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INTERNATIONAL LABOUR OFFICE

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Governing Body

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SEVENTH ITEM ON THE AGENDA

**Reports of the Committee on
Freedom of Association**

**356th Report of the Committee
on Freedom of Association**

CASE No. 2652

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

**Complaint against the Government of the Philippines
presented by
the Toyota Motor Philippines Corporation Workers' Association
(TMPCWA) by a communication dated 12 May 2008**

Allegations: The complainant alleges the Government's failure to secure the effective observance of Conventions Nos 87 and 98, which led to several infringements of the right to organize and collective bargaining on the part of Toyota Motor Philippines Corporation, such as interference in the trade union's establishment and activities, refusal to bargain collectively despite the certification of the union as the sole and exclusive bargaining agent, anti-union discrimination through the dismissal of union members further to their participation in union activities and in particular in strike action, restrictions on the exercise of the right to strike which includes the intervention of the Secretary of Labor and Employment to put an end to the strike

1194. The complaint is set out in a communication of 12 May 2008 from the Toyota Motor Philippines Corporation Workers' Association (TMPCWA). The complainant submitted additional information in support of its complaint in communications dated 26 August 2008 and 8 January 2010.
1195. The Government submitted its observations in a communication of 15 January 2010.
1196. 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).
1197. The complaint was sent in the framework of another case before the Committee concerning the Philippines, Case No. 2252, which also concerned labour conflicts at the Toyota Motor Philippines Corporation (TMPC) and the continued refusal by the management to recognize and negotiate with the complainant TMPCWA. The Committee considered that the new and detailed allegations made by the complainant with respect to the matters under examination were of such gravity that they called for a more detailed examination in the framework of the present complaint.
1198. The Committee last examined Case No. 2252 at its May–June 2008 session [see 350th Report, paras 160–179] and made the following recommendations:

- The Committee once again requests the Government to initiate discussions in order to consider the possible reinstatement of the 122 workers who did not previously accept the compensation package offered by the company, in their previous employment or, if reinstatement is not possible, as determined by a competent judicial authority, the payment of adequate compensation. The Committee requests the Government to pursue its efforts in this respect and to keep it informed of the decision of the Supreme Court on the motion for reconsideration by the Supreme Court *en banc*, as soon as it is rendered.
- On the criminal charges laid against 18 trade union members and officers for grave coercion against workers who were not involved in the strike of 18–31 March 2001, the Committee notes that, according to the complainant, a new hearing had been scheduled for 24 March 2008 and requests the Government to transmit a copy of the court judgement as soon as it is rendered.
- Noting that according to the complainant, the Fourth Division of the Court of Appeals instructed the parties to submit a memorandum on the certification dispute which has been pending for seven years now, the Committee expresses the hope that the Court of Appeals will issue its decision on this issue of certification without further delay and requests the Government to communicate the court judgement as soon as it is rendered.
- Noting with grave concern the allegations of the complainant with regard to unidentified individuals asking for information regarding the whereabouts of the officers of the TMPCWA and its office, the Committee requests the Government to take all necessary measures to guarantee the security of the TMPCWA officials and to keep it informed in this respect.
- The Committee requests the Government to solicit information from the employers' organization concerned so that it may have at its disposal their views as well as those of the enterprise concerned on the matters at issue.

Background

A. The complainant's allegations

Judicial procedures

1199. In its communication of 12 May 2008, the complainant refers to a decision of the Supreme Court of the Philippines rendered on 19 October 2007, with regard to the question of the dismissal of 227 workers (121 of which had decided not to settle their case with the employer, the TPMC). According to that decision, the dismissals of 227 trade union officers and members were lawful because of their participation in an illegal strike and for having committed other "illegal acts" during that strike, like coercion, committed in particular by obstructing free ingress to or egress from the company premises, badmouthing people, shouting invectives, and pounding the vehicles of Toyota officials. The Supreme Court also included among the illegal acts, the fact that the dismissed workers (who were on "payroll reinstatement" ordered by the courts) staged rallies or pickets in front of the Bicutan and Santa Rosa plants, in "patent" violation of the 10 April 2001 assumption of jurisdiction order issued by the Department of Labor and Employment (DOLE) Secretary, which proscribed the commission of acts that might lead to the "worsening of an already deteriorated situation". Moreover, the court ordered that separation pay should not be provided to the workers, because these illegal acts constituted

serious misconduct. The complainant indicates that its motion for reconsideration of this decision was denied by the Supreme Court on 17 March 2008, in a one-page decision.

