceed with the election on the understanding that the status of the contested employees could be resolved subsequently, as allowed by section 9(1A) of the IRA, the hotel management allegedly maintained that once excluded from the secret ballot, the disputed employees were to be definitively excluded from the possibility of union membership and representation. The union opposed this position and requested a list of names and job description of the employees in question. At the next meeting, held on 22 November 2013, the hotel management declared that out of a total workforce of 750 employees, 200 were team leaders/supervisors. The hotel management insisted that no secret ballot could be held until the scope of the union representation is defined; at the same time, it denied the union’s request for a list of names, positions and responsibilities. The Director of Industrial Relations Kuala Lumpur indicated that she would interview the employees and submit an official report. On 14 July 2014, the Director-General of Industrial Relations informed both parties that the positions of team leader (food and beverages operations), kitchen coordinator (culinary department), secretary (engineering department) and bell captain were ineligible for union membership.*
- 376.** *On 17 July 2014, the union once again requested a meeting to schedule a secret ballot. On 24 September 2014, the union was informed that the hotel failed to respond to the Department of Industrial Relations’ request for a meeting and was going to face prosecution. On 1 October 2015, the union was informed by the Director-General of Industrial Relations that the hotel sought a judicial review of the scope of representation, which effectively suspended the investigation. As the appeal was still pending in July 2017, two conciliations meetings were scheduled in July and September of the same year, which the hotel management failed to attend.*
- 377.** *The parties finally met on 2 October 2017 to sign a memorandum providing for a secret ballot to take place at the hotel premises on 29 November 2017. The management objected and challenged the use of its premises for election purposes. On 22 May 2018, the High*

Court dismissed the company's application, authorizing the secret ballot to take place at the hotel. The Committee understands that as of the date of the Government's reply, the election has not taken place as it was awaiting feedback from the Attorney General's Chamber regarding the actions to be taken after the High Court's decision.

- 378.** *The Committee deeply regrets that six years after the union first submitted its requests for recognition, this question is still pending and consequently, the workers at the hotel are precluded from exercising their freedom of association and collective bargaining rights. The Committee notes that, on the one hand, the excessive delay has been caused by the employer's no-shows at meetings called by the Director-General of Industrial Relations and the systematic appeal of decisions and that, on the other, the legislation and practice in place would appear to facilitate such delays. The Committee regrets that, despite being invited to solicit information from the employers' organization concerned with a view to having its views as well as those of the enterprise concerned, no information has been provided by the Government in this respect.*
- 379.** *The Committee recalls that the recognition by an employer of the main unions represented in the undertaking, or the most representative of these unions, is the very basis for any procedure for collective bargaining on conditions of employment in the undertaking. It further recalls that the competent authorities should, in all cases, have the power to proceed to an objective verification of any claim by a union that it represents the majority of the workers in an undertaking, provided that such a claim appears to be plausible. If the union concerned is found to be the majority union, the authorities should take appropriate conciliatory measures to obtain the employer's recognition of that union for collective bargaining purposes [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, paras 1355 and 1366].*
- 380.** *Regarding the exclusion of workers employed as "team leader/supervisor" from union representation, the Committee notes the Government's indication that the law does not deny the right of the employees in managerial, executive, confidential or security capacity to form a trade union and exercise collective bargaining rights but only prohibits trade unions for those employees to represent employees from other categories. The Committee recalls that it has dealt with this issue in Case No. 2717 (see Report No. 356, paras 840–841). On that occasion, it noted, in particular:*

840. ... that the IRA provides no definitions for the above noted categories, but stipulates rather that whether a particular occupation falls into any of the said categories is a matter to be determined by either the Director-General of Industrial Relations (section 9(4)) or the Minister of Human Resources (section 9(5)).

841. As concerns managerial and supervisory staff, 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 requirements 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 [see Digest of decisions and principles of the Freedom of Association Committee, fifth edition, 2006, para. 247]. Moreover, the Committee has taken the view that the expression "supervisors" should be limited to cover only those persons who genuinely represent the interests of employers [see Digest, op. cit., para. 248]. The Committee has previously recognized that limiting the definition of managerial staff to persons who have the authority to appoint or dismiss is sufficiently restrictive to meet the condition that these categories of staff are not defined too broadly, and that a reference in the definition of managerial staff to the exercise of disciplinary control over workers could give rise to an expansive interpretation which would exclude large numbers of workers from workers' rights. ...

On that occasion, the Committee requested the Government to take the necessary measures to amend the IRA 1967 so as to ensure that: (1) the definition of managerial and supervisory staff is limited to those persons who genuinely represent the interests of employers, including, for example, those who have the authority to appoint or dismiss; and (2) managerial and supervisory staff have the right to establish their own associations for the purpose of engaging in collective bargaining (see Report No. 356, para. 841).

- 381.** *The Committee notes the Government's indication that it was in the process of amending the provisions of the IRA and the Trade Union Act dealing with recognition, in cooperation with the ILO. The Committee expects that the necessary legislative amendments aimed at ensuring that the definition of managerial and supervisory staff is limited to those persons who genuinely represent the interests of employers, including, for example, those who have the authority to appoint or dismiss, will be prepared in consultation with the social partners and adopted without further delay. It requests the Government to keep it informed of the developments in this regard. In the meantime, the Committee requests the Government to take the necessary measures to ensure that the secret ballot for the recognition of the NUHBRW as the collective bargaining agent of the workers in question is held without delay, either on the basis of the updated employee list or on agreement that the status of the contested employees will be resolved subsequently. It requests the Government to keep it informed in this respect.*
- 382.** *As to the allegation that the secret ballot procedure allows employers to limit the participation of workers through various means, the Committee requests the Government to review in consultation with the social partners the existing secret ballot system in the framework of the above-mentioned legislative reform. It requests the Government to keep it informed in this regard.*
- 383.** *The Committee wishes to conclude by recalling the importance it attaches to measures being taken to facilitate the establishment and growth, on a voluntary basis, of free, independent and representative employers' and workers' organizations, and their recognition for the purposes of collective bargaining, it also emphasizes the importance of mutual trust and confidence for the development of harmonious labour relations.*

The Committee's recommendations

- 384.** *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) *The Committee expects that the necessary legislative amendments aimed at ensuring that the definition of managerial and supervisory staff is limited to those persons who genuinely represent the interests of employers, including, for example, those who have the authority to appoint or dismiss, will be prepared in consultation with the social partners and adopted without further delay. It requests the Government to keep it informed of the developments in this regard.*
- (b) *The Committee requests the Government to take the necessary measures to ensure that the secret ballot for the recognition of the NUHBRW as the collective bargaining agent of the workers in question is held without delay, either on the basis of an updated employee list or on agreement that the status of the contested employees will be resolved subsequently. It requests the Government to keep it informed in this respect.*

- (c) *The Committee requests the Government to review in the framework of the above-mentioned legislative reform and in consultation with the social partners, the existing secret ballot system. It requests the Government to keep it informed in this regard.*

CASE NO. 3076

INTERIM REPORT

**Complaint against the Government of the Republic of Maldives
presented by**

- **the Tourism Employees Association of Maldives (TEAM)**
supported by
- **the International Union of Food, Agricultural, Hotel, Restaurant,
Catering, Tobacco and Allied Workers' Associations (IUF)**

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

- 385.** The Committee last examined this case (submitted in April 2014) at its October 2018 meeting, when it presented an interim report to the Governing Body [see 387th Report, paras 523–531, approved by the Governing Body at its 334th Session (October–November 2018)]. [Link to previous examinations](#)
- 386.** The International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) associated itself to the complaint and provided additional information in a communication dated 7 August 2019.
- 387.** Since there has been no reply from the Government, the Committee has been obliged to postpone its examination of the case on several occasions since the presentation of the complaint. At its meeting in June 2019 [see 389th Report, para. 6], the Committee made an urgent appeal to the Government indicating that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body (1972), it could present a report on the substance of the case, even if the requested information or observations had not been received in due time. While noting the Government's request dated 2 October 2019 for a few additional days to the deadline for submission of its observations while awaiting technical assistance from the ILO, the Committee notes that, to date, the Government has not sent any further information and has thus decided to process with the examinations of this case.

388. The Republic of Maldives has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

389. In its previous examination of the case in October 2018, the Committee made the following recommendations on the matters still pending [see 387th Report, para. 531]:

- (a) The Committee deeply regrets that, despite the time that has elapsed since the presentation of the complaint in April 2014 and the holding of a meeting with a Government delegate in November 2017 in order to ensure greater cooperation with the Committee's procedures, the Government has still not replied to the complainant's allegations even though it has been requested several times to do so, including through several urgent appeals. The Committee strongly urges the Government to provide its observations on the complainant's allegations without further delay and to be more cooperative in the future. The Committee once again reminds the Government of the possibility to avail itself of the technical assistance of the Office.
- (b) The Committee once again urges the Government to conduct an independent investigation as to the grounds for the arrest and detention of TEAM members on the three mentioned occasions (December 2008, April 2009 and May 2013) and, should it appear that they have been arrested because of their trade union activities, to hold those responsible to account and take the necessary measures to ensure that the competent authorities receive adequate instructions not to resort to arrest and detention of trade unionists for reasons connected to their union activities in the future. The Committee requests the Government to keep it informed of the measures taken in this regard.
- (c) The Committee urges the Government to take all the necessary steps for the immediate enforcement of the sentence ordering the reinstatement of TEAM leaders and the payment of the remaining back wages, and to keep it informed of the steps taken in this regard.
- (d) The Committee urges the Government to conduct an independent inquiry into the allegations of excessive force used by the police in this case, and ensure that adequate instructions are given so that such situations do not occur in the future. The Committee requests the Government to keep it informed of developments.
- (e) The Committee requests the Government to solicit information from the employers' organizations concerned, with a view to having at its disposal their views, as well as those of the enterprise concerned, on the questions at issue.

B. Additional information from the complainants

390. In a communication dated 7 August 2019, the complainants provide additional information, alleging that the Government has neither investigated the grounds for detention of Tourism Employees Association of Maldives (TEAM) leaders in 2008, 2009 and 2013 nor taken any action to ensure enforcement of the 2009 final order by the Employment Tribunal, declaring the dismissals of TEAM leaders illegal and ordering reinstatement without loss of pay. In addition, the reinstatement order has been further contested by the employer in a series of court procedures, which continue to this day, as a result of which, the dismissed workers have not yet been reinstated in their positions. In 2014, TEAM initiated civil court proceedings to enforce the reinstatement order and the court ruled that since the order had not been properly implemented, the One & Only Reethi Rah Resort (hereinafter, Hotel A), should reinstate the workers to their positions in accordance with the ruling of the Employment Tribunal. However, the employer appealed the civil court ruling and in November 2016, the High Court decided that reinstatement of the victimized union leaders and members did not require reinstatement in the same workplace and that there was no need to enforce the specifics of the original and subsequent rulings since there was no definition

of reinstatement in national legislation or case law. The High Court thus considered that employers could exercise considerable discretion in determining the meaning and modalities of reinstatement. TEAM appealed this decision to the Supreme Court and the appeal is currently pending. The complainants point out that the absence of appropriate legal and enforcement procedures in the country has allowed the enforcement order to be endlessly postponed and ten years after the alleged acts the concerned workers continue to be denied their right to freedom of association.

391. In addition, TEAM members had been enjoined by court from engaging in any form of industrial action in support of the reinstatement (as was already denounced in the initial complaint) and worker protests on resort islands are in practice impossible to carry out as section 24(B)7 of the Freedom of Public Assembly Act declares all public gatherings on a tourist resort to be illegal without prior authorization from the police and national defence force. Indeed, according to the complainants, workers are effectively denied their right to freedom of assembly, a vital component of freedom of association, and this denial is enforced through police power, resulting in the island hotels and resorts being rights-free zones.

392. In this respect, the IUF also denounces anti-union discrimination at two other hotel establishments. In particular, it alleges that at Conrad Maldives Rangali Island Resort (hereinafter, Hotel B), 22 TEAM members were unfairly dismissed in June 2011 following a peaceful work stoppage by some 350 workers who, for two years, had been unsuccessfully attempting to engage the management in a discussion over the distribution of the service charge, which makes up a crucial part of their pay. When the management gave assurance that it was prepared to discuss the issues with the union, the workers returned to work but the management's response was retaliatory dismissal targeting TEAM members, some of whom had ten or more years of experience. The workers challenged the dismissals at the Employment Tribunal, which ruled that the dismissals were groundless and unfair and ordered reinstatement with back pay. The High Court overturned the initial decision but in February 2015, the Supreme Court overturned the High Court's decision and ordered investigation of the entire case. In December 2017, the High Court confirmed the original decision of the Employment Tribunal, concluding that dismissals without prior notice were unfair and in violation of the Employment Act and considered that the workers should be reinstated with full compensation. In March 2018, the management appealed this decision to the Supreme Court but no hearing has yet been scheduled. The complainants allege that, yet again, despite a clear decision ordering reinstatement, more than seven years have passed without its implementation due to the lack of effective framework to ensure protection against unfair dismissal, including explicit protection for union officers, collective bargaining and the right of workers to take industrial action.

393. The complainants further indicate that in 2011, TEAM began recruiting members at the Sheraton Maldives Full Moon Resorts & Spa (hereinafter, Hotel C). In 2013, union officers were elected at the resort and by 2014, TEAM represented a majority of the resort employees. However, the management responded negatively to requests for formal recognition, refused to meet with the union committee and in April 2014, initiated disciplinary proceedings against the union secretary, based on allegations that the union contested. A few days later, in a letter to the general manager, the union reiterated its demand for recognition and good faith negotiations to resolve the deteriorating social situation stemming from the management's hostility towards the union. On the same day, union members gathered in the staff area to protest against the disciplinary proceedings but still did not receive a reply to the written request for a meeting with the management. In addition, the management also rejected the union's written request for its members to assemble in celebration of May Day – a national public holiday. The complainants indicate that on 14 May 2014, off-duty union members went to the general manager's office to request a

meeting and when they found the office empty, they peacefully awaited his return. However, the police arrived, began questioning the union leaders and issued orders to clear the premises. The following day, the union president, the secretary and an executive member were issued disciplinary letters, accusing them of unlawful assembly and illegal display of union banners in the staff area in April, and were also issued termination letters in the presence of the police. Since then, a total of ten union leaders and members have been terminated (or, in the case of contract employees, their contracts were not renewed) and more than 100 members received the same disciplinary letter. According to the complainants, the selective dismissals and mass disciplinary proceedings were clearly designed to intimidate union members and prevent the union from functioning. Moreover, the management informed the staff that any violation of the law on assembly would be punished with instant termination, the police began regularly patrolling the staff area and dismissed union leaders barred from the island have no access to their members without breaching the law, a situation which violates freedom of association.

- 394.** The complainants inform that in August 2014, TEAM filed cases with the Employment Tribunal for unfair dismissal of seven union officers and members at Hotel C. In July 2015, the tribunal ruled that although the employer could not establish reasonable grounds for the dismissal of union officers Ahmed Shiyaz, Hussain Ali Didi and Moosa Mohamed under the terms of the Employment Act, they should not be reinstated but only compensated, as their participation in an illegal assembly constituted a form of “negligence” which contributed to their dismissal. In October 2015, TEAM appealed this ruling to the High Court, which decided in November 2017 that the three officers’ “negligence”, including participation in an unauthorized assembly, constituted sufficient grounds for dismissal and that the three should be neither reinstated nor compensated. In February 2018, TEAM appealed this decision to the Supreme Court, which accepted the appeal, but no hearings have yet taken place.
- 395.** With regard to the above allegations, the IUF and TEAM urgently call on the Committee to recall to the Government its responsibilities and take prompt measures to ensure the reinstatement with full back pay of all workers still desirous of returning to their employment.
- 396.** On a more general note, the complainants allege that there is no legal framework for ensuring respect for freedom of association and collective bargaining in the country and that the absence of clear jurisprudence permits contradictory legal rulings and arbitrary decisions. They further denounce a systematic failure on the part of the Government to implement effective protection of the rights set out in Conventions Nos 87 and 98, both in law and in practice, and consider that the Government should address the need for comprehensive legislative and enforcement measures as a priority in order to develop a robust system ensuring full legal protection for the rights set out in Conventions Nos 87 and 98.

C. The Committee’s conclusions

- 397.** *The Committee deeply regrets that, despite the time that has elapsed since the presentation of the complaint in April 2014, the Government has still not replied to the complainants’ allegations even though it has been requested on numerous occasions, including through several urgent appeals [see 375th Report, para. 8; 380th Report, para. 8; 382nd Report, para. 8; 386th Report, para. 7 and 389th Report, para. 6], to present its comments and observations on this case. Observing that the Government has expressed its interest to avail itself of ILO technical assistance. The Committee trusts that the Government will be in a position to provide its observations on the complainants’ allegations without further delay.*

398. Hence, in accordance with the applicable procedural rules [see 127th Report, para. 17, approved by the Governing Body at its 184th Session (1972)], the Committee is obliged to present a report on the substance of the case without being able to take account of the information which it had hoped to receive from the Government.
399. The Committee reminds the Government that the purpose of the whole procedure established by the International Labour Organization for the examination of allegations of violations of freedom of association is to promote respect for this freedom in law and in fact. The Committee remains confident that, if the procedure protects governments from unreasonable accusations, governments, on their side, will recognize the importance of presenting, for objective examination, detailed replies concerning allegations made against them [see First Report, 1952, para. 31].
400. The Committee recalls that this case refers to events that took place at Hotel A between November 2008 and May 2013 and concerns allegations of disproportionate use of police force against striking workers, repeated arrest and detention of TEAM leaders, their dismissal, and non-enforcement of the court ruling ordering their reinstatement without loss of pay.
401. The Committee takes due note of the updated information provided by the complainants, detailing further the challenges to the exercise of freedom of association in both law and practice. With regard to the grounds for the arrest and detention of TEAM members (recommendation (b)), the Committee notes that, according to the complainants, the Government has not taken any action to investigate these allegations. Regretting the apparent lack of progress on this matter, the Committee firmly urges the Government once again to conduct an independent investigation as to the grounds for the arrest and detention of TEAM members on the three mentioned occasions (December 2008, April 2009 and May 2013) and, should it appear that they have been arrested because of their trade union activities, to hold those responsible to account and take the necessary measures to ensure that the competent authorities receive adequate instructions not to resort to arrest and detention of trade unionists for reasons connected to their union activities in the future. The Committee requests the Government to keep it informed of the measures taken in this regard.
402. Concerning the situation of the dismissed TEAM officials (recommendation (c)), the Committee notes the complainants' allegation that the Government has not taken any action to ensure the enforcement of the 2009 reinstatement order and that, after prolonged refusal by the management to reinstate the workers and its contestation of the relevant judicial decisions, the trade union initiated civil proceedings in 2014 to enforce the original reinstatement order but these remain pending before the Supreme Court. The Committee cannot but regret that, despite an initial court decision ordering reinstatement and prolonged judicial proceedings attempting to enforce this decision, the dismissed TEAM officials have yet to be reinstated in their jobs more than ten years after their dismissal. The Committee recalls in this regard that delay in the conclusion of proceedings giving access to remedies diminishes in itself the effectiveness of those remedies, since the situation complained of has often been changed irreversibly, to a point where it becomes impossible to order adequate redress or come back to the status quo ante. Justice delayed is justice denied [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, paras 1144 and 170]. In these circumstances, the Committee expects the pending civil proceedings to be concluded without delay and trusts, that in making its decision, the Supreme Court will take into consideration the principles of freedom of association and the Committee's previous conclusions in this case. Considering the time that has elapsed since the Employment Tribunal first declared their dismissals illegal, the Committee expects the dismissed workers to be reinstated and paid back pay in the meantime and urges the Government to take steps to convene the management and the workers

concerned with a view to resolving the long outstanding issues in this case. The Committee requests the Government to provide a copy of the Supreme Court decision once handed down and to keep it informed of any developments.

