

Interim Report - Report No 380, October 2016

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Allegations: The complainant organization alleges forced transfer of union leaders, illegal termination, intimidation and physical threats against union members by the company Modelama Exports in retaliation for union activities. The complainant further alleges unjust denial of registration by the Registrar of trade unions in the Haryana State.

1. **543.** The complaint is contained in a communication from the Modelama Workers Union, Gurgaon (MWU) dated 27 February 2015.
2. **544.** The Government sent its partial observations in a communication dated 4 July 2016.
3. **545.** India has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

1. **546.** In its communication dated 27 February 2015, the MWU alleges forced transfer of union leaders, illegal termination, intimidation and physical threats against union members by the company Modelama Exports in retaliation for union activities, as well as denial of registration by the Registrar of trade unions in the Haryana State.
2. **547.** The complainant indicates that the MWU was created at the factory which produces and exports garment products to multinational brands in Europe and the United States and has many units in the Gurgaon district of Haryana, Noida and New Delhi. According to the complainant, the MWU is a trade union as per the definition provided under section 2(h) of the Trade Unions Act, 1926 with elected representatives and a membership of over 250 workers from various units of the company who pay a membership fee. On 19 December 2012, in line with sections 4 and 5 of the Trade Unions Act, the union submitted an application for registration and furnished all the necessary documents to the Registrar of trade unions in Chandigarh, the capital of the Haryana State.

3. **548.** The complainant states that a few days after the application for union registration, the factory management was informed by the Labour Department about the union formation and started retaliation against its office-bearers; according to the report from the United Workers Congress provided by the complainant, workers at the factory reported extreme retaliation, including termination, transfers, physical threats, attempted bribes, verbal harassment, abuse and surveillance. In particular, the complainant informs that on 8 January 2013, Ashok Kumar, General Secretary of the union, was transferred to another unit of the factory around 20 kilometres away, whereas he had been continuously working in the same unit for more than seven years and had been a very popular leader in that unit. Following his transfer, a series of illegal and forceful terminations and transfers of other office-bearers and active members of the union took place in the following months: Grijesh Kumar was dismissed on 12 January 2013; Pramod Kumar was dismissed on 18 January 2013; Brijesh Prasad and Rajendra Prasad were dismissed on 24 January 2013; Ramnath, Shishu Pal and Ashutosh Yadav were dismissed on 25 January 2013; Bramhanand Bhuyan (Organizing Secretary), Manju Devi and Ranjeet Kumar were dismissed on 28 January 2013; Manoj Kumar Singh (Joint Secretary), Murari Prasad and Sharwan Kumar (Vice-President) were dismissed on 12 February 2013; and Vinod Kumar (Treasurer) and Hem Narayan Jha (Publicity Secretary) were transferred to a different unit on 15 January 2013. The dismissed workers were individually called to the office of the human resources manager where they were surrounded by ten to 12 people, including security forces, and were forced to sign documents and provide their fingerprints, while being told that they were dismissed because they were union leaders. They were also provided with large amounts of money. The complainant affirms that each termination and transfer was done with malicious intent and constitutes an act of unfair labour practices under schedule V of the Industrial Disputes Act, 1947 and is prohibited under section 25-U of the same Act. The union filed several complaints to the Office of Labour-cum-Conciliation Officer, Circle-1, Gurgaon dated 9 January 2013 and 28 February 2013 but no action was taken by the Labour Department on the continuous complaints of illegal and forced termination and unfair labour practices. Furthermore, the management did not reply to any notice from the union and provided fabricated facts about the status of workers to the Labour Department.

4. **549.** In February and March 2013, the complainant organized protests in front of the factory gate where the dismissed and transferred workers demonstrated against their dismissal or transfer. Although the protesters were peaceful, the management disturbed, intimidated and provoked them by making negative comments and filming them. The complainant affirms that the management had a clear intention to threaten the workers with physical harm and it, therefore, lodged a complaint in the Udyog Vihar police station, following which the Sub-Inspector deleted the photos and videos and the management promised that the materials would not be misused. The complainant further indicates that the management blocked the protesters by parking trucks and other vehicles in front of them, even when they moved some metres away and changed their place for the protest, thus hiding the protesting workers from the public and other workers. The union repeatedly sent complaints to the Udyog Vihar police station against the illegal parking of trucks. Furthermore, the protest was also disturbed by female bouncers, working on instructions of the management, who threatened union members sitting in front of the factory, tried to convince them to leave the union, pushed them physically and abused them. On one of the days, a female bouncer snatched a camera of a media person who was at the venue reporting about the protest and the camera was kept inside the factory premises; it was returned only after another police intervention. According to the complainant, the management became wary of the protest's popularity and support received from workers of the company and other garment workers and, therefore, stopped them from coming outside the premises and for the first time provided lunch to them in the factory canteen. It was understood among the workers that they had been getting tea and biscuits in the factory free of charge because of the protest.