1200. The complainant refers to an appeal it had made to the Court of Appeals regarding the certification election of 2000. The complainant maintains that that vote should have excluded the votes of 105 employees, who were managerial and therefore not part of the rank-and-file bargaining unit; minus those votes, the complainant would have secured a majority of the votes (503 out of 958) and thus been certified as the sole and exclusive bargaining agent. The complainant indicates that on 2 April 2008, the Court of Appeals ruled that since the Toyota Motor Philippines Corporation Labour Organization (TMPCLO) was designated as the sole and exclusive bargaining agent by the 2006 certification election, the question of whether TMPCWA had won the 2000 certification election had been rendered moot. In its judgement, the Court of Appeals also ruled that the 105 employees whose votes were challenged by the complainant were, from the evidence before it, including the affidavits of the 105 employees concerned, not “managerial” employees but members of the rank-and-file as defined in article 212(m) of the Labour Code. A copy of the judgement of the Court of Appeals is attached to the complaint. The complainant alleges that the question of whether it won the 2000 election is still very important, as it may determine whether TMPC infringed labour laws by refusing to negotiate with it, and maintains that it is still the sole and exclusive bargaining agent. The complainant also alleges that the TMPC exercised influence with both the Supreme Court and the Court of Appeals so as to ensure favourable decisions for itself, and that the Court of Appeals, which took seven years to render its decision, waited for the Supreme Court’s decision concerning the legality of the dismissals to hand down its judgement respecting certification of the sole bargaining agent.
1201. On 23 April 2008 the complainant filed an urgent plea before the Supreme Court, requesting it to review its 19 October 2007 and 17 March 2008 decisions on the basis that they were contrary to labour law. On 6 May 2008, it filed a motion for reconsideration to the Court of Appeals, asking it to review its 2 April 2008 decision.

Anti-union monitoring, intimidation and harassment

1202. The complainant denounces the strong army presence and surveillance of the trade union. It specifically refers to two incidents, on 24 January and 4 February 2008, when three military members of the 202nd Infantry Brigade came to the complainant’s office without nameplates and asked questions concerning the whereabouts of union members. While the soldiers stated that their visit was prompted by information they had received that members of the “New People’s Army”, were among the workers, the complainant alleges that these interventions are rather a form of monitoring from the Government and constitute trade union repression.
1203. The complainant indicates that a detachment of the Philippine National Police (PNP) is present at the company’s gate, that headquarters of the Laguna Industrial Park Police Assistance Group (LIPPAG) were established inside the company’s premises, and that military members of the 202nd Infantry Brigade can freely enter the premises. The complainant alleges that these measures constitute harassment and repression to the union and all its leaders, and that the establishment of soldiers in a peaceful community is a tactic by the TMPC to destroy the union.
1204. In its communication of 26 August 2008, the complainant states that two unidentified men, who appeared to be military personnel, were spotted lurking in front of the house of union President Ed Cubelo. The complainant states that Ed Cubelo fears for his life, as this development is part of a larger pattern of intimidation and violence against trade unionists, including the murders of trade union leaders Diosdado Fortuna and Gerry Cristobal. The

complainant alleges that on 11 July 2008, Pablo Sario, a very active member of the TMPCWA, was pushed, insulted and prevented to speak at a meeting. He subsequently filed a complaint, but a month later his complaint was dismissed by the foreman, on the grounds that it was unfounded. The complainant alleges that many witnesses confirm Mr Sario's account. The complainant further indicates that on 20 and 22 August 2008, the management distributed leaflets linking the TMPCWA to the Communist Party of the Philippines, and that on 22 August 2008, Wenecito Urgel (the TMPCWA Vice-President inside the factory) was sent away from the factory, as Toyota officials were coming to visit it and the managers feared Mr Urgel would create chaos. During the visit, more than 50 guards were deployed inside the production line.