403. As to the allegations of excessive force used by the police in this case (recommendation (d)), the Committee recalls that these refer to the use of truncheons and pepper spray to disperse striking workers of Hotel A in December 2008 and observes that the Government has not provided any new information in this regard. Therefore, the Committee urges the Government once again to conduct an independent inquiry into these serious allegations and ensure that adequate instructions are given so that such situations do not occur in the future. The Committee requests the Government to indicate all steps taken in this regard.
404. The Committee further observes from the additional information provided that the complainants denounce prolonged anti-union discrimination at Hotels B and C. In particular, the Committee notes that 22 TEAM members were allegedly unfairly dismissed at Hotel B due to participation in a peaceful work stoppage and that despite prolonged court proceedings, the dismissed workers have yet to be reinstated, with the High Court's 2017 ruling on reinstatement currently pending appeal before the Supreme Court. It further notes the allegations made with reference to Hotel C concerning mass disciplinary proceedings affecting around 100 union members and targeted anti-union dismissals (or non-renewal of contracts) of ten TEAM members. While the High Court found the dismissals of three union officers to be justified, the case is also currently pending before the Supreme Court.
405. The Committee notes the multiple examples provided by the complainants of alleged retaliation for union activity at all three hotel resorts and the more general concerns raised at the absence of a legal framework and enforcement mechanisms to protect the exercise of freedom of association. In this regard, the Committee recalls that anti-union discrimination is one of the most serious violations of freedom of association, as it may jeopardize the very existence of trade unions. 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. Protection against acts of 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. No one should be penalized for carrying out or attempting to carry out a legitimate strike [see *Compilation*, op. cit., paras 1072, 1075, 1087 and 953].
406. In view of the above, the Committee requests the Government to take the necessary measures to ensure that the judicial proceedings relating to allegations of unfair dismissals at Hotels B and C are speedily concluded, so as to avoid unreasonable delays, and that the decisions are promptly and fully implemented by the parties concerned. The Committee trusts that, despite the time that has elapsed since these allegations were made, the courts will be able to order adequate remedies, with reinstatement being the preferred option, and, if reinstatement is not possible for objective and compelling reasons, the workers should be provided adequate compensation.
407. The Committee also observes from the additional information provided that the complainants denounce a number of other violations of the principles of freedom of association at Hotel C, including the management's refusal to allow union members to assemble on May Day, accusations of unlawful assembly and display of union banners, the management's refusal to recognize the union and engage in negotiations and a ban on access to the island and to trade union premises for the dismissed union members. Noting that these allegations, if proven true, could have harmful impacts on the exercise of legitimate trade union activities, the Committee wishes to recall that the right to organize

public meetings and processions, particularly on the occasion of May Day, constitutes an important aspect of trade union rights [see **Compilation**, op. cit., para. 212] and that workers' representatives should be granted access to all workplaces in the undertaking where such access is necessary to enable them to carry out their representation function [see **Compilation**, op. cit., para. 1591]. With regard to the question of collective bargaining, the Committee wishes to emphasize that employers should recognize for the purposes of collective bargaining organizations that are representative of workers in a particular industry [see **Compilation**, op. cit., para. 1356] and that, while the question as to whether or not one party adopts an amenable or uncompromising attitude towards the other party is a matter for negotiation between the parties, both employers and trade unions should bargain in good faith making every effort to reach an agreement [see **Compilation**, op. cit., para. 1333]. In these circumstances, the Committee requests the Government to take the necessary measures to ensure that the union at Hotel C can freely exercise its legitimate trade union activities, including the right to organize assemblies and display union banners, without any interference from the management and that the dismissed trade union officials have reasonable access to trade union members and premises, so as to be able to exercise their representative functions. The Committee further invites the Government to reach out to the parties and encourage them to engage in good faith collective bargaining as a means to create and maintain harmonious labour relations and prevent labour-related disputes.

408. Further observing the allegations of police interrogation of trade unionists and surveillance of staff areas at Hotel C, the Committee recalls that the apprehension and systematic or arbitrary interrogation by the police of trade union leaders and unionists involves a danger of abuse and could constitute a serious attack on trade union rights [see **Compilation**, op. cit., para. 128]. The Committee therefore requests the Government to give all appropriate instructions to ensure that the police is not used as an instrument of intimidation or surveillance of trade union members and to keep it informed of the action taken or envisaged in this regard.
409. Concerning the above case-specific allegations, the Committee requests the Government to solicit information from the employers' organizations concerned, with a view to having at its disposal their views, as well as those of the enterprises concerned, on the questions at issue.
410. Finally, observing with deep concern the complainants' overarching allegations that the Government's systematic failure to ensure effective protection of trade union rights both in law and in practice leads to a denial of the right to freedom of association to workers in the Republic of Maldives, including denial of the right to freedom of assembly, which is enforced by the police, and prolonged situations of anti-union discrimination, the Committee recalls that the ultimate responsibility for ensuring respect for the principles of freedom of association lies with the Government [see **Compilation**, op. cit., para. 46] and 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 **Compilation**, op. cit., para. 1140]. Furthermore, the Committee recalls that permission to hold public meetings and demonstrations, which is an important trade union right, should not be arbitrarily refused [see **Compilation**, op. cit., para. 219] and participation in peaceful assemblies and demonstrations should not lead to anti-union discrimination, as was alleged on several occasions in this case. In view of the above, the Committee requests the Government to take the necessary legislative and enforcement measures, in consultation with the social partners concerned, to address these general allegations and to ensure that protection for trade union rights, in particular the right to freedom of assembly and protection against anti-union discrimination, are fully guaranteed both in law and in practice. The Committee draws the

attention of the Committee of Experts on the Application of Conventions and Recommendations to the legislative aspects of this case.

- 411.** *Observing that the Government has expressed a need for ILO technical assistance, the Committee trusts that it will be in a position to avail itself of such technical assistance in the near future.*

The Committee's recommendations

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

- (a) *The Committee deeply regrets that, despite the time that has elapsed since the presentation of the complaint in April 2014, the Government has still not replied to the complainants' allegations even though it has been requested, on numerous occasions, to present its comments and observations on this case. The Committee once again strongly urges the Government to provide its observations on the complainants' allegations without further delay and to be more cooperative in the future. The Committee once again reminds the Government of the possibility to avail itself of the technical assistance of the Office.*
- (b) *The Committee firmly urges the Government once again to conduct an independent investigation as to the grounds for the arrest and detention of TEAM members on the three mentioned occasions (December 2008, April 2009 and May 2013) and, should it appear that they have been arrested because of their trade union activities, to hold those responsible to account and take the necessary measures to ensure that the competent authorities receive adequate instructions not to resort to arrest and detention of trade unionists for reasons connected to their union activities in the future. The Committee requests the Government to keep it informed of the measures taken in this regard.*
- (c) *The Committee expects the pending civil proceedings on the issue of dismissals of TEAM officials at Hotel A to be concluded without delay and trusts, that in making its decision, the Supreme Court will take into consideration the principles of freedom of association and the Committee's previous conclusions in this case. Considering the time that has elapsed since the Employment Tribunal first declared their dismissals illegal, the Committee expects the dismissed workers to be reinstated and paid back pay in the meantime and urges the Government to take steps to convene the management and the workers concerned with a view to resolving the long outstanding issues in this case. The Committee requests the Government to provide a copy of the Supreme Court decision once handed down and to keep it informed of any developments.*
- (d) *The Committee urges the Government once again to conduct an independent inquiry into the allegations of excessive force used by the police against workers of Hotel A and ensure that adequate instructions are given so that such situations do not occur in the future. The Committee requests the Government to indicate all steps taken in this regard.*

- (e) *The Committee requests the Government to take the necessary measures to ensure that the judicial proceedings relating to allegations of unfair dismissals at Hotels B and C are speedily concluded, so as to avoid unreasonable delays, and that the decisions are promptly and fully implemented by the parties concerned. The Committee trusts that, despite the time that has elapsed since these allegations were made, the courts will be able to order adequate remedies, with reinstatement being the preferred option, and, if reinstatement is not possible for objective and compelling reasons, the workers should be provided adequate compensation.*
- (f) *The Committee requests the Government to take the necessary measures to ensure that the union at Hotel C can freely exercise its legitimate trade union activities, including the right to organize assemblies and display union banners, without any interference from the management and that the dismissed trade union officials have reasonable access to trade union members and premises, so as to be able to exercise their representative functions. The Committee further invites the Government to reach out to the parties and encourage them to engage in good faith collective bargaining as a means to create and maintain harmonious labour relations and prevent labour-related disputes. The Committee also requests the Government to give all appropriate instructions to ensure that the police is not used as an instrument of intimidation or surveillance of trade union members and to keep it informed of the action taken or envisaged in this regard.*
- (g) *Concerning the case-specific allegations, the Committee requests the Government to solicit information from the employers' organizations concerned, with a view to having at its disposal their views, as well as those of the enterprises concerned, on the questions at issue.*
- (h) *Finally, the Committee requests the Government to take the necessary legislative and enforcement measures, in consultation with the social partners concerned, to ensure that protection for trade union rights, in particular the right to freedom of assembly and protection against anti-union discrimination, are fully guaranteed both in law and in practice. The Committee draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to the legislative aspects of this case.*
- (i) *Observing that the Government has expressed a need for ILO technical assistance, the Committee trusts that it will be in a position to avail itself of such technical assistance in the near future.*

CASES NOS 3328 AND 3340

DEFINITIVE REPORT

Complaints against the Government of Panama presented by

Case No. 3328

- **the Single National Union of Construction Industry and Allied Workers (SUNTRACS)**
- **the National Confederation of United Independent Unions (CONUSI) and**
- **Building and Wood Workers' International (ICM)**

Case No. 3340

- **General Workers' Union Confederation of Panama (UGT)**

Allegations: In Case No. 3328, it is alleged that:
(i) the Ministry of Labour favours the enterprise workers' union to the detriment of SUNTRACS;
(ii) the enterprise does not comply with agreements concluded with SUNTRACS; and
(iii) workers seeking reinstatement are subject to police repression and detention. In Case No. 3340, it is alleged that the Ministry of Labour favours SUNTRACS to the detriment of the enterprise workers' union and that the Government is allowing SUNTRACS to try to impose a collective agreement concluded with the Panamanian Construction Industry Board on workers who are not members of SUNTRACS

- 413.** The complaints are contained in communications from the Single National Union of Construction Industry and Allied Workers (SUNTRACS), the National Confederation of United Independent Unions (CONUSI) and Building and Wood Workers' International (ICM) dated 8 June 2018 (Case No. 3328) and from the General Workers' Union Confederation of Panama (UGT) dated 29 November 2018 and 19 June 2019 (Case No. 3340).
- 414.** The Government sent its observations in communications dated 7 and 13 February, as well as 26 June and 17 September 2019.
- 415.** Panama has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).
- 416.** The Committee has decided to examine these two cases together, since they concern a similar issue, although raised from different union perspectives, and also because, in its replies, the Government emphasized that the cases are related.

A. The complainants' allegations

Case No. 3328

417. In their communication dated 8 June 2018, the complainant organizations (SUNTRACS, CONUSI and the ICM) indicate that in 1997, Minera Panamá SA (hereafter “the enterprise”), a subsidiary of the Canadian mining company First Quantum Minerals (FQM), was awarded an over 30-year lease to develop a copper-mining project (hereafter “the mining project”), which was launched in December 2011. The complainants allege that the enterprise obliged workers, when signing the employment contract, to join a union controlled by the enterprise: the FQM Construction and Development Enterprise Workers’ Union (hereafter “the enterprise workers’ union”) and that employment contracts were not given to those who refused to join.
418. The complainant organizations indicate that, as a result of the labour exploitation of the mining project workers, who work more than 12-hour days without any occupational health and safety measures, a strike began on 13 March 2015 and ended six days later, with mediation by the Ministry of Labour and Labour Development (MITRADEL) and with the signing of an agreement in which the enterprise agreed to address their concerns relating to occupational safety, food distribution and transportation. The complainants allege that the enterprise never fulfilled this agreement. They also indicate that the lack of safety and health measures led to the death on 23 December 2015 of 29-year-old worker Faustino Díaz.
419. The complainant organizations state that, even though SUNTRACS is the most representative union in the construction sector, MITRADEL has always ruled in favour of the enterprise and the enterprise workers’ union, recognizing it as the so-called representative of the workers and denying SUNTRACS the right to negotiate with the enterprise on behalf of its members. The complainants allege that MITRADEL’s decisions of 30 November 2016 and 5 April 2017 are proof of this. They have provided a copy of the latter decision, which states that: (i) SUNTRACS and the enterprise workers’ union simultaneously submitted demands, and MITRADEL issued a decision ordering both to agree on the appointment of a joint representative to negotiate both lists with the enterprise, warning that should they fail to do so, the majority union would negotiate the lists; (ii) SUNTRACS submitted an application for *amparo*, which was granted due to the lack of grounds for the decision calling for the unions to agree and the violation of due process; (iii) MITRADEL issued a new decision ordering the unions to, within two working days, agree on the appointment of a joint representative to negotiate both lists, warning that should they fail to do so within the prescribed timeframe, the majority union would negotiate the lists; (iv) this decision was the subject of an administrative appeal filed by SUNTRACS, which was denied, thus upholding the decision; (v) the parties failed to reach an agreement and, in accordance with section 431 of the Labour Code, MITRADEL tallied the number of members, establishing 167 members in SUNTRACS and 361 members in the enterprise workers’ union, enabling the latter to negotiate the lists of both unions; and (vi) the decision was subject to appeal and review.
420. The complainant organizations indicate that on 13 February 2018, the workers held a strike, demanding a wage increase, respectful treatment, health care and the negotiation of a collective agreement between SUNTRACS and the enterprise. They state that the strike ended on 18 February 2018 and that, two days later, they signed an agreement that put an end to the collective dispute, in which the enterprise agreed to, inter alia: (i) re-hire any workers who had participated in the strikes and whose short-term contracts had ended between 1 and 17 February 2018; (ii) initiate discussions with SUNTRACS aimed at finding solutions to various labour-related demands, including the negotiation of a new collective labour agreement between the parties; and (iii) not take reprisals against workers for having

participated in the strike. The complainants allege that, with the complicity of MITRADEL, the enterprise has not honoured any of the terms established in the agreement. The complainants have sent a copy of a record dated 12 April 2018, in which MITRADEL observed that the enterprise had not complied with the agreement dated 20 March 2018 with regard to the re-hiring of workers who had been dismissed for having participated in the strike from 1 to 17 February 2018. In the record, MITRADEL stated that it was going to explore legal measures to enforce the agreement.

- 421.** The complainant organizations also indicate that the enterprise refused to comply with reinstatement orders issued in favour of over 30 workers who had been dismissed without any justification or legal basis and that, in protest against the enterprise's failure to comply with the reinstatement orders, on 4 June 2018, the workers held a peaceful protest at the entrance to the enterprise, which was violently repressed by Cocle national police and the enterprise's private security, who hit and arbitrarily arrested the workers who had been dismissed: Adolfo Yerena, Carlos Gondola, Hector Ramos Joniel Hall, Erick Pérez, Luis Gaitan, Luis Martines, José Borbua, José Bonilla, Dagoberto Chang, Alejandro Valdés and journalist Francis Guerra from an alternative media source, *Frenadeso Noticias*. The complainants indicate that when the workers filed a complaint, they were illegally taken into custody by members of the national police.

Case No. 3340

- 422.** In its communications of 27 September 2018 and 19 June 2019, the UGT indicates that within the mining project, there is an enterprise workers' union, presently known as the Industrial Union of Mine Construction and Mining Development and Allied Workers (STM), which is affiliated with the UGT and with Trade Union Convergence. The UGT indicates that since the 1990s, SUNTRACS and the Panamanian Construction Industry Board (CAPAC) (enterprise organization) have been concluding collective labour agreements and alleges that the Government has been allowing SUNTRACS to try to impose on workers who are not members of SUNTRACS and who work in enterprises that are not affiliated with CAPAC the collective labour agreements signed by these two organizations. It also alleges that the Government has been complicit and allowed SUNTRACS to oblige the construction workers to pay it union dues, even though they are not members of the organization and even though the enterprises for which they work are not members of CAPAC. According to the complainant, this situation has caused chaos and confrontations between the mining project workers. The UGT further alleges that SUNTRACS is trying to have a union monopoly in the country and that the Government is being passive in this regard.
- 423.** The complainant organization has sent a document entitled "Violence and blackmail by the main leaders of SUNTRACS" dated 23 March 2018, which indicates that SUNTRACS's political struggle for a union monopoly in the country spans more than two decades and that its strategy is based on discrediting other trade union leaders who do not support its interests and on inflicting violence and terrorizing workers and business owners. The document also mentions that on 16 January 2016, a group of workers and activists supported by SUNTRACS violently took over the premises of the enterprise undertaking the mining project, injuring 16 workers. Furthermore, in February 2018, SUNTRACS violently barged into the enterprise, leading the UGT to question why the Government allowed SUNTRACS to illegally occupy the enterprise premises for over 72 hours and why the Government would oblige the enterprise to sign an agreement with a non-mining-related trade union. The complainant has sent links to various articles published in the press referring to the above.
- 424.** The complainant organization has also sent a document entitled "Chronology of the conflict in Minera Panamá", according to which: (i) the enterprise workers' union acquired legal

status in February 2014 and continues to be the majority union in the mining project; (ii) on 2 September 2014, MITRADEL registered the first collective agreement between the enterprise workers' union and the enterprise, which is valid for four years; (iii) on 13 March 2015, a group of workers from a CAPAC-affiliated contracting enterprise for the Minera Panamá project carried out a work stoppage, blocking the exit of workers from all areas of project; given that these workers were covered by a collective labour agreement concluded between SUNTRACS and CAPAC, the latter demanded that the enterprise apply the agreement with CAPAC, which was not legally possible, since the enterprise had already concluded a collective agreement with the STM; (iv) in September 2016, MITRADEL approved changing the name of the enterprise union, which became an industrial union called the Industrial Union of Mine Construction and Mining Development and Allied Workers (STM); and (v) in 2017 and 2018, following several rounds of negotiations and even a strike held by the STM in January 2018, the STM and the enterprise signed various agreements relating to worker accommodation, the transportation system and conditions in dining areas.

B. The Government's reply

425. In its communications dated 7 and 13 February, as well as 26 June and 17 September 2019, the Government sent its observations for both cases, as well as those of the enterprise, the National Council of Private Enterprise (CONEP) and CAPAC. The Government indicates that Cases Nos 3328 and 3340 concern the construction sector and, in particular, an inter-union dispute that has arisen in the mining project. The Government indicates that it is making significant efforts to ensure that all the organizations are able to fully enjoy freedom of association and that it cannot take sides in disputes between unions over the ownership of rights, such as the dispute between SUNTRACS and the enterprise workers' union, which is now known as the STM and is affiliated with the UGT. The Government adds that it is regrettable that the complaints have not been discussed in the Committee for the Rapid Handling of Complaints, one of the committees under the Panama Tripartite Agreement, which meets weekly in MITRADEL and looks for consensual solutions to the cases brought before it.

Case No. 3328

426. The Government indicates that on 4 October 2012, MITRADEL established a special bureau on mining, with 46 public officials responsible for handling labour issues, in the light of the complexity of the mining-related occupations, as well as the large number of mining workers, who total approximately 10,000.

427. The Government indicates that in the mining project, union activities are wide-ranging and freely exercised and that five unions, including the enterprise workers' union (now known as the STM) and SUNTRACS, co-exist. The Government indicates that MITRADEL has been an ally to all the trade union organizations in the search for instruments that promote respect for freedom of association and that, on several occasions, it has engaged in mediation and that various agreements have been signed and put an end to disputes. The Government refers in particular to the agreement signed on 18 March 2015, in which it was agreed that SUNTRACS would have access to the mining project and to the agreement dated 18 March 2018 (signed on 20 March 2018) which includes clauses relating to visits by SUNTRACS representatives to the mining project. The Government indicates that it has not been aware of any complaints regarding the implementation of the latter agreement, with regard to visits and the presence of SUNTRACS in the mining project, so it assumes that it is being implemented to the satisfaction of the parties.

428. In its reply communicated by the Government, the enterprise indicates that it does not intervene in the unions' internal affairs; that it does not interfere with right of workers to join the union of their choice or to refrain from joining a trade union organization; and that it does not favour any trade union organization. The enterprise denies the complainants' allegation that it obliges workers, when signing the employment contract, to join the enterprise workers' union.
429. The enterprise indicates that on several occasions, SUNTRACS, through the use of violence and threats, has tried to force the enterprise to negotiate with it instead of with the STM, which has the right to negotiate because it is the most representative union, as it has a larger number of enterprise workers than SUNTRACS does. The enterprise states that in 2015 and 2018, SUNTRACS and the STM submitted lists of demands at the same time and that, on both occasions, MITRADEL, after tallying the number of enterprise workers belonging to each union, found that the STM was the most representative union and was therefore entitled to negotiate the collective labour agreement. The enterprise indicates that even though SUNTRACS is a minority union in terms of enterprise workers, in March 2015, it concluded an agreement and protocol for admission to the mining project with the enterprise, even though on several occasions, SUNTRACS has violently barged into the company premises, causing a work stoppage each time and jeopardizing the lives and integrity of all. The Government adds that SUNTRACS and the STM have applied to MITRADEL for the right to negotiate a new collective labour agreement, and that the procedure established in the Labour Code has been followed. The applications are still being processed due to the submission by SUNTRACS of applications for *amparo*, which must first be resolved.
430. As regards the reinstatement orders, the company indicates that the courts had issued those orders before the company had been heard. It also indicates that the company had challenged those orders and that, after hearing the parties and considering the facts and evidence, the courts had thus far issued a ruling in six of the 31 cases, revoking the respective reinstatement orders. The company indicates that SUNTRACS lodged an appeal and that, in two cases, the Higher Labour Court of the First Judicial District issued a ruling that confirmed the revocation of the reinstatement orders, with those rulings duly enforced. The Government has sent the text of these rulings, which concluded that the company had not dismissed the workers but rather that the labour relationship had ended as their fixed-term contracts had expired and therefore reinstatement was not appropriate.
431. As regards the alleged arbitrary detentions of workers engaging in peaceful protest calling for their reinstatement, the Government has sent a copy of a report by the national police dated 20 June 2019, signed by the chief of the second police district of Cocola, that indicates that there is no record of the detentions of the citizens named in the complaint.

Case No. 3340

432. In its communication dated 7 February 2019, the Government indicated that it was making every relevant effort to ensure that all trade unions were able to fully exercise their freedom of association and that it was unable to intervene in inter-union disputes nor in engagement with employers' associations in the scope of that freedom. The Government also indicated that SUNTRACS had signed a collective labour agreement with CAPAC (which brings together around 100 companies) in compliance with the conciliation procedures set forth in the Labour Code, and that MITRADEL did not have the authority to stop a company from negotiating a collective agreement with SUNTRACS with content identical to that contained in the agreement signed between SUNTRACS and CAPAC.
433. CAPAC indicates that it is an employers' organization that brings together the leading companies in the construction sector; that, since 2018, it has negotiated ten collective labour

agreements with SUNTRACS that regulate labour relations between CAPAC members, which are generalist and specialist contractors, and their workers; and that those agreements were negotiated in accordance with the provisions of the Labour Code.

C. The Committee's conclusions

434. *The Committee observes that Cases Nos 3328 and 3340 concern the same mining project that has involved around 10,000 workers since 2011. While the Committee observes that the allegations in the cases are different and the complaints were made by different organizations, it notes that the Government has indicated that the two cases are related, the common denominator being the dispute between two of the five trade unions involved in the project – SUNTRACS (complainant in Case No. 3328) and the STM, which is affiliated with the UGT (complainant in Case No. 3340) – regarding the ownership of rights to negotiate with the company. On this basis, the Committee has decided to examine both cases in one report, first examining each complaint separately and then presenting its conclusions in relation to their common elements.*

Case No. 3328

435. *The Committee notes that the complainant organizations allege that: (i) the company requires workers to join the STM, a trade union controlled by the company, and that although SUNTRACS has presented a list of demands for the purpose of negotiating collective labour agreements with the company, MITRADEL has favoured the STM, recognizing it as the implied representative of workers, thereby denying SUNTRACS the right to engage in collective bargaining on behalf of its members; (ii) the company has breached post-dispute agreements reached with SUNTRACS, including one signed on 20 March 2018 in which, among other points, the company had undertaken to reinstate workers dismissed for participating in a strike; they also allege that MITRADEL has not taken steps to demand compliance with the agreement; and (iii) workers who participated in a peaceful protest calling for their reinstatement, which was ordered by the courts, were restrained by police and detained arbitrarily.*

436. *In this regard, the Committee notes that the Government and the company indicate that: (i) the company does not oblige workers to join any particular trade union and negotiates collective labour agreements with the STM and not with SUNTRACS because MITRADEL has determined that the STM is the most representative trade union and has the right to negotiate; the Government also indicates that both trade unions had subsequently asked MITRADEL to negotiate a new collective labour agreement and that these proceedings are ongoing as SUNTRACS has lodged an amparo appeal; (ii) MITRADEL has mediated between SUNTRACS and the company in order to resolve a number of different disputes and has facilitated the conclusion of agreements that allowed access and the presence of SUNTRACS in the mining project; and (iii) there is no record of police detention of the workers mentioned in the complaint and the workers have not been reinstated because the courts have revoked the reinstatement orders on the basis that the workers had not been dismissed but rather the term of their contracts had expired.*

437. *Recalling that workers have the right to join organizations of their own choosing and that the authorities and employers should avoid all discrimination between trade unions, the Committee observes that in this case there are no elements that lead it to conclude that the company required the workers to join a particular union.*

438. *As regards collective bargaining, the Committee observes that the MITRADEL resolution dated 5 April 2017 determined that the STM, and not SUNTRACS, would negotiate lists of*

*demands because the STM was deemed to be the most representative given that it had more than double the number of members as SUNTRACS. In relation to the allegation that, through this resolution, MITRADEL denied SUNTRACS the right to negotiate in favour of its members in the mining project, the Committee recalls that the determination of the most representative trade union should always be based on objective and pre-established criteria so as to avoid any opportunity for partiality or abuse. Pre-established, precise and objective criteria for the determination of the representativity of workers' and employers' organizations should exist in the legislation and such a determination should not be left to the discretion of governments. The Committee also recalls that systems based on a sole bargaining agent (the most representative) and those which include all organizations or the most representative organizations in accordance with clear pre-established criteria for the determination of the organizations entitled to bargain are both compatible with Convention No. 98 [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, paras 529, 530 and 1360].*

- 439.** *Furthermore, the Committee notes that the Government indicates that both trade unions subsequently asked MITRADEL to negotiate a new collective labour agreement and that these proceedings are ongoing as SUNTRACS has lodged an amparo appeal in that respect. The Committee expects that the courts will shortly rule on the amparo proceedings described above.*
- 440.** *As regards compliance with the agreements that ended disputes between SUNTRACS and the company, the Committee observes that, while MITRADEL facilitated the conclusion of agreements, which, among other things, allowed access and the presence of SUNTRACS in the mining project, MITRADEL has also noted the company's non-compliance with some points of these agreements. The Committee observes that, in a record dated 12 April 2018, attached by the complainant organizations, MITRADEL indicated that the company had breached the agreement signed on 20 March 2018, specifically by not reinstating the workers whom the company had committed to reinstate in the agreement. The Committee observes that MITRADEL had indicated in this record that it would examine the legal steps to be taken towards compliance with the agreement. The Committee recalls that agreements should be binding on the parties [see **Compilation**, op. cit., para. 1334] and expects that MITRADEL, as a facilitator of and signatory to the agreements, will take the necessary steps to ensure compliance with the agreements in question.*
- 441.** *Furthermore, the Committee observes that the complainant organizations allege that the company refused to comply with reinstatement orders issued in favour of more than 30 workers dismissed without justification or legal grounding. In that respect, the Committee notes that the company indicates that it has challenged these reinstatement orders and that the courts had thus far revoked six of the 31 reinstatement orders on the basis that the workers had not been dismissed but rather their contracts had expired. The Committee observes that neither the complainants nor the Government provided a copy of the reinstatement orders, which has prevented the Committee from ascertaining the reasons why the reinstatement was ordered. The Committee observes, however, that the Government has provided copies of the rulings that revoked the reinstatement orders and indicates that the names of the workers mentioned therein do not match the names of the workers whom the company had undertaken to reinstate in the agreement. In the light of the above, and given that there are pending judicial proceedings relating to the challenge filed against the reinstatement orders, the Committee expects that the courts will shortly rule on the matter and that the decisions issued will be respected.*
- 442.** *Regarding the allegation of police repression and detention of protesting workers calling for their reinstatement, the Committee observes that the complainant organizations did not send any information or evidence relating to the alleged police repression. It also observes*

that it is unclear whether the information submitted by the complainants refers to detention by the police or by the company's private security services. Furthermore, the Committee has no information regarding the date on which the workers would have been released. On that basis, and noting that the Government has declared that there is no record that the workers were detained by the police, the Committee will not pursue its examination of this allegation.

Case No. 3340

443. The Committee notes that the UGT, which is affiliated with the STM, alleges that the Government condoned attempts by SUNTRACS to enforce the collective agreement that it had signed with CAPAC on non-members employed by construction companies not affiliated with CAPAC (in particular workers employed by mining project contractors). It also alleges that the Government has condoned attempts by SUNTRACS to require construction workers, including non-members, to pay trade union dues to SUNTRACS. The Committee also observes that, according to the complainant, SUNTRACS inflicted violence and terror on workers and employers and on several occasions SUNTRACS members violently took over the company's premises, resulting in injuries to several workers.
444. In this respect, the Committee notes that the Government indicates that the collective labour agreements signed between SUNTRACS and CAPAC follow the procedure set forth in the Labour Code and that MITRADEL cannot stop a company from negotiating a collective agreement with SUNTRACS with content identical to that contained in the agreement signed between SUNTRACS and CAPAC. The Committee also notes that CAPAC indicated that it is an employers' organization that brings together the leading companies in the construction sector; that, since 2018, it has negotiated ten collective labour agreements with SUNTRACS that regulate labour relations between CAPAC members, which are generalist and specialist contractors, and their workers; and all such agreements were negotiated in accordance with the provisions of the Labour Code.
445. The Committee observes that, according to the complainant organization's allegations, SUNTRACS sought to impose the terms of its collective labour agreement with CAPAC on the workers of a CAPAC-affiliated mining project contractor. According to the complainant, this would not be legally viable since the company already has a collective agreement with the STM that covers these workers. In this respect, the Committee recalls that systems of collective bargaining with exclusive rights for the most representative trade union and those where it is possible for a number of collective agreements to be concluded by a number of trade unions within a company are both compatible with the principles of freedom of association [see **Compilation**, *op. cit.*, para. 1351].
446. As regards the allegations of violent actions by SUNTRACS, while the Committee observes that the complainant organization has sent a link to various articles published in the press that indicate that SUNTRACS violently entered the company's premises, these and other press articles also indicate that STM-affiliated workers who wanted SUNTRACS to withdraw from the project had protested violently against SUNTRACS members, preventing them from accessing the company's premises. In this regard, the Committee recalls that trade union organizations should conduct themselves responsibly and respect the peaceful manner in which the right of assembly should be exercised [see **Compilation**, *op. cit.*, para. 211].

Conclusions common to both cases

447. The Committee observes that both cases contain allegations of favouritism on the part of the Government towards one trade union organization or the other. In this respect, the

Committee notes that the Government indicates that it cannot intervene in the dispute between SUNTRACS and the STM and that it laments the fact that the complaints have not been discussed in the Committee for the Rapid Handling of Complaints, a commission established in the scope of the Panama Tripartite Agreement that seeks to resolve cases with consensual solutions.

- 448.** *The Committee observes that the information and documentation submitted in both cases demonstrate that the Government, through MITRADEL, has acted as a mediator in numerous disputes within the company, has facilitated the signing of agreements and has proved that the company has breached some points of such agreements. The information and documentation submitted in both cases does not lead the Committee to conclude that there has been any favouritism or special treatment of either trade union organization by the Government.*
- 449.** *In the light of the above, and given that several matters raised in the complaints appear to be recurring and unresolved issues, the Committee invites the Government to seek to foster a climate of dialogue and trust when interacting with the trade unions concerned and the company, against a backdrop of trade union pluralism, to help to maintain harmonious labour relations within the company. To this end, the Committee encourages the Government to redouble its efforts towards dialogue and conciliation and to examine, together with the organizations and the company, the issues raised with a view to reaching agreements that overcome these challenges with the support of tripartite dialogue forums within the country.*

The Committee's recommendations

- 450.** *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) The Committee expects that the Ministry of Labour and Labour Development (MITRADEL), as a facilitator of and signatory to the agreements signed between the trade unions and the company, will take the necessary steps to ensure compliance with the agreements in question.*
 - (b) The Committee expects that the courts will shortly rule on the pending judicial proceedings relating to the reinstatement of the workers and that the decisions issued will be respected.*
 - (c) The Committee invites the Government to seek to foster a climate of dialogue and trust when interacting with the trade unions concerned and the company, against a backdrop of trade union pluralism, to help to maintain harmonious labour relations within the company. To this end, the Committee encourages the Government to redouble its efforts towards dialogue and conciliation and to examine, together with the organizations and the company, the issues raised with a view to reaching agreements that overcome these challenges with the support of tripartite dialogue forums within the country.*

CASE NO. 3346

DEFINITIVE REPORT

**Complaint against the Government of Netherlands
presented by
Landelijke Belangenvereniging (LBV)**

Allegations: The complainant organization denounces the current policy of the Ministry of Social Affairs and Employment of allegedly systematic and arbitrary rejection of requests of dispensation from the application of collective labour agreements that are declared universally binding. The complainant alleges that through this practice, the Ministry restricts the freedom of association and collective bargaining rights of the parties to the prior agreements concluded at the company or subsector levels

- 451.** The complaint is contained in communications dated 28 December 2018, 4 February and 2 July 2019, submitted on behalf of Landelijke Belangenvereniging (LBV).
- 452.** The Government sent its observations in communications dated 8 May 2019 and 11 September.
- 453.** Netherlands has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Collective Bargaining Convention, 1981 (No. 154).

A. The complainant's allegations

- 454.** In its communication dated 28 December 2018, the LBV alleges that the Ministry of Social Affairs and Employment (hereafter, the Ministry) has changed its policy in the application of the framework implementing regulations (Declaration of Universality Binding Status Collective Labour Agreement Provisions Assessment Framework) (hereafter the Assessment Framework) in the sense that, in practice, dispensation from the application of the provisions of a collective agreement that have been declared generally binding in a sector is no longer granted on substantive grounds and this means that companies with specific characteristics can no longer apply company collective labour agreements (hereafter company CLAs) concluded prior to the Declaration of Universal Binding Force (hereafter AVV) of certain provisions of a subsequent sector agreement in so far as they are inconsistent with the minimum provisions of the latter. The complainant alleges that through this practice, the Ministry violates the right of unions such as LBV and individual companies to freely conclude company CLAs as it is no longer advantageous for companies to conclude such agreements if they can be overruled at any time by an AVV CLA. Furthermore, as unions such as LBV that are not sector unions are deprived of the realistic opportunity to find employers willing to invest money, time and energy in a company CLA, their right to exist and recruit members is at risk.