- 1205.** In a communication dated 8 January 2009, the complainant alleges that many trade unionists (none of whom are TMPCWA members) were arrested and many others were in hiding due to fabricated charges of murder and accusations of membership in the New People's Army. Finally, the complainant alleges that TMPC officials have stopped attending conciliation–mediation conferences that were to be held at the National Conciliation and Mediation Board (NCMB), and that the latter body lacks the power to compel the TMPC to attend the meetings. A copy of a notice for a conciliation–mediation conference scheduled for 9 December 2008, issued by the NCMB and addressed to the TMPC, is attached to the communication.

B. The Government's reply

- 1206.** In its communication of 15 January 2010, the Government states that a high-level ILO mission, the terms of reference of which covered all cases before the Committee concerning the Philippines, was carried out on 22–29 September 2009. The mission identified four areas for future action on Convention No. 87, including: (1) a three to four-year technical cooperation programme on training and capacity building to strengthen labour market governance; (2) rapid response such as the setting up of a high-level tripartite, interagency monitoring body for alleged trade union rights violations; (3) pushing for legislative amendments to certain Labor Code provisions; and (4) the resolution of longstanding CFA cases through innovative approaches and the resolution of active cases pertaining to alleged extra-judicial killings and the militarization of economic zones.
- 1207.** The Government states that it will work closely with the ILO, its social partners and other stakeholders to establish a Technical Cooperation Program (TCP) that will raise the awareness and strengthen the capacity of all relevant government institutions including the social partners in the promotion and protection of labour rights. A three to four-year TCP has been subjected to a multi-stakeholder review and is currently being finalized by the ILO for submission to potential donors including the US Department of Labor (USDOL). Pending the implementation of the TCP, the Government and the ILO has started the conduct a of short-term awareness programme on the principles of Freedom of Association. The first was the three-day National Tripartite Conference on Principles of Freedom of Association held last December which resulted in the signing of Joint Statements by the social partners with the Armed Forces of the Philippines (AFP), Philippine National Police (PNP) and the Philippine Economic Zone Authority (PEZA). Copies of the Joint Statements and Report of Proceedings are attached as Annex B. Two more regional conferences focusing on the economic zones will be conducted before end of March 2010.
- 1208.** Finally, the Government is working on the proposed legislative reforms to further strengthen trade unionism and remove obstacles to the effective exercise of labour rights. Towards this end, the Executive Branch has drafted two bills which are currently undergoing tripartite consultations for submission to the National Tripartite Industrial

Peace Council (NTIPC) prior to the filing with the appropriate committees of both Houses of the 15th Congress by June 2010. The first bill seeks to amend Section 263(g) of the Labor Code which authorizes the Secretary of Labor (and the President) to assume jurisdiction over labour disputes concerning the national interest. It limits the assumption of jurisdiction to the ILO's concept of "essential services". The second bill, on the other hand, incorporates the amendments that further liberalize the exercise of trade union rights, repeal the requirement of prior authorization for receipt of foreign assistance and remove the criminal sanction for mere participation in illegal strike on ground of non-compliance with the administrative requirements. In view of the possible delay in the passage of these bills into law, taking into account the pendency of the bills earlier reported to the ILO covering the same subject matter, the processes involved and the forthcoming electoral exercise, the Executive Branch will implement the following administrative interim measures: (1) the joint guidelines on the conduct of PNP personnel, private security guards during strikes/lockouts effective March 2010; and (2) Revised Department Order No. 40, series of 2003, to include procedural requirements prior to the assumption of jurisdiction by the Secretary of Labor.