- 455.** The complainant presents itself as an association of employees and jobseekers formed in 1969 and registered at the Chamber of Commerce in Rotterdam, the Netherlands. Its current membership is approximately 11,000. Pursuant to its statute LBV has the capacity to conclude CLAs within the meaning of the Collective Labour Agreements Act and is currently party to 21 CLAs the scope of which covers approximately 955,000 employees and 2,800 companies. Among the ongoing CLAs concluded by the LBV, 11 apply within a sector/industry and ten are company CLAs. The sector agreements include two agreements with the Dutch Association of Intermediary Organizations and Temporary Employment Agencies (NBBU) and one with the Federation of Private Employment Agencies (ABU) that are the two employers' organizations active in the employment agency industry. The ABU CLA is declared universally binding, keeping in mind that dispensation was granted within the agreement to the NBBU CLA. The company CLAs also include four agreements with employment companies or agencies including the Tentoo CF&F, the Connexie Payroll, the DPA and the Persoonality-Payrolling. The complainant specifies that the above-mentioned four company CLAs only apply to temporary employees of the employment agencies and adds that Tentoo CF&F, Connexie Payroll and the DPA support its complaint. Furthermore, each time AVV was requested for the ABU CLA, the complainant requested dispensation from the Ministry for the above-mentioned four company CLAs.
- 456.** The complainant further explains the rules governing the AVV declaration and dispensation requests and the Ministry decisions on them. It indicates in this regard that the effect of AVV is that the relevant CLA is binding for all companies active in the relevant sector irrespective of whether those companies and/or employees are members of the union or employers' organization party to the CLA. The AVV CLA sets aside prior company CLAs unless schemes to the benefit of the employees that deviate from the AVV CLA are agreed therein. However, it is possible for the parties to a company CLA to obtain dispensation from the AVV, in the first place by requesting the parties to the AVV CLA to grant them dispensation. This type of dispensation is usually granted on the basis of criteria that are included in the AVV CLA itself and is stated in the AVV request addressed to the Ministry by the parties to the AVV CLA. Where dispensation is not integrated within the AVV CLA, the parties to the company CLA can request the Ministry to grant a dispensation based on article 7 of the Assessment Framework which provides for rules governing the assessment of such requests. The Assessment Framework provides for a formal assessment that concerns the formal existence of a prior company CLA and the independence of the trade union party to it. It also provides for a substantive assessment based in particular on the criterion that the application of the AVV CLA cannot be reasonably required in the company at issue in view of compelling arguments. Compelling arguments would concern in particular the specific company characteristics that differ in essential respects from those that could be considered to come under the scope of the AVV CLA. The complainant indicates that the Ministry grants dispensation merely upon the satisfaction of formal requirements unless the parties to the AVV CLA submit an objection against the request for dispensation. Such an objection entails a substantive assessment on the part of the Ministry. The manner in which this substantive assessment is conducted is the object of the present complaint.
- 457.** The complainant alleges that the "company-specific characteristics" criterion gives the Ministry so much leeway that it can practically reject any request for dispensation, and it has effectively and systematically done so over the past years, rejecting requests where dispensation was obtained previously, although facts and circumstances remained unchanged. LBV indicates, in particular, that between 2004 and 2015, it had repeatedly submitted requests for dispensation on behalf of the four employment companies with which it had concluded company CLAs and those dispensations were always granted by the Ministry, however, for the first time, by decisions dated 22 March 2016, the Ministry rejected dispensation requests by LBV concerning those company CLAs. It adds that an appeal against those negative decisions is currently pending before the Council of State. The

complainant further alleges that since 2016, in all cases in which a substantive assessment of the dispensation request has been conducted in view of the objections submitted by the parties to the AVV CLA, the Ministry has rejected the dispensation requests, and this is not restricted to the requests concerning the employment agency industry, neither to company CLAs. The complainant further alleges in this regard that a dispensation request concerning the subsectoral CLA between LBV and the DI-Stone employers' organization was recently rejected by the Ministry, based on the argument that the CLA governing the building finishing contractors industry has expanded its scope to include natural stone activities, making the latter a subsector of the former.

- 458.** The complainant further states that in previous national proceedings the Ministry had contested its claim that dispensations are no longer granted in practice whenever objections are submitted against them. It indicates that the Ministry produced figures showing that between 2007 and 2016, 38 per cent of the requests for dispensation were granted. LBV adds that, in order to verify the figures produced by the Government, together with several employer parties it requested data from the Ministry on the basis of the Government Information (Public Access) Act. LBV alleges that the data so obtained presented an image entirely different from the one drawn by the Government. The complainant argues in this regard that according to the data it has obtained, between 2007 and 2016 only 30 per cent of the dispensation requests led to a positive decision, which is 36 per cent of the requests that were decided as decisions were made on 170 out of 209 requests submitted. The complainant adds that if only the number of dispensations that were granted after a substantive assessment – which constitute the object of the present complaint – is considered, these percentages fall to 19 per cent and 23 per cent respectively. Finally, the complainant adds that no requests for dispensations have been granted since April 2016, and it draws the conclusion therefrom that currently the right to dispensation exists on paper but not in practice and that this means that the realization of custom solutions by companies that differ essentially from those that come under an AVV CLA is apparently no longer possible.
- 459.** LBV emphasizes its acknowledgement that the granting of dispensation to a company CLA must not lead to competition based on terms of employment in the sense that if the packages of terms of employment of an AVV CLA and a company CLA are compared, the latter should not prove less favourable to employees and affirms that, as a trade union, it is not inclined to conclude CLAs which are less favourable to employees. The complainant adds that it should however be possible to compose the package differently and shift focus in a way that strengthens the employer's competitive position. In the end, the possibilities offered by dispensation also benefit the employees both as regards terms of employment and employment and LBV therefore wishes to conclude such company CLAs and to continue to do so. The LBV alleges that the practice of the Ministry makes the granting of dispensation entirely dependent on whether the AVV CLA parties do or do not submit an objection and so gives them extensive power to turn a company CLA into a dead letter and marginalizes the Ministry's own role to implement regulations adequately in order to ensure respect for the right to freedom of association and collective bargaining. The complainant finally recalls that the Assessment Framework does not allow a comparison of terms of employment between the AVV CLA and the company CLA and hence such a comparison must not have any role in the assessment made by the Ministry.
- 460.** The complainant alleges that in view of the policy change described above, it is no longer useful to conclude company CLAs, as each time a sector CLA is declared universally binding the effect of the company CLA will cease to a large extent and the switch to the AVV CLA has to be made immediately, which is harmful to business operations that focus on continuity and makes the conclusion of a company CLA a business risk. Thus the AVV CLA acquires a monopoly position at the expense of the company CLAs. It further adds that the criteria applied by the Ministry for deciding whether there are sufficient company-specific

characteristics on the basis of which dispensation may be obtained are not clear as company-specific characteristics that were previously acknowledged may suddenly lose their importance, for example, on the basis of the argument that there are new relevant environmental factors. While the Ministry considered only a few years ago that the International Labour Organization (ILO) Conventions implied that company CLAs could not be restricted in any way, it has now turned to an overall limitation of the effective right to have company CLAs in so far as they are inconsistent with the minimum provisions of a subsequent AVV CLA. The complainant alleges that the current policy of the Ministry puts the companies with their own CLAs in a situation of great legal uncertainty. This policy does not provide any starting points for the assessment of whether dispensation can be obtained in a particular case and employers and trade unions are therefore unable to estimate in advance whether their company CLA does or does not qualify for dispensation. The complainant alleges that this means in practice that company CLAs are no longer concluded, consequently, parties smaller than industry partners lose the freedom to conclude their CLAs independently, while, according to the complainant, the freedom of bargaining should have as much weight for a company CLA as for an AVV CLA. The complainant states that its right to exist and its importance to the labour market are prejudiced if dispensations are invariably rejected and adds that a solution to these problems may lie in a clearer description of the criteria when dispensation can be obtained so that parties that wish to conclude a company CLA are enabled to predict with a higher degree of legal certainty whether their agreement may qualify for dispensation in due time in case of subsequent conclusion of an AVV CLA.

- 461.** The complainant further indicates that it does not call into question the right to conclude an AVV CLA neither is it concerned with the regulations within the Assessment Framework. Recalling that the compatibility of the Assessment Framework with ILO Conventions has already been examined and confirmed by the Committee in a case brought by itself and the employers' organization Altro Via [Case No. 2628, 351st Report, paras 1135–1161], the complainant emphasizes that the present case concerns the practical application of the Assessment Framework by the Ministry with respect to requests for dispensation. LBV further adds that judicial correction offers insufficient relief in connection with the Ministry's implementation practice regarding company CLA's as courts are not allowed to review policy. It admits that that policy is indeed laid down in the Assessment Framework and the implementation practice can merely be assessed for reasonableness. It specifies that its complaint concerns the overall picture, the image of not just the individual case, but of all cases jointly, where the Ministry always finds that there are insufficient grounds for dispensation. The complainant argues that the facts described above violate Articles 2 and 3 of Convention No. 87, Articles 2, 3 and 4 of Convention No. 98, and Articles 5 and 8 of Convention No. 154, as they have a chilling effect on collective bargaining at the company level and as such threaten the existence of smaller unions who negotiate and conclude such agreements.

B. The Government's reply

- 462.** In its communication dated 8 May 2019 and 11 September, the Government indicates that LBV concludes for the most part company CLAs or CLAs that cover groups of companies. Additionally, LBV is one of the employees' organizations engaged in the negotiation of the collective agreement covering a significant majority of the persons active in the staffing industry.
- 463.** With regard to the system of the declaration of universally binding status for a sectoral collective agreement, the Government indicates that when employers' and employees' organizations conclude an agreement covering a significant majority of the persons active in a certain industry, they may apply for an order of the Minister of Social Affairs and

Employment declaring certain provisions of this collective agreement universally binding. The Government indicates that under such an order, those provisions of this collective agreement would apply to all employers and employees in the industry concerned provided that the companies carry out activities falling within the scope of the agreement. Consequently, provisions of other collective agreements concluded in the industry which are less favourable for the employees cannot be applied. The Government further refers to the possibility of exclusion of certain company or subsector collective agreements by the parties to the AVV CLA themselves and the possibility of obtaining exemption from the generally binding effect of the sector CLA through application of the parties to the company or subsector CLA to the Minister. The Government further indicates that a declaration of generally binding status is intended to support establishment of collective agreements on employment terms and conditions with a view to preventing that non-bound employers and employees compete by undercutting each other on employment terms and conditions.

464. The Government further adds that any application for an AVV is published in the *Government Gazette* and interested parties have the right to raise objections. Objections are, as a rule, submitted to the parties applying for the order and may also be submitted to the Labour Foundation, which is a consultative organ of management and labour, consisting of representatives of central employees' and employers' organizations. The Minister takes the objections and the responses from the parties to the agreement and the Labour Foundation into account in the decision-making process.

465. With regard to exemptions from the AVV, the Government indicates that they are intended to offer a way out in cases where companies and subsections of an industry can in all fairness not be required to be bound by provisions that have been declared universally binding. Granting an exemption, therefore, consists in making an exception to the general rule. It further adds that the legislation specifies neither an obligation for the Minister, nor a right for applicants when it comes to a declaration of universally binding status or an exemption. It endows the Minister with a discretionary power. The Government refers to two other regulatory texts concerning the AVV and exemptions from it: Notification of Collective Agreements and Applications for Declarations of Universal Binding Status Decree and the Assessment Framework. The Decree contains more detailed rules on the application for an AVV. It requires both specification of the relevant provisions of the collective agreement and the period for which the universally binding status is requested for them. Parties must also state if any companies or subsections of an industry should be excluded. The Decree also lays down rules on how parties to a company or subsector CLA may apply for exemption. The Government further indicates that the Assessment Framework contains policy rules. Its paragraph 7 concerns exemptions, stipulating that any application for exemption can only be submitted by employers or parties that have concluded a legally binding collective agreement. It is also required that those parties be independent from each other so as to prevent employees' organizations being incited to conclude a separate collective agreement in order to be able to apply for exemption. Exemption is granted by the Minister if compelling arguments make it clear that application of the provisions to be declared universally binding for an industry cannot reasonably be required of certain companies or a subsection of an industry. Compelling arguments concern, in particular, the specific characteristics of the companies that make them, on essential aspects, different from those for which the provisions to be declared universally binding are meant. The Government finally specifies that in this framework the Ministry does not assess the separate employee benefits packages.

466. In response to the complainant's allegations, the Government first recalls that LBV submitted a complaint to the ILO regarding an amendment to the Assessment Framework which added consideration of specific circumstances of a case to the process of deciding whether or not to grant exemption from an AVV order [Case No. 2628, 351st Report,

paras 1135–1161]. The Government further recalls that this amendment ended the situation where an exemption was granted more or less automatically when the applicants fulfilled the formal requirements of having concluded their own CLA and being independent from each other. It then affirms that, despite the complainants' allegations, the way in which applications for exemption are assessed has not changed. The assessment is made based on current regulations, the policy framework, jurisprudence, the possible relevant developments that have taken place in, for example, the industry or sector to which the application relates. It further indicates that in the assessment process it is verified whether applicants have concluded their own legally binding CLA and are independent from each other, and whether the specific characteristics of the company/ies or the subsection applying for the exemption differ on essential points from those of the companies that are part of the target group for the industry agreement to such a degree that application of the provisions declared universally binding cannot be required from the company requesting exemption. The Government further emphasizes that objections raised following an application for exemption are taken into consideration but are not decisive in their own right. The decision of the Minister on the exemption is not made subject to these objections. The Government further indicates that in the assessment process the contents of CBAs are not compared to each other. An exemption granted is valid through the expiry date of the relevant AVV order and every time a new AVV order is issued a new application for exemption must be submitted, therefore, having been granted an exemption previously is not a decisive factor in assessing a later application for exemption.

467. With regard to the assessment of LBV's exemption requests mentioned in the complaint, the Government indicates that there have been several relevant developments in the national jurisprudence as well as in the segment of the labour market on which LBV's activities are focused. The Government refers to the appearance at the beginning of the twenty-first century of payroll companies – or payroll service providers – that take care of human resources-related matters for an employer by entering into employment contracts with the employees who work for that employer, and by handling all associated functions, including wage payment. The employees work under the supervision and direction of the employer, who is billed by the payroll company for all human resources related services provided. The Government further indicates that these companies were initially assumed to be separate from the staffing industry in view of the fact that they did not engage in recruitment and selection and did not employ intermediaries. This perceived separation was well reflected in the fact that in 2006 a special interest group for payroll companies, Vereniging voor Payrollondernemingen (VPO) established its own collective agreement. At the time, the parties to the CLA for the staffing industry exempted the members of the parties to VPO's CLA from the subsequent AVV orders concerning their CLA. Also, at the time other payroll companies who submitted requests for exemption were granted exemption by the Minister on the basis of the fact that the specific company characteristics differed from those of companies that on average came within the scope of the CBA of the staffing industry, namely the conventional temping agencies. The Government adds however, that the perception that the activities of payroll companies differ substantially from those of temping agencies changed gradually over time. It indicates in this regard that the last VPO CBA expired in 2012 and VPO itself was dissolved in 2016 and its members joined the largest employers' organization in the staffing industry which assumed responsibility for looking after the interests of employers who provide staffing services without recruitment and selection.

468. With regard to national jurisprudence, the Government indicates that, in a decision dated 4 November 2016, the Supreme Court of the Netherlands ruled that all triangular relationships under employment law are to be defined, as specified in sections 7:690 and 7:691 of the Netherlands Civil Code, regardless of whether the work performed at the third party is temporary, or whether it involves an active allocation role. This means that all

employment contracts where the employer second the employee to a third party, as part of a contract awarded to this employer, to perform work under the supervision and direction of the third party are to be considered staffing contracts. The Government states that it has thus been confirmed that there is no substantial difference between the activities of a temping agency and those of a payroll company.

- 469.** The Government affirms that the labour market and legal changes mentioned above prompted the Ministry to change its decisions on exemption requests related to the AVV CLAs in the staffing industry. It indicates that in order to avoid a sudden change without prior notice, companies that were previously granted an exemption based on the perception that their specific company characteristics differed from those of the average companies that came under the scope of the CLA for the staffing industry were granted a temporary exemption with the notice that any future decisions on the granting of an exemption would take legal and other developments into account.
- 470.** With regard to the interpretation of the statistics showing a clear drop in the number of applications for exemption over the past few years, which the complainant puts down to the categorical rejection of exemption requests over that period, the Government considers that no conclusions can be drawn about the policy for granting dispensation on the basis of the figures alone. The Government states that the drop can be due to the fact that most exemption applications submitted over the 2007–18 period related to the business services sector, with the majority relating to the staffing industry within that sector and that due to the change in the definition of the activities of payroll companies and the associated case law, many parties felt that they did not need an exemption anymore. The Government further indicates that the drop can also be due to the fact that when an AVV order is not requested for an industry-wide collective agreement the number of exemption requests would automatically drop. The Government indicates that the rejection of an exemption application may also be decided on the basis of formal grounds. With regard to the complainant’s allegation that the figures provided by the Ministry were not accurate, the Government indicates that an application submitted in one year may not entail a decision in the same year, meaning that the number of applications may differ from the number of decisions. The Government furthermore points out that the “Objections Report 2018” also shows that initially unfavourable primary decisions were reversed after additional information regarding specific company characteristics had been provided during the objection procedure, which led to another judgement. The Government finally indicates that in 2019 (up to July) three dispensation requests were granted and one refused (for late submission).
- 471.** The Government affirms that the regulations concerning AVV orders and exemptions thereto and the way they are implemented in the Netherlands are not contrary to ILO Conventions Nos 87, 98 and 154 and refers in this regard to the Collective Agreements Recommendation, 1951 (No. 91), allowing for broadening of the scope of collective agreements subject to certain conditions, which it then argues are all respected in the Netherlands, as an AVV order is issued at the request of the parties to a CLA and the Minister cannot unilaterally decide to declare provisions of a collective agreement universally binding. It further explains that the provisions of the CLA relating to certain terms and conditions of employment that have been declared universally binding through an AVV order cannot subsequently be deviated from in a way that is to the disadvantage of the employees. These provisions are made by employers’ and employees’ organizations jointly and those same organizations also determine which companies are to be considered part of the industry governed by their CLA and fall under the scope of that agreement. In defining this scope they can exclude certain companies and subsections of the industry, but if they do not, the Minister can make use of his/her authority to grant exemption. This authority is based on the necessity of taking into account the fact that while in most cases an AVV serves its purpose of preventing competition on the basis of employment terms and conditions, it

may in some cases lead to well-founded objections from certain companies because of their substantially different situation. The Government only provides a possibility to get an exemption in cases where companies and subsections of an industry can in all fairness not be required to be bound by provisions that have been declared universally binding.