- 1209.** The Government indicates that as concerns the alleged military harassment of the TMPCWA, the mission had been provided with information on this matter and had met with the parties, visited the Toyota Plant in Santa Rosa, Laguna and had discussions with representatives of the AFP, PNP, the local mayor and PEZA. The mission had also proposed a combined awareness-raising and capacity-building initiative on human rights, trade union rights and civil liberties programme for the military and the police, which could be co-conducted with the Commission on Human Rights of the Philippines (CHRP), including the updating of the guidelines for the conduct of the PNP, private security guards and company guard forces during strikes, lockouts and labor disputes.
- 1210.** The Government states that the dismissal of the 227 workers has already been decided with finality by the Philippine Supreme Court in April 2008. Pursuant to the report of the TMPC, 135 of the dismissed workers have requested and received financial assistance from the company. The incumbent bargaining representative of the rank-and-file union, the TMPCLO, made representations on this issue.
- 1211.** As regards the TMPCWA's claim that a total of 26 members were implicated in three criminal lawsuits as a result of the illegal strike, one case was already dismissed in 2001 and the union's proposal to dismiss the other two cases has been included in the exploratory talks on the conciliated "out-of-the-box" solution. The Government, through the DOLE, has initiated separate discussions with the TMPC, the TMPCWA (President Ed Cubelo) and with the two incumbent unions for "out-of-the-box solutions" (i.e., the dismissal of the remaining criminal cases against the members of TMPCWA and livelihood assistance for interested dismissed members). The criminal cases were initiated by individual employees because of grave coercion, harassments and threats made allegedly by the members of TMPCWA (Ed Cubelo group) to them and to their families as a consequence of the labour dispute.
- 1212.** The Government states that the supervisory union, the TMPCSU, has extended support to work out the dismissal of the criminal cases to put an end to Toyota workers' divisiveness. Criminal Case No. IS No. 01-1-3536, 02B-605, 02-1237, which was initiated by the members of the supervisory union, has already been withdrawn by the complainants, Messrs R. de Guzman and L. Tejano, in 2001 in the spirit of reconciliation. The withdrawal of the two remaining cases is being worked out. The supervisory union has held meetings with the complainants but the reluctance was largely due to the lack of assurance that the threats will stop and the absence of an apology from the respondents. The DOLE will facilitate a settlement agreement between the parties to bring about the

dismissal of the criminal charges and to move forward the “out-of-the-box solution” on the dismissal case.

C. The Committee's conclusions

1213. *The Committee first wishes to recall the context of its examination of these matters under Case No. 2252. The Committee recalls that that case concerned labour conflicts at the TMPC enterprise and the alleged continued refusal by the management to recognize and negotiate with the complainant TMPCWA, despite the union's certification by the DOLE as sole and exclusive bargaining agent. The enterprise moreover dismissed 227 workers. Criminal charges were filed by certain employees against officers and members for having staged strikes in protest at this refusal. The National Labor Relations Commission (NLRC) later on found these dismissals valid but nevertheless required the enterprise to grant one month's separation pay for every year of service. Approximately 100 workers have not accepted the compensation package. In February 2006, the DOLE authorized a new certification election, which took place on 16 February 2006, and led to the certification of the TMPCLC – which the complainant alleged was established under the dominance of the employer – as sole and exclusive bargaining agent of all the rank and file employees. Several legal appeals were pending before the courts filed by both parties (the enterprise and the TMPCWA). The Committee further takes note of the report of the high-level ILO mission to the Philippines that took place from 22 September to 1 October 2009.*
1214. *The Committee notes that the complainant's motion for reconsideration of the 19 October 2007 decision of the Supreme Court was denied on 17 March 2008, and that on 23 April 2008 the complainant filed an urgent plea before the Supreme Court requesting it to review its 19 October 2007 and 17 March 2008 decisions on the basis that they were contrary to the labour law. In respect of this matter, the Committee also notes the Government's statement that the dismissal of the 227 workers has already been decided with finality by the Philippine Supreme Court in April 2008; pursuant to the report of the enterprise, 135 of the dismissed workers have requested and received financial assistance from the enterprise. The incumbent bargaining representative of the rank-and-file union, the TMPCLC, made representations on this issue.*
1215. *In respect of the Supreme Court's denial of the complainant's motion for reconsideration of its 19 October 2007 decision, the Committee recalls that during the first examination of this case, both the complainant and the Government indicated that the strike in question was peaceful and the Government even referred at one point in its reply to the dismissal of participants in the peaceful demonstration [332nd Report, para. 884]. The Committee had found in the past, with regard to the reasons for dismissal, that the activities of trade union officials should be considered in the context of particular situations which may be especially strained and difficult in cases of labour disputes and strike action [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth edition, 2006, para. 811]. The Committee further recalls that sanctions, such as massive dismissals in respect of strike actions, should remain proportionate to the offence or fault committed [see 329th Report, para. 738 and 332nd Report, para. 886]. The Committee recalls with regard to the TMPCWA officers in particular, that they were declared to have forfeited their employment status by the NLRC because they decided to organize the strike of 23 and 29 May 2001 contrary to the Secretary of DOLE's assumption of jurisdiction order of 10 April 2001. However, as noted by the Committee during the first examination of this case, such an order is not compatible with the principles of freedom of association and therefore, the union officers concerned cannot be sanctioned for having ignored it [332nd Report, para. 886]. The Committee recalls that it has always considered that sanctions for strike action should be possible only where the prohibitions in question are in conformity with the principles of freedom of association [see 332nd Report, para. 886] and had emphasized that the same holds with regard to trade union members.*