- 472.** The Government further indicates that the parties to a subsector or company CLA have and retain full freedom to agree their own employment terms and conditions and more favourable provisions in a subsector or company CLA which are generally left intact by an AVV. Therefore, the Government concludes, the claim that its actions are standing in the way of the establishment of collective agreements is untenable and its unchanged policy with respect to the granting of exemptions from an AVV order is in conformity with the ILO Conventions cited by the complainant.
- 473.** The Government finally gives an overview of the procedures concerning the non-granting of an exemption involving the complainant that are currently pending in the Netherlands. It refers to a total of 11 such procedures, nine of which concern payroll companies and are pending before courts (three appeal proceedings) or the Dutch Council of State's Administrative Justice Department (six further appeal cases). Two other procedures are objections to the rejection of exemption applications for companies that process natural stone and are currently being processed at the Ministry. The matter under review in these procedures is whether the characteristics of these companies differ from companies governed by the CLA for the building finishing contractors industry on essential points, given that the companies in question process natural stone at a workshop, while finishing contractors process stone on site, where a building is being fitted out and finished. The Government indicates that the Ministry has not yet made a decision on these objections.

C. The Committee's conclusions

- 474.** *The Committee notes that this case concerns the practice of the Dutch Ministry of Social Affairs and Employment regarding the granting to certain companies or subsectors exemptions from the extension of certain provisions of sectoral collective agreements. The Committee recalls that, in a previous case brought by the complainant and an employers' organization, it had examined the legal framework governing the granting of such exemptions since January 2007 [see Case No. 2628, 351st Report, paras 1135–1161] and had found on that occasion that this legal framework was not in violation of the principles of freedom of association and collective bargaining. The Committee notes in this regard the complainant's emphasis that the present complaint is distinct from the previous one, in that it concerns not the law, but its practical application by the Ministry.*
- 475.** *The Committee notes in particular that the complainant alleges that the Ministry's policy in this regard has changed over time, shifting from considering that the ILO Conventions implied that company CLAs could not be restricted to an overall limitation of the effective right to have company CLAs in so far as they are incompatible with provisions of a sector CLA declared universally applicable. The Committee notes that the Government, while admitting that the amendment of the Assessment Framework in January 2007 adding consideration of the specific circumstances of the case to the process of deciding whether to grant an exemption ended the situation where exemptions were granted more or less automatically upon fulfilment of formal conditions, affirms that it has not changed its policy on granting exemptions since the law changed.*
- 476.** *The Committee notes in particular the complainant's allegation that since March 2016, whenever the parties to the sector agreement who have applied for the declaration of universally applicable status for certain provisions of their agreement object to a request for exemption, so triggering a substantive assessment of the exemption request on the basis*

of the criterion of the specific characteristics of the company, the Ministry systematically rejects the exemption request. The Committee notes the complainant's allegation that the number of requests submitted, as well as those granted, have decreased over the years, a decline that was first noticed in the employment agency industry and then in other industries. According to the complainant, from the 206 exemption requests submitted between 2007 and 2016, decisions were made on 170 applications. Out of those, 39 exemptions were granted after a substantive assessment which makes up for 19 per cent of the applications submitted and 23 per cent of the applications decided. Since March 2016 no requests for exemption have been granted following a substantive assessment. The Committee notes that relying on these figures, the complainant alleges that by systematically rejecting exemption requests whenever the parties to the sector agreement submit objections to them, the Ministry is practically giving the exclusive power to those parties to decide when an exemption can be granted to a company or subsector CLA and is thus discouraging the conclusion of company CLAs.

- 477.** *The Committee notes that the Government does not challenge the figures presented by the complainant, however it rejects the allegation that the decline in the number of exemption requests submitted to the Ministry and positive decisions on them is attributable to a new policy of categorically rejecting those applications. The Committee notes in particular the Government's indications that the falling numbers of exemption applications can also be due to the fact that most exemption applications submitted over the 2007–18 period related to the business services sector, and in particular to the staffing industry, where the shift in the definition of the activities of payroll companies and associated case law may have brought the concerned parties to the conclusion that they did not need an exemption anymore. As regards the rejection of the complainant's exemption requests, the Committee notes the Government's explanations regarding the change in the labour market and the national case law that have made the initial distinction between payroll companies and average temping agencies irrelevant and how these changes have informed the decisions of the Ministry and produced a shift from positive to negative decisions on exemption requests concerning companies that had previously obtained exemptions. The Committee further notes the complainant's allegation that a request it had submitted for exemption related to the building finishing contractors industry was also rejected by the Ministry, and the Government's reply that an objection to this negative decision is currently under examination at the Ministry.*
- 478.** *The Committee recalls that its mandate consists in determining whether national law and practice complies with the principles of freedom of association and collective bargaining, while the proper application of national law to specific circumstances is a matter within the competence of the national authorities and ultimately the courts. It therefore will confine its examination to whether the practice of the Ministry as it emerges from the submissions of the parties is compatible with the principles of freedom of association and the effective recognition of the right to collective bargaining.*
- 479.** *The Committee recalls that the question of extension of collective agreements in the Netherlands was already examined by the Committee in Case No. 2628. On that occasion [351st Report, 2008, para. 1158], the Committee recalled that paragraph 5 of Recommendation No. 91 provides:*
- (1) Where appropriate, having regard to established collective bargaining practice, measures, to be determined by national laws or regulations and suited to the conditions of each country, should be taken to extend the application of all or certain stipulations of a collective agreement to all the employers and workers included within the industrial and territorial scope of the agreement.*
 - (2) National laws or regulations may make the extension of a collective agreement subject to the following, among other, conditions:*

- (a) *that the collective agreement already covers a number of the employers and workers concerned which is, in the opinion of the competent authority, sufficiently representative;*
- (b) *that, as a general rule, the request for extension of the agreement shall be made by one or more organizations of workers or employers who are parties to the agreement;*
- (c) *that, prior to the extension of the agreement, the employers and workers to whom the agreement would be made applicable by its extension should be given an opportunity to submit their observations.*

480. *Recalling that it has previously found that the legal framework establishing a system for extension of collective agreements in the Netherlands is in conformity with the principles of freedom of association and collective bargaining, the Committee underlines that this system allows for the extension of application of certain provisions of collective agreements when they cover a significant majority of the persons active in a certain industry to the whole industry, but also allows for taking into account well-founded objections from certain companies with specific characteristics that differ essentially from those of the companies for which the collective agreement to be extended was initially established.*

481. *The Committee understands from the concordant submissions of the complainant and the Government that while the legal framework has not changed since 2007, the number of positive decisions with regard to exemption applications that were objected to by the parties to the AVV CLA have declined and that, in particular, no such exemptions have been granted since March 2016. The Committee notes, however, that the complainant and the Government disagree on the causes of this decline: while the complainant alleges that the Government has suddenly changed policy and, instead of fulfilling its role of guardian of the rights of all parties, is systematically deferring to the parties to the AVV CLA in their opposition to the exemption, the Government explains its recent negative decisions with reference to the changes in the national jurisprudence and market environment and, in particular, the shift in the general perception of what can be qualified as “specific company characteristics” within the staffing industry. The Committee further notes that the Government emphasizes that the legislation specifies neither an obligation for the Minister, nor a right for applicants when it comes to a declaration of universally binding status or an exemption. The Minister has discretionary power in this regard and objections raised following an application for exemption are taken into consideration, but are not decisive in their own right and the decision on an exemption is not made subject to them.*

482. *The Committee notes the complainant’s allegation that, even if they are given an opportunity to submit their requests for exemption, in practice the authority with the decision-making competence – namely the Ministry – does not seem to give any weight to the request in cases where the parties to the AVV CLA object to the granting of the exemption. The Committee further observes, however, the Government’s indication that any application for an AVV is published in the Government Gazette and the interested parties have the right to raise objections. Objections are, as a rule, submitted to the parties applying for the order and may also be submitted to the Labour Foundation, which is a consultative organ of management and labour, consisting of representatives of central employees’ and employers’ organizations. The Minister takes the objections and the responses from the parties to the agreement and the Labour Foundation into account in the decision-making process. The Committee further observes that the Ministry’s negative decisions regarding the complainants’ exemption requests are currently under judicial review.*

483. *The Committee notes that the complainant does not substantiate its allegation that the Ministry rejects requests for exemption out of deference to the objecting parties and contrary to their right to collective bargaining beyond indicating that, since 2016, no exemptions*

were granted in case of the objection of the parties to the AVV CLA. It further notes that the Government not only rejects this allegation, but also indicates a number of factors that have informed the Ministry's decision to no longer grant the LBV the exemptions in the specific cases related to the payroll companies and staffing industry.

484. *Recalling that it is not for the Committee to substitute itself for the competent national authorities in their application of exemption requests under national law, and considering that it has already found that the legal framework governing the granting of exemptions is in conformity with the principles of freedom of association, the Committee considers that this case does not call for further examination.*

The Committee's recommendation

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

CASE No. 3197

DEFINITIVE REPORT

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

Allegations: The complainant organization reports the commission of various anti-union acts by a shipping company, including non-renewal of employment contracts and non-observance of a collective agreement. It also reports significant judicial delays

486. The complaint appears in a communication dated 30 December 2015 from the Autonomous Workers' Confederation of Peru (CATP).

487. The Government sent its observations in communications dated 6 May and 8 July 2019.

488. 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 organization's allegations

489. In its communication of 30 December 2015, the complainant organization indicates that the company IMI del Perú S.A.C. (hereafter "the shipping company"), whose primary activity is sea transport, provides services to the oil company Savia del Perú S.A.C. (hereafter "the oil company"). According to the complainant, as well as the documents attached to the complaint, as a result of a number of complaints filed by the shipping company's trade union (SINTRAIMI) for violation of labour rights and acts of anti-union discrimination, including non-renewal of employment contracts for unionized workers, on 30 July 2008, the Ministry of Labour for the province of Talara issued a violation report against both the shipping and

oil companies for violations relating to payslips, distortion of third-party contracts and distortion of market-needs contracts. According to the violation report, the shipping company's payroll included workers who actually had an employment relationship with the oil company (considered the main company). The Ministry fined both companies and ordered the oil company to add 988 workers from the shipping company to its payroll. The complainant indicates that the oil company contested the ministerial decision before the courts and that, as a result of its delaying tactics, the courts have not yet issued a ruling, as an appeal for annulment filed by the oil company is still pending before the Supreme Court of Justice.

- 490.** The complainant organization also indicates that the shipping company has been using the low price of crude oil as a pretext for implementing workforce reduction programmes offering minor incentives, threatening workers with the loss of a wide range of rights should they forego the incentives. The complainant indicates that the company has downsized by 246 workers through its reduction programmes and alleges that it is trying to further reduce its workforce by 200 workers with a view to dismantling the union. The complainant adds that the company does not make its overtime payments and that, even though SINTRAIMI filed a complaint in this regard and the National Labour Inspection Authority (SUNAFIL) found that the shipping company owed the unionized workers overtime, the company has not made any overtime payments. The complainant also alleges that, faced with workers' growing interest in the union, the shipping company has tried to discourage and destabilize its workers through dismissals, transfers, schedule changes and increased health premiums.
- 491.** In addition, the complainant organization alleges that, although SINTRAIMI has signed three collective agreements with the shipping company and has submitted the fourth collective list, the company not only refuses to discuss economic improvements with the union, but also fails to comply with the collective agreements that have already been concluded. The complainant indicates that on 29 January 2015, the administrative authority fined the shipping company for failing to comply with the arbitration award issued in relation to collective bargaining during the period 2012–13, regarding the payment of an extended service bonus. It also alleges that the company does not observe the 2013–14 collective agreement with regard to the food to be provided to workers.

B. The Government's reply

- 492.** In its communications dated 6 May and 8 July 2019, the Government sent its observations, together with those of the shipping company.
- 493.** The Government provides the following information concerning the violation reports issued against the shipping and oil companies. With regard to the shipping company, the Government indicates that the company contested the violation report in which it was fined for violations relating to payslips and prohibited intermediation (third-party distortion) and that the report was declared null and void. In response, SINTRAIMI filed an appeal, and a new decision was issued, upholding the fine. The fine was contested once again by the company and, on 30 April 2009, the imposition of a fine was upheld once again. The company then initiated administrative dispute proceedings against the decision: (i) in its judgment of 16 November 2011, the Second Temporary Labour Court of Piura found that the action was partially founded; declared null and void the decision penalizing the company for engaging in the prohibited labour intermediation of 988 workers and dismissed the action to render null and void the penalty imposed for the distortion of intermittent market-needs contracts; (ii) this judgment was upheld by the Specialized Labour Chamber of Piura on 15 October 2012; (iii) on 12 March 2015, the Supreme Court of Justice dismissed the appeal for annulment filed by SINTRAIMI; and (iv) on 8 January 2015, the Second Labour Court, in an implementation order, ordered the issuance of a new decision rendering null and void

the penalties imposed. The Government also indicates that an appeal for annulment filed by the shipping company is still pending.

- 494.** With regard to the oil company, the Government indicates that, after the company contested the violation report in which it was fined and ordered to add 988 workers from the shipping company to its payroll, the report was declared null and void. This was subsequently appealed by SINTRAIMI, which nullified the action taken and upheld the fine and the order to add the workers. The company then initiated administrative dispute proceedings against the decision: (i) in its judgment of 16 June 2014, the Second Temporary Labour Court of Piura found that the action was unfounded; (ii) in its judgment of 12 January 2015, the Specialized Labour Chamber of Piura revoked the ruling of 16 June 2014 and declared the violation report null and void; (iii) in its judgment of 12 March 2015, the Supreme Court of Justice dismissed the appeal for annulment filed by SINTRAIMI; and (iv) on 11 March 2016, the Second Labour Court issued an implementation order, ordering the Piura regional government to issue a new administrative order, rendering the administrative disciplinary proceedings relating to prohibited labour intermediation null and void. The Government also indicates that an appeal for annulment filed by the shipping company is still pending.
- 495.** The Government further indicates that SUNAFIL has ruled that the shipping company owes its workers overtime pay. The Government indicates that, although the shipping company has not contested the decision, it has not made the payments in accordance with the decision and that SUNAFIL has therefore requested the Regional Directorate for Labour and Employment Promotion of Piura to take the appropriate measures. The Government adds that the shipping company has been penalized for failing to comply with clause II of the arbitration award corresponding to the period August 2012 to June 2013.
- 496.** With regard to the incentive-based workforce reduction programmes, the shipping company states that, following the significant drop in the price of the barrel, the oil industry was obliged to reduce its operations, as a result of which the shipping company was obliged to reduce its activities and adopt various measures, such as inviting workers to take part, on a voluntary basis, in an incentive-based workforce reduction programme. The company indicates that, between March and September 2015, 246 workers agreed to voluntarily terminate their employment relationship and that, to date, none of the workers who chose to terminate their employment have initiated judicial proceedings or have reported to the labour administrative authority any irregularities relating to termination of labour relations by mutual consent or to the supposed threats alleged by the complainant organization.
- 497.** Lastly, the shipping company states that the schedule changes, transfers and non-payment of overtime were solely due to the difficult financial situation in which the company found itself and that such measures had not been aimed at harming workers.

C. The Committee's conclusions

- 498.** *The Committee observes that, in the present case, the complainant organization alleges that a shipping company, which provides services to an oil company, has committed a number of anti-union acts, including non-renewal of contracts for unionized workers. It also alleges that, although complaints have been filed in this regard and both companies have been penalized, the companies have filed administrative and judicial appeals that are still pending due to the use of delaying tactics.*
- 499.** *The Committee notes that, according to the complainant organization's allegations and the documents submitted by the complainant: (i) as a result of a number of complaints filed by SINTRAIM for labour violations and anti-union discrimination (non-renewal of employment contracts for unionized workers), in 2008, the Ministry of Labour issued a violation report*

against both the shipping and the oil companies for violations relating to payslips, distortion of third-party contracts and distortion of market-needs contracts (temporary contracts); (ii) both companies were fined and the oil company was ordered to add 988 workers from the shipping company to its payroll; and (iii) the oil company has filed several judicial appeals in order to delay adding the workers to its payroll, and the courts have not yet issued a ruling. In this respect, the Committee notes the Government's indication that both companies contested the violation reports initially through administrative channels and then through administrative dispute courts and that, in 2015, the Supreme Court of Justice dismissed the appeals for annulment filed by SINTRAIMI against the judgments that had rendered null and void the penalties imposed on both companies. The Committee observes that, in its reply, the Government also indicates that appeals for annulment filed by both companies are still pending.

500. The Committee observes that neither the complainant organization nor the Government has provided copies of the judgments issued and that the information provided by the parties does not permit the Committee to establish whether the judicial proceedings in question have concluded or whether, to the contrary, they are still under way. Taking into account that these judicial proceedings relate to violation reports issued over a decade ago, the Committee recalls that delay in the conclusion of proceedings giving access to remedies diminishes in itself the effectiveness of those remedies, since the situation complained of has often been changed irreversibly, to a point where it becomes impossible to order adequate redress or come back to the status quo ante [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 1144], and hopes that if indeed, as the Government indicates, appeals are still pending before the Supreme Court of Justice, this Court will issue a judgment as soon as possible.
501. As to the allegations that the shipping company has downsized by 246 workers through workforce reduction programmes offering minor incentives; that it has threatened workers with the loss of a wide range of rights should they forego such incentives; and that the company is trying to further reduce its workforce by 200 workers with a view to dismantling SINTRAIMI, the Committee notes the shipping company's indication that the programmes were implemented for economic reasons; that the 246 workers who took part in these programmes between March and September 2015 did so on a voluntary basis and that none of these workers have initiated judicial proceedings or filed complaints in relation to these programmes. In this regard, the Committee recalls that it is only able to give an opinion on allegations concerning programmes and processes of restructuring or economic rationalization, whether or not they entail staff reductions or the transfer of companies or services from the public to the private sector, if they give rise to acts of discrimination or anti-union interference [see **Compilation**, op. cit., para. 42]. In the light of the lack of evidence demonstrating the anti-union nature of the incentive-based workforce reduction programme, the Committee will not pursue its examination of this allegation.
502. The Committee also notes that, according to the complainant organization's allegations, faced with workers' growing interest in the union, the shipping company has tried to discourage and destabilize its workers through dismissals, transfers, schedule changes, non-payment of overtime to unionized workers and increased health premiums. In relation to the non-payment of overtime, the Committee notes that, according to the Government, this allegation has been confirmed by SUNAFIL, which has requested the Regional Directorate for Labour and Employment Promotion of Piura to take the appropriate measures to ensure that the company pays its debts and complies with its obligations. In this regard, the Committee trusts that the Government will ensure that the unionized workers receive the appropriate overtime payments.