1216. *In its last examination of the case, the Committee had expressed its regret that the Supreme Court appears to consider that the staging of peaceful pickets should be sanctioned as a violation of an assumption of jurisdiction order, itself contrary to freedom of association principles, and as liable to lead to a worsening of an already deteriorated situation; it had also emphasized that the action of picketing organized in accordance with the law should not be subject to interference by the public authorities, and that the prohibition of strike pickets is justified only if the strike ceases to be peaceful [see Digest, op. cit., paras 648–649]. Bearing in mind the serious consequences of the dismissals for the workers concerned, the Committee had once again requested the Government to initiate discussions in order to consider the possible reinstatement of the 122 workers who did not previously accept the compensation package offered by the company, in their previous employment or, if reinstatement is not possible, as determined by a competent judicial authority, the payment of adequate compensation [350th Report, para. 173]. In light of the above, the Committee is bound to express its regret that the Supreme Court denied the complainant’s motion for reconsideration of the 19 October 2007 decision. The Committee notes from the mission report that the complainant had expressed to the mission its willingness to negotiate a solution with respect to the dismissed workers. Further noting from the report that representatives of the company had informed the mission that the company was not in a position to hire any of the dismissed workers, under any circumstances, the Committee – recalling once again the serious consequences of the dismissals for the workers concerned – once again requests the Government to initiate discussions in order to reach a solution regarding reinstatement with respect to some 100 workers who did not previously accept the compensation package offered by the company in their previous employment including, if their reinstatement is not possible as determined by a competent judicial authority, the payment of adequate compensation. The Committee further requests the Government to inform it of the outcome of the complainant’s urgent plea before the Supreme Court requesting a review of the latter’s 19 October 2007 and 17 March 2008 decisions.*
1217. *The Committee notes the Government’s indications respecting the criminal charges against the 18 trade unionists, including that the supervisory union, the TMPCSU, has extended support to work out the dismissal of the criminal cases. Of the three criminal lawsuits resulting from the strike, one case was dismissed in 2001 and the TMPCWA’s request to dismiss the other two cases has been included in the exploratory talks on the conciliated “out-of-the-box” solution. The Government further states that, through the DOLE, it has initiated separate discussions with the enterprise, the TMPCWA (President Ed Cubelo) and with the two incumbent unions for “out-of-the-box solutions” with a view to the dismissal of the remaining cases. The Committee requests the Government to keep it informed of developments regarding the abovementioned undertakings, as well as on the judicial proceedings relating to the two criminal cases.*
1218. *Previously, the Committee had noted with interest the adoption of Republic Act No. 9481 entitled “An Act strengthening the workers’ constitutional right to self-organization, amending for the purpose Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines”. The Committee noted that the law in question contains several improvements in relation to the previous legislative provisions and that, in particular, section 12 of the Act amends section 258 of the Labor Code to read as follows:*

Employer as Bystander – In all cases, whether the petition for certification election is filed by an employer or a legitimate Labor organization, the employer shall not be considered a party thereto with a concomitant right to oppose a petition for certification election. The employer’s participation in such proceedings shall be limited to: (1) being notified or informed of petitions of such nature; and (2) submitting the list of employees during the pre-election conference should the Med-arbiter act favourable on the petition.

1219. *Observing that if this provision were in force at the time when the TMPCWA requested certification as majority union, the dispute which is the object of the present case might have been avoided since the enterprise would not have had the right under the law to oppose the union's petition for certification before the courts (on grounds relative to the segregation of the votes of supervisory employees), the Committee expressed the hope that the Court of Appeals, in rendering its decision, would bear in mind the spirit of this new provision of the Labor Code combined with the fact that, as the Committee had previously noted, during the latest certification election the enterprise did not pursue the matter of the segregation of the votes of the supervisory employees with any insistence and therefore seemed to have changed position on this issue, which constituted the basis for its initial appeal against the TMPCWA and lies at the heart of the dispute with that union.*
1220. *The Committee notes with regret that in its 2 April 2008 decision, the Court of Appeals appears not to have given consideration to the Committee's previous comments as set out above, but ruled rather that since the TMPCLO was designated as the sole and exclusive bargaining agent by the 2006 certification election, the question of whether the TMPCWA had won the 2000 certification election had been rendered moot. In its judgement, the Court of Appeals also ruled that the 105 employees whose votes in the 2006 certification election were challenged by the complainant were, from the evidence before it, including the affidavits of the 105 employees concerned, not "managerial" employees but members of the rank-and-file as defined in article 212(m) of the Labor Code. The Committee recalls, from its previous examinations of Case No. 2252, that the employer had challenged the complainant's certification in 2000 on the grounds that the 105 employees concerned were managerial staff, and thus not entitled to vote – only to change its position on this very issue in the 2006 certification elections. Noting that on 6 May 2008 the complainant filed a motion for reconsideration to the Court of Appeals, asking it to review its 2 April 2008 decision, the Committee requests the Government to inform it of developments in this respect. Moreover, the Committee expresses the firm expectation that the Court of Appeals, should it grant the complainant's motion, will give due consideration to the Committee's previous comments on the issue of certification.*
1221. *Previously, the Committee had expressed grave concern over the complainant's allegations with regard to unidentified individuals asking for information regarding the whereabouts of the officers of the TMPCWA and its office. In this regard, the Committee must once again express deep concern over the complainant's indication that two unidentified men were spotted lurking in front of the house of union President Ed Cubelo. The Committee further notes the complainant's allegation that a detachment of the PNP is present at the company's gate, that the headquarters of the LIPPAG were established inside the company's premises, and that military members of the 202nd Infantry Brigade can freely enter the premises; these measures allegedly constitute harassment and repression to the union and all its leaders. The Committee also notes from the mission report that the mission had heard stories of intimidation by the armed forces that need to be investigated and redressed.*
1222. *The Committee notes from the mission report the indications provided by the employer with regards to this matter, including that the police station referred to by the complainant serves not just the employer, but the entire community, and that the only time the armed forces had entered company premises was when President Arroyo held a cabinet meeting on the premises. The Committee also notes the information provided by a representative of the armed forces to the mission, stating that the role of the PNP in the Laguna Technopark, where the employer's premises are located, was to maintain peace and order, carry out community development programmes, including livelihood programmes, and safeguard the community's security. Furthermore, the Committee takes note of the Government's indication that the mission had identified four areas for future action to ensure the implementation of Convention No. 87, including one dedicated to the resolution*

of active cases pertaining to alleged extra-judicial killings and the militarization of economic zones.