- 503.** *With respect to the alleged transfers, schedule changes and increased health premiums, while noting that the shipping company indicates that these were a result of the difficult economic situation affecting the oil industry and that they did not have any impact on the pay level of workers, the Committee also observes that the complainant organization does not provide evidence demonstrating the anti-union nature of the above-mentioned measures.*
- 504.** *As to the alleged dismissals, while observing that the Government has not sent its observations in this regard, the Committee observes that the complainant organization has not indicated how many workers have been dismissed and when or whether these workers were members of the union. In the light of the above, the Committee will not pursue its examination of these allegations.*
- 505.** *As to the alleged failure to comply with an arbitration award and the clauses of a collective agreement, the Committee notes that, according to both the complainant organization and the Government, on 29 January 2015 the shipping company was penalized by means of a fine for failing to comply with clause II of the arbitration award corresponding to the period August 2012 to June 2013. With respect to the alleged non-observance of the 2013–14 collective agreement with regard to the food to be provided by the shipping company to the workers, while observing that the Government has not sent its observations in this regard, the Committee notes that it has not received any information from the complainant organization on any appeals filed in relation to the alleged violation. In the light of the above, the Committee trusts that the Government will ensure the swift and effective resolution of any appeals filed in this regard.*

The Committee's recommendation

- 506.** *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. 3119

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

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

Allegations: The complainant organization alleges harassment, intimidation and threats against trade union leaders and members by the armed forces in collusion with private companies

- 507.** The Committee last examined this case (submitted in March 2015) at its October 2018 meeting, when it presented an interim report to the Governing Body [see 387th Report, paras 611–628 approved by the Governing Body at its 334st Session (October–November 2018)]. [Link to previous examinations](#)
- 508.** The Government provides its observations in communications dated 31 May and 1 October 2019.

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

A. Previous examination of the case

510. At its October 2018 meeting, the Committee made the following recommendations [see 387th Report, para. 628]:

- (a) The Committee firmly expects that the initiatives undertaken (adoption of operational guidelines for investigating and monitoring mechanisms, strengthening cooperation among them, capacity building of state actors and other stakeholders, etc.) will significantly contribute to swift and efficient investigation and resolution by the relevant mechanisms with a view to putting an end to extrajudicial killings, harassment and other forms of interference in the exercise of freedom of association, and that labour activity or trade union function would be sufficient evidence to give rise to an in-depth review of the possible motivation.
- (b) The Committee firmly expects that the measures taken with regard to improving the knowledge of human rights and freedom of association among the military, the police and other state actors will be sustained and will significantly contribute to raising awareness of trade union rights in the army and the police. The Committee expects that the Government will take all necessary further measures to ensure protection for legitimate trade union activities. The Committee expects once again that the Government will take the necessary accompanying measures, including the issuance of appropriate high-level instructions and training to: (i) ensure the strict observance of due process guarantees in the context of any surveillance, interrogation or other operations by the army and police in a way that guarantees that the legitimate rights of workers' organizations can be exercised in a climate that is free from violence, pressure or threats of any kind against their leaders and members; and (ii) to restrict as far as possible prolonged military presence inside workplaces which is liable to have an intimidating effect on the exercise of trade union rights. The Committee requests the Government to keep it informed of any developments in this regard.
- (c) The Committee requests the Government once again to take the necessary measures to ensure the full and swift investigation and resolution of the alleged acts of harassment concerning Rogelio Cañabano, Perlita Milallos and Musahamat union members and activists, even if not committed by state actors, and to report on any investigation conducted and remedies applied, including by the IAC and the AFP-HRO, as well as any forthcoming NTIPC-MB resolutions in the above cases.
- (d) With regard to the pending case concerning the RDEU, the Committee requests the Government to clarify whether the alleged acts of harassment form part of the ongoing judicial proceedings and, if not, requests it once again to take the necessary measures to ensure the full and swift investigation and resolution of these allegations. The Committee also requests the Government to provide a copy of the relevant NLRC resolutions related to the termination of RDEU members and to keep it informed of the outcome of the ongoing appeal procedures.

B. The Government's reply

511. In its communications dated 31 May and 1 October 2019, the Government indicates that the operational guidelines and process structures of the National Tripartite Industrial Peace Council-Monitoring Body (NTIPC-MB), the Regional Tripartite Monitoring Bodies (RTMBs), the Administrative Order No. 35 Inter-Agency Committee (IAC) and the National Monitoring Mechanism (NMM) were reviewed, with the end view of addressing the gaps and blockages in obtaining substantial progress specific to labour-related cases of extrajudicial killings or violations of Conventions Nos 87 and 98.

- 512.** It also states that as part of the Department of Labour and Employment (DOLE)-ILO-EU Generalized System of Preferences Plus (EU GSP+) Project, activities and initiatives are taken to enhance the knowledge and capacities of the concerned state actors, including the police, the military, local chief executives, as well as the social partners, on the principles and application of Conventions Nos 87 and 98. In November 2018, a Multisectoral Trainers' Training on Freedom of Association and Collective Bargaining was held in Pampanga, which was attended by 32 representatives from different government agencies, including the Philippine Economic Zone Authority (PEZA), the Department of the Interior and Local Government (DILG), the Department of National Defense (DND), the Department of Justice (DOJ), Armed Forces of the Philippines (AFP), the Philippine National Police (PNP), and the Commission on Human Rights (CHR). The activity aimed at inculcating the various stakeholders and social partners with common understanding and interpretation of international labour standards, specifically on the right to freedom of association and collective bargaining, as well as on the roles, functions and mechanisms that need to be observed relative to the exercise of workers' rights and activities, such as the *Joint DOLE-PNP-PEZA Guidelines on the Conduct of PNP Personnel, Economic Police and Security Guards, Company Security Guards and Similar Personnel During Labour Disputes* and the *Guidelines on the Conduct of the DOLE, DILG, DND, DOJ, AFP and PNP Relative to the Exercise of Workers' Rights and Activities*. The capacitated social partners and stakeholders may now be tapped as resource persons and advocates on freedom of association and collective bargaining, delivering lectures and learning sessions, particularly on existing guidelines governing the engagement of various social partners and stakeholders during labour disputes vis-à-vis the principles of freedom of association and collective bargaining, as it may be applied in their respective organizations.
- 513.** Parallel to this, the Government is working on the development of sector-specific tools: (i) the *Workers' Training Manual on Freedom of Association* intended to enhance capacities of workers' representatives to participate in existing monitoring mechanisms on violations of workers' civil liberties and trade union rights; and (ii) the *Diagnostics of Compliance with Labour Standards: A Checklist for Small Enterprises* – an employers' tool for diagnosing the level of compliance with labour standards among small enterprises and for providing concrete remedies to address compliance issues. Furthermore, the DILG, together with the Local Government Academy, the ILO Country Office and the DOLE, is working to explore possible incorporation of international labour standards, particularly freedom of association and collective bargaining, and the Guidelines in the regular orientations and training of local chief executives. The CHR, with the assistance of a consultant engaged by the ILO, is also in the process of formulating and finalizing its own freedom of association training module.
- 514.** Apart from these agency and sector-specific tools and modules, a freedom of association e-learning module is being finalized as part of the DOLE's Labour and Employment Education Services (LEES). Building upon existing documents and materials from previous initiatives, the e-learning module will include topics on: international labour standards and labour rights; ILO principles on freedom of association and collective bargaining; the Philippine context – the right to self-organization; tripartite monitoring bodies on the application of international labour standards and other related investigative and monitoring mechanisms; and guidelines relative to the exercise of workers' rights, particularly the right to freedom of association and collective bargaining. Guidelines governing the conduct that must be observed during the exercise of workers' rights and activities are also being reviewed for amendment and updating.
- 515.** The Government further indicates, with regard to the alleged cases of harassment of Rogelio Cañabano, Perlita Milallos and Musahamat union members and activists, that it continues to coordinate with the concerned law enforcement agencies for the swift investigation and resolution of the case and that significant progress has been made in this regard. It also

reiterates information provided previously on the case of Mr Rogelio Cañabano. As for the case concerning death threats against Mr Vicente Barrios, the Government states that a criminal case for frustrated murder has been filed and an arrest warrant has been issued against the suspects by the Regional Trial Court Branch 3, Nabunturan in the Compostela Valley Province.

- 516.** The Government also informs that in the case involving several officers and members of the RMN Davao Employees' Union (RDEU), the employer ¹ and the National Labour Relations Commission (NLRC) Eighth Division, the NLRC upheld the validity of the dismissal of several RDEU officers and members and the Court of Appeals upheld the NLRC resolutions declaring the strike conducted by the RDEU as illegal. The Government recalls and clarifies that: (i) the RDEU went on strike in October 2014 on three grounds: the employer's refusal to bargain, union busting and unfair labour practices, following which the employer filed a petition to declare the strike illegal; (ii) while the petition was first dismissed by the labour arbiter in May 2015, it was reversed in October 2015 by the NLRC which found that the strike was illegal and that there was no evidence to support a finding of unfair labour practices or union busting, but there was evidence that union officers and employees perpetrated illegal acts in the course of the strike, as a result of which there was merit to dismiss the officers and union members from service; (iii) the RDEU filed a petition for certiorari before the Court of Appeals which was denied in March 2018 for lack of merit; (iv) on the employer's refusal to bargain, the Court of Appeals pointed out that: the failure to reach agreement after negotiations have continued for a reasonable period does not establish a lack of good faith; the series of letters from both parties attest to the fact that the employer was open to bargaining with the RDEU, while standing firm on the manner in which such negotiations should be conducted; there was no bargaining deadlock to warrant the union's resort to strike and the negotiation has not come to a point where there was an impasse, rather both parties were making concessions in keeping with the true spirit of negotiations, when the union decided to conduct a strike; (v) on union busting and unfair labour practices, the Court of Appeals stated that: contracting out services is not illegal per se, it is an exercise of business judgment or management prerogative and absent proof that the management acted in a malicious or arbitrary manner, the Court will not interfere with the exercise of judgment by the employer; since there had been no union busting, the NLRC was correct in holding that the employer did not violate pertinent provisions of the collective bargaining agreement; and (vi) on the legality of the strike and dismissal of union officers and members, the Court of Appeals considered that: a strike declared on the basis of grievances which have not been submitted to the grievance committee as stipulated in the collective bargaining agreement is premature and illegal; the union should have honoured its manifestation before the National Conciliation and Mediation Board to maintain the status quo with the employer and the failure of the union to heed its commitment is reflective of bad faith; the union officers were in clear breach of the Labour Code when they knowingly participated in the illegal strike and in the commission of illegal acts during the strike (barricading the entrance of the employer's transmitting site, obstructing ingress and egress from the transmitter site, intimidating non-striking employees, preventing to carry out the lawful purpose for entering the premises which is tantamount to obstruction of free ingress and egress from the employer's premises, obstructing public thoroughfares and harassing the employer's officers); (vii) a motion for reconsideration was filed by the union but was denied in July 2018; (viii) in June 2019, the RTMB-Region XI reported that the police investigator had conducted an interview with the members of the RDEU; and (ix) the case has been elevated to the Supreme Court.

¹ The Radio Mindanao Network, Inc.

C. The Committee's conclusions

- 517.** *The Committee recalls that the present case concerns allegations of harassment, intimidation and threats against trade union leaders and members by the armed forces in collusion with private companies.*
- 518.** *With regard to the initiatives undertaken to improve the functioning of the investigating and monitoring mechanisms with a view to putting an end to extrajudicial killings and other forms of interference in the exercise of freedom of association (recommendation (a)), the Committee notes that the Government reiterates that the operational guidelines and process structures of the NTIPC-MB, the RTMBs, the IAC and the NMM were reviewed so as to address gaps and blockages in obtaining substantial progress specific to labour-related cases of extrajudicial killings or violations of Conventions Nos 87 and 98. The Committee also observes from the information submitted by the Government to the 2019 Committee on the Application of Standards that following this review, recommendations were issued to help address the identified gaps and blockages and that these recommendations will be taken up by the concerned agencies for consideration and possible implementation. The Government also informed the Committee on the Application of Standards that, in the spirit of social dialogue and tripartite engagement, trade unions' and employers' representatives were enlisted as deputized labour inspectors, that there were 16 Regional Tripartite Monitoring Bodies across the country ready to be mobilized anytime and anywhere when needed and that such mobilization at the regional level brought about an immediate response and concrete appropriate action. Welcoming the Government's engagement to further review the functioning of the existing investigating and monitoring mechanisms and observing that these matters are being followed up by the Committee of Experts, the Committee expects that the recommendations addressing the current gaps and blockages will be rapidly implemented and that the measures and initiatives undertaken by the Government will significantly contribute to swiftly and efficiently investigating and addressing pending labour-related cases of extrajudicial killings and other violations of the principle of freedom of association by the relevant mechanisms, as well as preventing the occurrence of such acts in the future. The Committee requests the Government to keep it informed of any developments in this regards.*
- 519.** *Concerning capacity-building and awareness-raising on human rights and freedom of association among state actors (recommendation (b)), the Committee notes the detailed information provided by the Government on a number of activities, in particular: (i) a Multisectoral Trainers' Training on Freedom of Association and Collective Bargaining in November 2018 attended by representatives of different government agencies and the social partners; (ii) development of a training manual for workers' representatives in order to enhance their capacities to participate in existing monitoring mechanisms on violations of workers' civil liberties and trade union rights; (iii) development of a tool for employers for diagnosing the level of compliance with labour standards of small enterprises and for providing concrete remedies to address compliance issues; (iv) incorporation by the DILG of international labour standards, particularly freedom of association and collective bargaining, as well as of the relevant guidelines, in the regular orientations and training of local chief executives; (v) formulation and finalization of a training module on freedom of association at the HRC; and (vi) development of a freedom of association e-learning module at the DOLE LEES, including on, among others, international labour standards, principles of freedom of association and collective bargaining, the right to self-organization and tripartite monitoring bodies and other investigating and monitoring mechanisms. The Committee further observes, from the information submitted by the Government to the 2019 Committee on the Application of Standards, that: (i) additional capacity-building trainings of social partners, prosecutors, enforcers and other relevant actors, especially in criminal investigations, took place in January and February 2019; (ii) the DOLE has repeatedly*

called on the AFP and PNP to ensure the observance of the Guidelines on the Conduct of the DOLE, DILG, DND, DOJ, AFP and PNP Relative to the Exercise of Workers' Rights and Activities; (iii) the AFP has reaffirmed its commitment to the Guidelines and issued directives to all military units to respect the rights of workers; and (iv) as part of the commitment of the AFP and the PNP to integrate the Labour Code and the Guidelines in their educational programmes, lectures and orientations on freedom of association and trade unionism were held in February and May 2019. Noting these developments with interest, the Committee strongly encourages the Government to continue to elaborate training programmes and provide capacity-building activities to members of the armed forces, the police and other relevant state actors so as to ensure adequate and effective protection for legitimate trade union activities. The Committee also firmly expects that improved knowledge and awareness of human and trade union rights among state officials will significantly contribute to: (i) ensuring the strict observance of due process guarantees in the context of any surveillance, interrogation or other operations by the army and police in a way that guarantees that the legitimate rights of workers' organizations can be exercised in a climate that is free from violence, pressure or threats of any kind against their leaders and members; and (ii) restricting as far as possible prolonged military presence inside workplaces which is liable to have an intimidating effect on the exercise of trade union rights. The Committee requests the Government to keep it informed of any developments in this regards.

520. With regard to the alleged acts of harassment of Rogelio Cañabano, Perlita Milallos and Musahamat union members and activists (recommendation (c)), while noting the Government's indication that it continues to coordinate with the concerned law enforcement agencies for the swift investigation and resolution of the case and that significant progress has been achieved, the Committee regrets that the Government does not provide any specifics as to the current status of the investigations but simply reiterates some of the previously provided information, especially considering that these serious allegations (harassment by the military through frequent military visits and interrogation about union function and activities) date back to 2014. In this regard, the Committee observes that the Committee on the Application of Standards also noted with concern the lack of investigation in relation to numerous allegations of murders of trade unionists and anti-union violence and requested the Government to take effective measures to prevent violence in relation to the exercise of workers' and employers' organizations legitimate activities and to immediately and effectively undertake investigations into such allegations with a view to establishing the facts, determining culpability and punishing the perpetrators. Recalling that acts of intimidation and physical violence against trade unionists constitute a grave violation of the principles of freedom of association and the failure to protect against such acts amounts to a *de facto* impunity, which can only reinforce a climate of fear and uncertainty highly detrimental to the exercise of trade union rights [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 90] and in view of the lack of updated information in this regard, the Committee urges the Government to take the necessary measures to ensure the full and swift investigation and resolution of the alleged acts of harassment of the above trade union leaders and members of KMU-affiliated unions, whether committed by state or non-state actors, and to provide a detailed report on the outcome of any investigation conducted and remedies applied, including by the IAC and the AFP human rights officer, as well as any forthcoming NTIPC-MB resolutions in the above cases. The Committee further observes with respect to the case concerning death threats against Mr Vicente Barrios that while it has been previously reported that the case had been settled amicably, the Government now informs that a criminal case for frustrated murder has been filed and an arrest warrant has been issued against the suspects. The Committee trusts that the case will be examined rapidly and requests the Government to inform it of the outcome of the judicial proceedings.

521. *As to the case concerning the RDEU (recommendation (d)), the Committee notes that, according to the information provided by the Government, the Court of Appeals upheld, on the one hand, the validity of the dismissal of several RDEU officers and members due to their participation in an illegal strike and commission of illegal acts in the course of the strike and, on the other hand, found that there was no union busting or unfair labour practices, since contracting out services was a prerogative of the management and, in the absence of proof of malicious intent by the employer, it was not for the court to intervene in such matters, and that the case has been elevated to the Supreme Court. While noting the Court of Appeals' reasoning and decision on the three grounds invoked by the RDEU to go on strike (refusal of the employer to bargain, union busting and unfair labour practices), the Committee recalls that the allegations initially submitted in this case concerned vilification, threats and harassment of RDEU members by the management in September–October 2014, allegations that do not appear to have been fully addressed in the judicial proceedings, as recounted by the Government. The Committee therefore requests the Government once again to clarify whether these allegations formed part of the concluded judicial proceedings and, should this not be the case, to take the necessary measures to ensure that they are swiftly examined and, if proven true, adequately remedied by one of the available investigating, monitoring or judicial mechanisms. The Committee also requests the Government to provide the Court of Appeals' decision from March 2018 and to inform it of the outcome of the proceedings before the Supreme Court.*

The Committee's recommendations

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

- (a) Welcoming the Government's engagement to further review the functioning of the existing investigating and monitoring mechanisms and observing that these matters are being followed up by the Committee of Experts, the Committee expects that the recommendations addressing the current gaps and blockages will be rapidly implemented and that the measures and initiatives undertaken by the Government will significantly contribute to swiftly and efficiently investigating and addressing pending labour-related cases of extrajudicial killings and other violations of the principle of freedom of association by the relevant mechanisms, as well as preventing the occurrence of such acts in the future. The Committee requests the Government to keep it informed of any developments in this regard.*
- (b) The Committee strongly encourages the Government to continue to elaborate training programmes and provide capacity-building activities to members of the armed forces, the police and other relevant state actors so as to ensure adequate and effective protection for legitimate trade union activities. The Committee also firmly expects that improved knowledge and awareness of human and trade union rights among state officials will significantly contribute to: (i) ensuring the strict observance of due process guarantees in the context of any surveillance, interrogation or other operations by the army and police in a way that guarantees that the legitimate rights of workers' organizations can be exercised in a climate that is free from violence, pressure or threats of any kind against their leaders and members; and (ii) restricting as far as possible prolonged military presence inside workplaces which is liable to have an intimidating effect on the exercise of trade union rights. The*

Committee requests the Government to keep it informed of any developments in this regard.

- (c) *The Committee urges the Government to take the necessary measures to ensure the full and swift investigation and resolution of the alleged acts of harassment concerning Rogelio Cañabano, Perlita Milallos and Musahamat union members and activists, whether committed by state or non-state actors, and to provide a detailed report on the outcome of any investigation conducted and remedies applied, including by the IAC and the AFP human rights officer, as well as any forthcoming NTIPC-MB resolutions in the above cases. The Committee trusts that the case concerning Mr Vicente Barrios will be examined rapidly and requests the Government to inform it of the outcome of the judicial proceedings.*
- (d) *With regard to the case concerning the RDEU, the Committee requests the Government once again to clarify whether the alleged acts of harassment and vilification of trade union members formed part of the concluded judicial proceedings and, should this not be the case, to take the necessary measures to ensure that they are swiftly examined and, if proven to be true, adequately remedied by one of the available investigating, monitoring or judicial mechanisms. The Committee also requests the Government to provide the Court of Appeals' decision from March 2018 and to inform it of the outcome of the proceedings before the Supreme Court.*

CASE NO. 3185

INTERIM REPORT

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

- **the National Confederation of Transport Workers' Union of the Philippines (NCTU)**
- **the Center of United and Progressive Workers of the Philippines (SENTRO)**
- and
- **the International Transport Workers' Federation (ITF)**

Allegations: The complainant organizations allege the extrajudicial killings of three trade union leaders and denounce the failure of the Government to adequately investigate these cases and bring the perpetrators to justice. The complainants further allege the use of threats and murder attempts against a fourth trade union leader and his family, who have been forced into hiding, and denounce the Government's failure to adequately investigate this case and protect the victims. The failure to investigate and prosecute in these cases would

have reinforced the climate of impunity, violence and insecurity with its damaging effect on the exercise of trade union rights

- 523.** The Committee last examined this case (submitted in February 2016) at its October 2018 meeting, when it presented an interim report to the Governing Body [see 387th Report, paras 629–654 approved by the Governing Body at its 334th Session]. [Link to previous examinations](#)
- 524.** The Government provides partial observations in communications dated 31 May and 1 October 2019.
- 525.** The Philippines has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

- 526.** At its October 2018 meeting, the Committee made the following recommendations [see 387th Report, para. 654]:
- (a) Stressing the importance which it places on rapidly identifying the perpetrators of violence against trade unionists and bringing them to justice in order to combat impunity and promote a climate free from violence, intimidation and fear in which freedom of association may be fully exercised and recalling that the murders of Antonio “Dodong” Petalcorin, Emilio Rivera and Kagi Alimudin Lucman took place in 2013, the Committee once again expresses its firm expectation that the perpetrators will be brought to trial and convicted without further delay, and requests the Government to keep it informed of the progress made in this regard, including the current status of these cases, and to provide a copy of the relevant judgments as soon as they are handed down.
 - (b) The Committee draws the special attention of the Governing Body to the serious and urgent nature of the matters dealt with in this case.

B. The Government’s reply

- 527.** In its communications dated 31 May and 1 October 2019, the Government informs that it continues to coordinate with the concerned law enforcement agencies for the resolution of the cases. In particular, reports from the Philippine National Police (PNP) dated 10 and 13 June 2019 indicate that: (i) in the case of Emilio Rivera, the accused person has a standing arrest warrant against him but is at large and the investigator-on-case is still conducting a follow-up operation to gather relevant information for the apprehension of the suspect; (ii) concerning the case of Antonio Petalcorin, a case for murder was filed in March 2017 against two suspects through the regular filing procedure and an arrest warrant has been issued by the Regional Trial Court Branch 54, Ecoland in Davao City but the suspects are still at large; (iii) as to the case of attempted murder of Carlos Cirilo, previously examined by the Committee, the police conducted a follow-up investigation to locate possible witnesses of the grenade-throwing incident but to no avail.
- 528.** The Government further states that, in a report from August 2019, the Regional Tripartite Monitoring Body-Region XI (RTMB-XI) maintains its 2018 recommendation on these cases, affirming that “considering that a case for murder was already filed and the investigator of the case is conducting continuing follow-up investigation to apprehend the suspect and gather any relevant information for the development of the said case, it cannot

be said that the State lacks adequate investigations, prosecutions, and independent judicial inquiries into the murder”. The RTMB-XI likewise recommends that the PNP and judicial agencies continue to pursue investigations, prosecutions and judicial resolutions in order to resolve the case and upon receipt of any information that can help in the case development, the RTMB-XI will also coordinate with the PNP and judicial agencies.

C. The Committee’s conclusions

- 529.** *The Committee recalls that the present case concerns allegations of the extrajudicial killings of three trade union leaders and the failure of the Government to adequately investigate these cases and bring the perpetrators to justice, reinforcing the climate of impunity, violence and insecurity with its damaging effect on the exercise of trade union rights.*
- 530.** *With regard to the status of the cases concerning the murders of Antonio “Dodong” Petalcorin, Emilio Rivera and Kagi Alimudin Lucman (recommendation (a)), while taking due note of the Government’s indication that it continues to coordinate with the concerned law enforcement agencies for the resolution of the cases, and in particular, that the suspects in the cases of Emilio Rivera and Antonio Petalcorin have an arrest warrant pending against them and that the investigator is conducting a continuing follow-up investigation to apprehend the suspects, the Committee observes that similar information has been previously provided by the Government and regrets that no substantial progress appears to have been made in bringing the perpetrators to justice in these cases, despite the fact that the murders took place in 2013 and that the Government has indicated on several occasions that they were being handled and investigated through the regular processes of criminal investigation and prosecution. The Committee further notes the information provided on the case of Carlos Cirilo but regrets that no specifics were provided as to the current status of the investigations in the case of Kagi Alimudin Lucman. The Committee observes in this regard that the 2018 Committee of Experts expressed the firm hope that all remaining alleged cases of violations of trade union rights would be the subject of appropriate and vigorous investigations, as well as effective measures to ensure accountability, and that the 2019 Committee on the Application of Standards also noted with concern the lack of investigation in relation to numerous allegations of murders of trade unionists and anti-union violence and requested the Government to take effective measures to prevent violence in relation to the exercise of workers’ and employers’ organizations legitimate activities and to immediately and effectively undertake investigations into such allegations with a view to establishing the facts, determining culpability and punishing the perpetrators.*
- 531.** *In these circumstances, recalling that acts of intimidation and physical violence against trade unionists constitute a grave violation of the principles of freedom of association and the failure to protect against such acts amounts to a de facto impunity, which can only reinforce a climate of fear and uncertainty highly detrimental to the exercise of trade union rights [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 90] and stressing the importance which it places on rapidly identifying the perpetrators of violence against trade unionists and bringing them to justice in order to combat impunity and promote a climate free from violence, intimidation and fear in which freedom of association may be fully exercised, the Committee once again expresses its firm expectation that the perpetrators in the three mentioned cases will be brought to trial and convicted without further delay and trusts that the Government will continue to make every effort in this regard. The Committee requests the Government to keep it informed of the progress made, including the current status of these cases, and to provide a copy of the relevant judgments as soon as they are handed down.*

The Committee's recommendations

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

- (a) *Stressing the importance which it places on rapidly identifying the perpetrators of violence against trade unionists and bringing them to justice in order to combat impunity and promote a climate free from violence, intimidation and fear in which freedom of association may be fully exercised and recalling that the murders of Antonio “Dodong” Petalcorin, Emilio Rivera and Kagi Alimudin Lucman took place in 2013, the Committee once again expresses its firm expectation that the perpetrators will be brought to trial and convicted without further delay and trusts that the Government will continue to make every effort in this regard. The Committee requests the Government to keep it informed of the progress made, including the current status of these cases, and to provide a copy of the relevant judgments as soon as they are handed down.*
- (b) *The Committee draws the special attention of the Governing Body to the serious and urgent nature of the matters dealt with in this case.*

CASE NO. 3067

INTERIM REPORT

Complaint against the Government of Democratic Republic of the Congo

presented by

- the Congolese Labour Confederation (CCT)
- the Espoir Union (ESPOIR)
- the National Union of Teachers in Catholic Schools (SYNECAT)
- the Union of State Officials and Civil Servants (SYAPE)
- the National Trade Union of Mobilization of Officials and Civil Servants of the Congolese State (SYNAMAFEC)
- the Union of Workers – State Officials and Civil Servants (UTAFE)
- the National Union of Officials and Civil Servants in the Agri-rural Sector (SYNAFAR)
- the General Trade Union of the State and Para-State Finance Administration, and Banks (SYGEMIFIN)
- the Trade Union of Workers of the Congo (SYNTRACO)
- the State Civil Servants and Public Officials Trade Union (SYFAP) and
- the National Board of State Officials and Civil Servants (DINAFET)

Allegations: The complainants denounce Government interference in trade union elections in the public administration, intimidation, and the suspension and detention

*of union officials at the instigation of the
Ministry of Public Service*

- 533.** The Committee last examined this case (submitted in April 2014) brought by several public service unions, during its meeting in March 2018 and on that occasion presented another interim report to the Governing Body [see 384th Report, approved by the Governing Body at its 332nd Session (March 2018), paras 233–249]. [Link to previous examinations](#)
- 534.** The Government provided partial information in a communication dated 7 June 2018.
- 535.** The Democratic Republic of the Congo has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Workers’ Representatives Convention, 1971 (No. 135).

A. Previous examination of the case

- 536.** During its previous examination of the case in March 2018, the Committee made the following recommendations [see 384th Report, para. 249]:
- (a) The Committee deplores the total lack of cooperation on the part of the Government in the proceedings, in particular the fact that it has communicated none of the information requested on several occasions, including through urgent appeals. Despite the time that has elapsed since the presentation of the complaint, the recommendations made by the Committee in November 2015 and November 2016, a meeting between members of the Committee and a Government delegation in June 2016, and an invitation to come before the Committee pursuant to paragraph 69 of the procedures for the examination of complaints alleging violations of freedom of association, the Government has to date not provided any reply to the complainant organizations’ allegations or the Committee’s recommendations. The Committee urges the Government to be more cooperative in the future, especially since it recently benefited from technical assistance from the Office and the International Training Centre in Turin.
 - (b) The Committee urges the Government to take without delay the necessary steps to review the contested 2013 decrees of the Ministry of Public Service in consultation with the relevant workers’ organizations. The Committee requests the Government to keep it informed in this regard.
 - (c) The Committee must urge the Government once again to undertake, without delay, consultations with all the representative workers’ organizations concerned, including the INSP and the SIAP, on ways of representing workers’ interests in collective bargaining in the public administration. The Committee requests the Government to keep it informed in this regard.
 - (d) The Committee requests the Government to provide the founding document of the INAP and the handover document between the former inter-union association (INSP) and the INAP and to report its observations on the matter.
 - (e) The Committee expects the Government to issue immediate instructions so that trade union members who are exercising their rightful trade union duties in public administration cannot be subjected to prejudice in the workplace and so that those responsible for these acts are punished. Furthermore, the Committee urges the Government to conduct investigations on the aforementioned disciplinary action cases against trade union leaders in order to determine if they were punished for lawfully exercising their trade union activities and, if appropriate, to award compensation that sufficiently discourages further disciplinary action.

- (f) Noting that Mr Muhimanyi and Mr Endole Yalele filed a complaint before the appeals court for the violation of the legal time limit for concluding a disciplinary case, the Committee urges the Government to keep it informed of the result of this complaint.
- (g) The Committee urges the Government to conduct without delay an investigation into the circumstances behind the arrest and detention of trade union leaders in July 2013 and November 2014 and to keep it informed of the findings and follow-up action.
- (h) The Committee urges the Government to keep it informed of the status of the complaint filed by Mr Modeste Kayombo-Rashidi with the Kinshasa/Gombe prosecution authorities against Mr Constant Lueteta, INAP Secretary, for having made death threats.
- (i) The Committee urges the Government to inform it of the follow-up given to the administrative and judicial appeals brought by the complainants.
- (j) Firmly recalling that trade union leaders should not be subject to retaliatory measures, and in particular arrest and detention, for having exercised their rights which derive from the ratification of ILO instruments on freedom of association, including for having lodged a complaint with the Committee on Freedom of Association, and underlining the importance of ensuring that trade union rights can be exercised in normal conditions with respect for basic human rights and in a climate free of pressure, fear and threats of any kind, the Committee urges the Government to provide detailed information without delay on the reasons for and the status of the dismissals and disciplinary action against the following trade union leaders and members: Mr Nkungi Masewu, President of SYAPE; Mr Embusa Endole, President of ESPOIR; Mr Gongwaka, trade union leader; Mr Kaleba, President of the CCT/Finance union committee; and Mr Kalambay, coordinator of COSSA. Noting with concern that fresh allegations have been made of harassment of trade union leaders since it last examined the case, the Committee requests the Government to provide information on the situation of Mr Mulanga Ntumba, General Secretary of SAFE, and Mr Tshimanga Musungay, General Secretary of RESYCO.
- (k) The Committee urges the Government to provide without delay detailed information in response to the allegations that trade union leaders in the public service have been subjected to disciplinary measures, including dismissal, and particularly on the reasons given to justify the termination in May 2016 of the President of the SYAPE, Mr Nkungi Masewu.
- (l) The Committee invites the Government to a meeting with representative members during the next session of the International Labour Conference (May–June 2018) in order to obtain detailed information on the measures taken in relation to this case.

B. The Government's reply

- 537.** In its communication dated 7 June 2018, the Government objects to the contents of the allegations made against it.
- 538.** With regard to the ministerial decree No. 16 of 1 July 2013 on the regulation of trade union activities in the public administration, the Government indicates that, before the first public administration trade union elections were organized, a joint preparatory commission had been set up to prepare the regulatory texts pertaining to them. That commission was made up of all the trade unions that had requested to be involved, that is to say the INSP and the SYAPE. The Government believes that the allegations denouncing the authority of the delegates in the said commission are unfounded and that the INAP leaders concerned really are officials from the most representative trade unions of the public administration according to the results of the 2013 trade union elections.
- 539.** The Government also rejects the allegations of threats made against Mr Kayombo-Rashidi by Mr Lueteta, INAP Secretary, and notes that the parties have reconciled.

540. The Government states that there is effective social dialogue between the Government and 60 public administration trade unions grouped under the INAP. It also notes that the reason the complainant trade unions contest the aforementioned ministerial decree No. 16 of 1 July 2013 and ministerial decree No. 19 of 1 July 2013 on the Electoral Code is because they did not receive enough votes to become members of the Board of Directors of the INAP.

C. The Committee's conclusions

541. *The Committee takes note of the information provided by the Government. It however deeply regrets that its partial and very general nature does not provide a substantive response to the allegations presented by the complainants, especially given the time that has elapsed since the complaint was brought. The Committee believes that the report remains valid with regard to the matter of regulating trade union activities in the public administration, as well as the death threats made towards Mr Kayombo-Rashidi and the complaint he filed with the Kinshasa/Gombe prosecution authorities. While noting that, according to the Government, Mr Kayombo-Rashidi and Mr Lueteta have reconciled, the Committee requests the Government and the complainant to indicate whether a judicial appeal is still ongoing and, if so, to keep it informed of any decision handed down.*

542. *The lack of substantive cooperation from the Government is all the more concerning since the Committee, during its previous examination of the case, had drawn the Government's attention to fresh allegations of harassment towards trade union leaders and members received from the complainant organization in May 2016, which have also gone unanswered. The Committee urges the Government to demonstrate greater cooperation in the future and firmly recalls that, while the procedure protects governments against unreasonable accusations, they must recognize the importance of formulating, for objective examination, detailed replies concerning the allegations brought against them. The Committee invites the Government to accept a mission to clarify all the outstanding issues in this case.*

543. *In view of the foregoing, the Committee finds itself once again obliged to refer the Government to its conclusions from its last examination of the case [see 384th Report, paras 241–248] and to recall all of its previous recommendations.*

The Committee's recommendations

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

- (a) *The Committee deeply regrets that the partial and very general nature of the information provided by the Government does not provide a substantive response to the allegations presented by the complainants, especially given the time that has elapsed since the complaint was brought. The Committee urges the Government to demonstrate greater cooperation in the future and firmly recalls that, while the procedure protects governments against unreasonable accusations, they must recognize the importance of formulating, for objective examination, detailed replies concerning the allegations brought against them.*
- (b) *The Committee urges the Government to take without delay the necessary steps to review the contested 2013 decrees of the Ministry of Public Service in*

consultation with the relevant workers' organizations. The Committee requests the Government to keep it informed in this regard.

- (c) The Committee strongly urges the Government once again to undertake, without delay, consultations with all the representative workers' organizations concerned, including the INSP and the SIAP, on ways of representing workers' interests in collective bargaining in the public administration. The Committee requests the Government to keep it informed in this regard.*
- (d) The Committee requests the Government to provide the founding document of the INAP and the handover document between the former inter-union association (INSP) and the INAP and to report its observations on the matter.*
- (e) The Committee expects the Government to issue immediate instructions so that trade union members who are exercising their rightful trade union duties in public administration cannot be subjected to prejudice in the workplace and so that those responsible for these acts are punished. Furthermore, the Committee urges the Government to conduct investigations on the aforementioned disciplinary action cases against trade union leaders in order to determine if they were punished for lawfully exercising their trade union activities and, if appropriate, to award compensation that sufficiently discourages further disciplinary action.*
- (f) Noting that Mr Muhimanyi and Mr Endole Yalele filed a complaint before the appeals court for the violation of the legal time limit for concluding a disciplinary case, the Committee urges the Government to keep it informed of the result of this complaint.*
- (g) The Committee urges the Government to conduct without delay an investigation into the circumstances behind the arrest and detention of trade union leaders in July 2013 and November 2014 and to keep it informed of the findings and follow-up action.*
- (h) The Committee requests the Government and the complainant to indicate whether the judicial appeal of Mr Modeste Kayombo-Rashidi is still ongoing and, if so, to keep it informed of any decision handed down.*
- (i) The Committee urges the Government to inform it of the follow-up given to the administrative and judicial appeals brought by the complainants.*
- (j) Firmly recalling that trade union leaders should not be subject to retaliatory measures, and in particular arrest and detention, for having exercised their rights which derive from the ratification of ILO instruments on freedom of association, including for having lodged a complaint with the Committee on Freedom of Association, and underlining the importance of ensuring that trade union rights can be exercised in normal conditions with respect for basic human rights and in a climate free of pressure, fear and threats of any kind, the Committee urges the Government to provide detailed information without delay on the reasons for and the status of the dismissals and disciplinary action against the following trade union leaders and members: Mr Nkungi Masewu, President of SYAPE; Mr Embusa Endole, President of ESPOIR;*

Mr Gongwaka, trade union leader; Mr Kaleba, President of the CCT/Finance union committee; and Mr Kalambay, coordinator of COSSA. Noting with concern that fresh allegations have been made of harassment of trade union leaders, the Committee requests the Government to provide information on the situation of Mr Mulanga Ntumba, General Secretary of SAFE, and Mr Tshimanga Musungay, General Secretary of RESYCO.