1223. *In this connection, the Government has committed itself to ensuring the expeditious investigation, prosecution, and resolution of pending cases concerning alleged harassment and assassination of labour leaders and trade union activists. In affirming the mission's proposal that the matter of trade union violence be addressed through a combined human rights, trade union rights and civil liberties programme for the forces of order, the Committee requests the Government to continue to pursue the measures it has indicated and all other measures necessary to ensuring that freedom of association may be exercised by all workers' organizations, including the complainant, in a climate free from violence, harassment, and threats of intimidation of any kind, and to keep it informed of the progress made in this regard.*
1224. *The Committee notes, finally, the complainant's allegation that on 20 and 22 August 2008 the management distributed leaflets linking the TMPCWA to the Communist Party of the Philippines. The complainant alleges that on 22 August 2008, Wenecito Urgel (the TMPCWA Vice-President inside the factory) was sent away from the factory, as officials were coming to visit it and the managers feared Mr Urgel would create chaos. The complainant further alleges that on 11 July 2008, Pablo Sario, a very active member of the TMPCWA, was pushed, insulted and prevented to speak at a meeting. He subsequently filed a complaint, but a month later his complaint was dismissed by the foreman, on the grounds that it was unfounded. In this connection, the Committee observes from the mission report that the mission had received numerous stories of impediments and obstacles to the full exercise of freedom of association. The complainant alleged various situations where they had been effectively blocked from exercising trade union rights for nearly two decades, and where any advances in this respect were few and far between; in particular, the unions described a scenario wherein trade union rights are rarely respected by the employer, who is reported to prefer a non-union workplace or one where unions are generally submissive. The Committee also notes that the employer's representatives had informed the mission that they had no knowledge of the leaflet referred to by the complainant. The representatives also stated that fairness towards all employees was the company's policy, and that "even TMPCWA members who had been unkind in the past had been given promotion opportunities". Noting the divergence of points of view with respect to this issue, the Committee requests the Government to initiate a full, in-depth and independent inquiry into the complainant's allegations of discrimination against its members and, if they are found to be true, to take the necessary measures to ensure that the persons concerned are adequately compensated so as to constitute sufficiently dissuasive sanctions against future acts of anti-union discrimination. It further requests the Government to keep it informed in respect of any court proceedings concerning these matters.*

The Committee's recommendations

1225. *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) *The Committee once again requests the Government to initiate discussions in order to reach a solution with respect to approximately 100 workers who did not previously accept the compensation package offered by the company in their previous employment including, if their reinstatement is not possible as determined by a competent judicial authority, the payment of adequate compensation. The Committee further requests the Government to inform it of the outcome of the complainant's urgent plea before the Supreme Court*

requesting a review of the latter's 19 October 2007 and 17 March 2008 decisions.

- (b) The Committee requests the Government to keep it informed of developments regarding the initiatives to find "out-of-the-box solutions" with a view to dismissing the criminal cases involving members of the TMPCWA, as well as on the judicial proceedings relating to the two criminal cases.*
- (c) The Committee requests the Government to inform it of the outcome of the complainant's motion for reconsideration of the Court of Appeals' 2 April 2008 decision confirming the TMPCLC's certification as the sole and exclusive bargaining agent. The Committee further expresses the firm expectation that the Court of Appeals, should it grant the complainant's motion, will give due consideration to the Committee's previous comments on the issue of certification.*
- (d) The Committee requests the Government to continue to pursue measures to ensure the expeditious investigation, prosecution, and resolution of pending cases concerning the alleged harassment and assassination of labour leaders and trade union activists, and all other measures necessary to ensuring that freedom of association may be exercised by all workers' organizations, including the complainant, in a climate free from violence, harassment, and threats of intimidation of any kind, and to keep it informed of the progress made in this regard.*
- (e) The Committee requests the Government to initiate a full, in-depth and independent inquiry into the complainant's allegations of discrimination against its members and, if they are found to be true, to take the necessary measures to ensure that the persons concerned are adequately compensated so as to constitute sufficiently dissuasive sanctions against future acts of anti-union discrimination. It further requests the Government to keep it informed of any court proceedings concerning these allegations.*