- (k) *The Committee urges the Government to provide without delay detailed information in response to the allegations that trade union leaders in the public service have been subjected to disciplinary measures, including dismissal, and particularly on the reasons given to justify the termination in May 2016 of the President of the SYAPE, Mr Nkungi Masewu.*
- (l) *The Committee invites the Government to accept a mission to clarify all the outstanding issues in this case.*

CASE No. 3314

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

**Complaint against the Government of Zimbabwe
presented by
the Zimbabwe Congress of Trade Unions (ZCTU)**

Allegations: The complainant alleges violations of collective bargaining rights, restrictions on the right to demonstrate, illegal dismissal of trade union leaders, arrest and criminal prosecution of a trade union leader following participation in a demonstration

545. The complaint is contained in a communication dated 23 March 2018 from the Zimbabwe Congress of Trade Unions (ZCTU).
546. The Government sent its observations in a communication dated 12 April 2019.
547. Zimbabwe 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

548. In its communication dated 23 March 2018, the ZCTU alleges violations of collective bargaining rights, restrictions on the right to demonstrate, illegal dismissal of eight trade union leaders, arrest and criminal prosecution of a trade union leader following participation in a demonstration.
549. The ZCTU explains that since 2012, ZESA Holdings Private Limited and its subsidiary Zimbabwe Electricity Transmission and Distribution Company (hereafter "the company")

has been refusing to honour a collective bargaining agreement (CBA) that had the effect of increasing the minimum basic salary of its employees to US\$275 per month and rationalizing salary scales differentials. The company and its subsidiary are owned by the Government and the board of the company is appointed by the Minister of Energy and Power Development.

- 550.** The ZCTU explains that the agreement was registered in terms of section 79(1) of the Labour Act and published as Statutory Instrument 50 of 2012 in terms of section 80(1) of the Labour Act. The Zimbabwe Energy Workers Union (ZEWU), the National Energy Workers Union of Zimbabwe (NEWUZ), and ZCTU affiliates, brought the matter to the High Court after the company circumvented the agreement and offered settlement payments directly to its employees. The High Court ordered the company to stop offering its employees settlement back pays or salaries and to desist from negotiating directly with its employees. The complainant alleges that despite the court order, the company continued to refuse to comply with the agreement and that the dispute dragged on prompting workers and their unions to embark on a collective job action.
- 551.** On 27 November 2017, the Energy Sector Workers Union of Zimbabwe (ESWUZ) wrote to the chief executive officer of the company setting out its concerns regarding corruption and refusal of the company to comply with the agreement. The union then planned a demonstration, interdicted by a High Court Order which stated that any form of collective job action was prohibited due to the status of the essential service provider of the company. The union appealed to the Supreme Court against the judgment of the High Court, which had the effect of suspending the ban, and held a demonstration on 21 December 2017. According to the ZCTU, the company maintained its defiance to pay. The company applied for a show-cause order to the Minister of Labour and Social Services in terms of section 106 of the Labour Act. On 31 January 2018, the Labour Court issued a disposal order removing the case from the role, pending the outcome of the appeal filed in the Supreme Court.
- 552.** The ESWUZ also engaged the President's Office seeking intervention. In response, the officials conducted investigations, the findings of which are not yet availed.
- 553.** On 9 February 2018, the company issued a press statement reiterating its defiance to pay and threatening union officials with unspecified actions. The ZCTU responded by requesting the company to withdraw its threats and to engage with the unions to come up with a payment plan.
- 554.** The complainant indicates that the unions planned another demonstration set for 28 February 2018. However, it was prohibited by the High Court, which ordered that there should be no demonstrations until the appeal filed in the Supreme Court is disposed of.
- 555.** On 5 March 2018, the company suspended eight trade union leaders of the ESWUZ: Florence Taruvanga (National Women Advisory Council Chairperson and the ZCTU first Vice-President), Gibson Mushunje (General Secretary), Admire Mudzonga (first Vice-President), Ackim Mzilikazi (Union Trustee), Steogen Mwoyoweshumba (National Organizing Secretary and ZCTU General Council member), Taririo Shumba (Harare branch member), Given Dingwiza (National Young Workers Committee Chairperson and ZCTU Young Workers Committee Council member) and Johannes Chingoriwo (Chairperson of Harare branch and ZCTU northern region council member). The eight leaders were charged with the participation in an unlawful collective job action, breach of confidentiality and insubordination. They are now undergoing disciplinary proceedings, despite the fact that the unlawfulness of the demonstration of 21 December 2017 is still pending in the Supreme Court.

- 556.** On 12 March 2018, the ZCTU wrote to the Ministry of Labour and Social Services requesting its intervention. It alleges that its communication remained unanswered.
- 557.** On 13 March 2018, the NEWUZ staged a demonstration during which the police arrested the union's General Secretary Mr Thomas Masvingwe. He is facing criminal charges and appeared in the Magistrate's Court on 19 March 2018. His trial was set for 25 April 2018.
- 558.** On 20 March 2018, the ZCTU petitioned Parliament to investigate corruption at the company and victimization of workers' representatives for reporting it. The police banned the procession accompanying the petition on the grounds that the union was prohibited by the High Court Order from engaging in any demonstration against the company. The ZCTU indicates that the allegations of corruption in the company became public and the Parliamentary Portfolio Committee on Public Accounts queried the company's accounts. The company is also involved in a US\$5 million tender scam while refusing to pay workers and punishing them for raising such issues.
- 559.** The ZCTU emphasizes in addition that no tangible progress was made with regards to the implementation of the conclusions and legislative amendments recommended by the ILO Commission of Inquiry in 2010.

B. The Government's reply

- 560.** In its communication dated 12 April 2019, the Government indicates that the company in question is a state-owned enterprise and its board is accountable to the Minister of Energy and Power Development. The company generates, transmits and distributes electricity in Zimbabwe. It is the only electricity generator and supplier for the public grid. It is governed by two Acts of Parliament: the Electricity Act and the Rural Electrification Fund Act.
- 561.** The Government states that Statutory Instrument 50 of 2012 referred to by the complainant was registered by the Ministry of Labour and Social Services, which means that it was gazetted and became law.
- 562.** The Government further indicates that the case of the company's non-compliance with the CBA was taken to the High Court and a judgment was issued. The Government indicates that as a parastatal and as a body corporate, the company is obliged to uphold the court judgment. The allegations that the Government allowed the company to defy the court judgment are therefore unfounded.
- 563.** The Government adds that following the ZCTU request for its intervention in March 2018, the Ministry of Labour and Social Services convened a meeting with the company's management, the affected employees, representatives of the ZCTU and the Employers' Confederation of Zimbabwe (EMCOZ). The meeting resolved that the ZCTU and the EMCOZ would attempt to engage their constituents and engage in bilateral discussions towards the resolution of the matter.
- 564.** In July 2018, due to lack of progress on the matter, the ZCTU requested the Government's intervention. On 1 August 2018, the Ministry of Labour and Social Services convened another meeting, which resolved the following: (i) the company's management is to consider the issues and options with the intention of re-engaging the dismissed workers and inform the Ministry within two weeks; (ii) the Ministry is to convene a meeting with the dismissed workers within two weeks; (iii) the Ministry is to facilitate ILO training for both unions and employers; and (iv) the company is to send copies of the High Court Judgment to the Ministry. The meeting noted that the implementation of the 2012 CBA had been overtaken by a High Court Judgment.

- 565.** Notwithstanding the lack of progress on the part of the company's management, the dismissed employees met with officials of the Ministry of Labour and Social Services in December 2018 and agreed for the matter to be brought to the attention of the Minister responsible for labour administration for her intervention.
- 566.** In March 2019, a follow-up meeting was held between the dismissed employees and the Ministry of Labour and Social Services officials. The employees submitted a write up of their grievances, which the Ministry intends to discuss with the company's new board.
- 567.** On 11 April 2019, the Minister of Labour and Social Services met with representatives of the ZCTU, Zimbabwe Federation of Trade Unions (ZFTU) and APEX Council. Part of the issues discussed in the meeting included this case. The Minister undertook to urgently engage the company's board with a view to finalizing the long-standing issues of the dismissed employees, among other issues.

C. The Committee's conclusions

- 568.** *The Committee notes that the ZCTU alleges violations of collective bargaining rights, restrictions on the right to demonstrate, illegal dismissal of eight ESWUZ leaders, the arrest and criminal prosecution of a trade union leader following participation in a demonstration. The Committee notes that the Government does not dispute the course of events as described by the ZCTU.*
- 569.** *The Committee notes that the source of the dispute in this case is the refusal by the company to comply with the terms of the 2012 CBA, particularly with the provisions in relation to salary. The Committee notes in this respect a decision of the High Court dated 15 September and 18 November 2015. The Committee observes from this decision that the company "has admitted to non-compliance with the CBA in relation to remuneration" and "engaged the employees directly without the involvement of their unions and offered them a settlement". The Committee further observes that the High Court pointed out that:*

... A party which fails to comply with the terms of a collective bargaining agreement commits an unfair labour practice. Failure to comply with or refusal to be bound by a collective bargaining agreement is also offensive and constitutes a criminal offence. Section 82 records the seriousness with which the legislature views CBAs. This is borne by the fact that the legislature makes it an unfair labour practice to fail to comply with a registered CBA and further criminalises a failure to comply with the CBA.

The Committee also notes that the court ordered the company to:

... stop offering to its employees settlement, back-pays and/or salaries which it unilaterally and arbitrarily computes without the involvement of the applicants [and to] desist from negotiating directly with its employees over wages and benefits without the involvement of employee unions and ensure that any negotiations or offer of settlement is done with the Applicants or through their legal practitioners and does not interfere with the employees' right to collective bargaining and fair labour standards.

- 570.** *The Committee further notes that on 9 February 2018, the company issued a press statement through which it advised its stakeholders that it acknowledges that there is a long-standing 2012 collective bargaining dispute that is pending before the courts; affirms that it has no capacity to pay the said CBA, notwithstanding a signed agreement; informed that it made a settlement offer to employees with respect to the CBA and was grateful that an overwhelming majority of employees accepted the offer; and considers that the substantial pay increase and back pay relating to the 2012 CBA would require a tariff increase which would place an unnecessary burden on electricity consumers.*

- 571.** *While noting the Government’s indication that as a parastatal, the company is obliged to uphold the court judgment, the Committee observes with regret that seven years after the conclusion of the CBA, the provisions in relation to salary are still not implemented. The Committee recalls that agreements should be binding on the parties 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 **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, paras 1334 and 1340]. The Committee urges the Government to take all necessary measures to ensure that the CBA is implemented by the parastatal company in question or that a settlement is fully negotiated with the union without further delay. It requests the Government to keep it informed of all steps taken to that end.*
- 572.** *The Committee notes that according to the ZCTU, as the company refused to comply with the court order, the unresolved dispute prompted workers to embark on a collective job action. The ESWU informed the company of its intention to demonstrate through a letter dated 27 November 2017. However, the High Court granted a temporary interdict sought by the employer. The Committee notes the reasoning of the Court:*

... The unlawfulness of the intended collective job action arises from two situations. Firstly, the employees of the applicant are engaged in an essential service, and are prohibited by law from engaging in or recommending collective job action. See section 104(3) of the Labour Act; and section 2(g) of the Labour Declaration of Essential Services Notice, 2003. Secondly, the respondent and its members have not followed the procedures set out in section 104(2) of the Labour Act before resorting to collective job action to resolve their dispute with the employer. The failure to comply with the mandatory requirements of that section renders the collective job action unlawful. Professor Madhuku for the respondent submitted that section 59 of the Constitution applies. The section provides that: “Every person has the right to demonstrate and to present petitions, but these rights must be exercised peacefully”. That section must be read together with section 65(3) of the Constitution which speaks explicitly to the right of every employee to participate in collective job action. Section 65(3) explicitly states that “a law may restrict the exercise of this right in order to maintain essential services”. Reading section 59 in isolation from section 65(3) would be contrary to the established principle that a Constitution is a living document whose provisions must be read together as a whole and not in isolation. The respondents have not sought to impugn the provisions of the Labour Act which relate to essential services in the context of collective job action.

The Court concludes:

... The balance of convenience favours the granting of the interim relief. ... The full extent, implications and consequences of the proposed collective job action are matters that can be considered on the return date. The letter of 8 December 2017 does not limit participation in the demonstration to employees who are on leave. I do not believe that there is an alternative remedy which would achieve the same result as the interdict being sought in the present case. This is only a temporary interdict pending the outcome of the proceedings for a show-cause order.

- 573.** *The Committee notes that the union appealed this decision to the Supreme Court, which had the effect of suspending the ban. It further notes that it held a demonstration on 21 December 2017. The company applied for a show-cause order to the Minister in terms of section 106 of the Labour Act. On 31 January 2018, the Labour Court issued a disposal order removing the case from the role, pending the Supreme Court decision. The Committee further notes that on 28 February 2018, the ESWUZ intended another demonstration that was interdicted by a High Court Order in March 2018 stating that the demonstration violated section 65(3) of the Constitution, prohibiting any form of collective job action until the appeal filed in the Supreme Court is disposed of and ordering that “any violation of this court order shall result in criminal prosecutions”. Finally, the police declined a request for a procession organized*

by the ZCTU to accompany the petition to Parliament against corruption and victimization of workers' representatives for reporting corruption on 20 March 2018.

- 574.** *The Committee notes that the Court, the complainant and the relevant documents submitted by the complainant (including the above-cited letter dated 27 November 2017 addressed to the company) refer to the intended action as a demonstration. The Committee observes that the facts presented in the case are not clear as to whether the employees intended to stop working or if the demonstration was to take place outside of working hours. The Committee recalls that while a work stoppage in an undertaking providing essential services, such as electricity services in the present case, may be restricted or prohibited, a demonstration outside of working hours to express their views on their socio-economic conditions which does not entail an interruption of such services should be afforded appropriate protection. The Committee recalls in this respect that workers should enjoy the right to peaceful demonstration to defend their occupational interests [see **Compilation**, op. cit., para. 208]. Observing that final consideration of this matter is pending before the Supreme Court, the Committee requests the Government to bring the conclusions of this case to the attention of the relevant judicial authorities and to transmit to it a copy of the final decision once it is handed down.*
- 575.** *The Committee notes the ZCTU allegations that following the above-mentioned action on 21 December 2017, on 5 March 2018 the company suspended from employment eight trade union leaders on charges of participating in an unlawful collective job action, breach of confidentiality and insubordination. The complainant indicates that they are undergoing disciplinary proceedings. The Committee further notes that, according to the Government, following the ZCTU's request for its intervention in March 2018, the Ministry of Labour and Social Services convened a meeting with the management, the affected employees, representatives from the ZCTU and the EMCOZ. The participants of the meeting resolved that the ZCTU and the EMCOZ would attempt to engage their constituents and engage in bilateral discussions towards the resolution of the matter. In July 2018, the ZCTU once again requested the Government's intervention due to the lack of progress on the matter and another meeting took place on 1 August 2018. During the meeting, it was agreed in particular that the company would consider the issues and options with the intention of re-engaging the dismissed workers and inform the Ministry within two weeks, and that the Ministry, on the one hand, would convene a meeting with the dismissed workers within two weeks, and on the other, facilitate ILO training for both the unions and employers. Two meetings were also held between the dismissed employees and the Ministry officials in December 2018 and March 2019. On 11 April 2019, the Minister of Labour and Social Services met with representatives of the ZCTU, ZFTU and APEX Council to discuss different issues, including the present case. On that occasion, the Minister undertook to urgently engage the company's board with a view to finalizing the long-standing issues of the dismissed employees. The Committee urges the Government to address the issue of dismissed employees as per its commitment expressed during the meeting of 11 April 2019 and to provide information in this regard as a matter of urgency.*
- 576.** *The Committee notes the arrest of Mr Masvingwe on 13 March 2018 during a demonstration staged by the NEWUZ. According to the complainant, he is facing criminal charges and appeared in the Magistrate's Court on 19 March 2018. His trial had been set for 25 April 2018. The Committee regrets that the Government provides no information in this regard. 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, the arrest of, and criminal charges brought against, trade unionists may only be based on legal requirements that in themselves do not infringe the principles of freedom of association [see **Compilation**, op. cit., para. 133]. It further recalls that no one should be deprived of their freedom or be subject to penal sanctions for the mere fact of organizing and*

participating in a peaceful demonstration. The Committee understands that Mr Masvingwe is not being detained. It observes, however, that more than a year has passed since the intended trial date on criminal charges against him. The Committee requests the Government to provide without delay detailed information on the circumstances of the arrest of Mr Masvingwe, the exact charges brought against him and the outcome of the trial.

The Committee's recommendations

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

- (a) *The Committee urges the Government to take all necessary measures to ensure that the CBA is implemented by the parastatal company in question or that a settlement is fully negotiated with the union without further delay. It requests the Government to keep it informed of all steps taken to that end.***
- (b) *The Committee requests the Government to transmit the considerations of this case to the relevant judicial authorities and to transmit a copy of the final decision once it is handed down.***
- (c) *The Committee urges the Government to address the issue of dismissed employees as per its commitment expressed during the meeting of 11 April 2019 and to provide information in this regard as a matter of urgency.***
- (d) *The Committee requests the Government to provide without delay detailed information on the circumstances of the arrest of Mr Masvingwe, the exact charges brought against him and the outcome of the trial.***

Geneva, 31 October 2019

(Signed) Professor Evance Kalula
Chairperson

Points for decision:

paragraph 83	paragraph 328
paragraph 95	paragraph 348
paragraph 114	paragraph 384
paragraph 132	paragraph 412
paragraph 153	paragraph 450
paragraph 170	paragraph 485
paragraph 190	paragraph 506
paragraph 224	paragraph 522
paragraph 252	paragraph 532
paragraph 269	paragraph 544
paragraph 302	paragraph 577
paragraph 317	