5. **550.** The complainant further states that workers reported extreme retaliation for the protests, which, according to the report of the United Workers Congress provided by the complainant, included surveillance of workers and their families by the management, attempts at bribery and intimidation through visits at home and at the workplace. These allegations concern the following workers:

- – Sharwan Kumar, the Vice-President of the union, received a phone call at 8 p.m. on 19 February 2013 asking when he would be getting home, after which he went to a colleague's house. The senior manager of the factory, Arvind Rai, and in-charge, Munna, then called his wife and asked about Mr Kumar's whereabouts, while offering her large amounts of money if she convinced her husband to leave the union and the protest. After she refused, they threatened her with dire consequences.
- – Ashutosh Yadav's uncle, Vijay Kumar, was approached by the senior manager telling him to tell Yadav to leave the protest under the threat of dire consequences. Yadav also received numerous calls on 20 and 21 February 2013 and was asked to come to a specific room in the factory, where he was threatened to be accused of smuggling. Since then, Yadav has been living with a friend but the company's officials continue to threaten them.
- – Manju Devi was approached on 19 February 2013 by the senior manager, Arvind Rai, her supervisor, Upendra, and the personnel manager, Sanjay Yadav, who offered her money and asked her to either take it and join the company or leave the protest. When she replied that she would join the factory if all her colleagues were taken back, she was told to worry about herself and not her colleagues and Ms Devi refused the offer. Later on, the senior manager came to her house, repeated the offer and proposed further benefits, which the worker again refused. The senior manager also tried to convince Ms Devi's husband but he did not want to intervene on the issue. Ms Devi then called her colleague Ashok Kumar who came and talked to the senior manager. On 20 February 2013, the senior manager called the factory where Ms Devi's husband worked and told them to dismiss her husband because of her trade union affiliation. On the same day, her supervisor approached the worker at her home to pressure her to leave the protest.

- – Ashok Kumar, the General Secretary of the union, received a call on 19 February 2013 from his colleague Manju who said that the senior manager, the supervisor and the personnel manager were at her home and asked him to come, after which the senior manager also tried to convince Mr Kumar to leave. Later on, the driver and Mr Kumar's relative came to his house and talked to the senior manager on the phone. Mr Kumar was told to return to his hometown after which the workers could resume their duties one by one but Mr Kumar refused. The next day, the personnel manager again visited Mr Kumar's house at night and Mr Kumar requested that all of his colleagues be reinstated which the personnel manager said he would do if the protests did not resume for three days. However, when Mr Kumar asked to have a written agreement on this by the next morning, the personnel manager added that he would prepare the document if Mr Kumar could promise that the workers would leave the union. To this, Mr Kumar replied that he would do it if during one year the management treated the workers fairly but he had not received any written document from the management.

6. **551.** The complainant further claims that while intimidating and harassing trade union members, the management was simultaneously engaged in negotiation with union representatives and agreed to let the workers resume duty and pay the increased conveyance expenses and rent for two office-bearers. However, such agreement was only made verbally and after a few months, the management stopped providing the promised facilities to the union's office-bearers. Furthermore, although the management was supposedly negotiating with the union, they also obtained an ex parte stay order against the union blocking workers' rights to peacefully gather and protest, which, according to the complainant, was made on the basis of fictitious grounds and on submissions by the management without giving the union the opportunity to respond and defend their rights. As a result, the complainant called a mass gathering and a protest march against the management from 17 February to 12 March 2013 near the factory gate, while respecting the distance of 300 metres imposed by the stay order, and various trade union leaders and workers expressed solidarity with the struggle. Even at that distance, the management used various disruptive methods to disturb the protest but the workers continued to put pressure on the management to settle this issue. The complainant states that the union and the management held further negotiations and after several meetings, the management provided a written agreement to have 14 workers resume their duty. As part of the deal, Ashok Kumar and Sharwan Kumar agreed to be transferred 20 km away if the management paid for their rent incurred as a result of the transfer and two other active members of the union, Hem Narayan Jha and Vinod Kumar, were transferred to Okhla in April 2013 and were promised conveyance as the workplace was far from their homes. However, the complainant indicates that since then the management went back on its promises: it stopped paying these costs as of April 2014; Ashok Kumar was denied his salary for the month of June 2014 and around 200 trade union leaders and members were either forced to resign or were illegally terminated by the management in the following months. The complainant states that it also sent complaints about the disruption of protests and anti-union discrimination to the brands buying from the factory, but most of them either did not respond or shared the management's position, while one considered that there were violations of its code of conduct and eventually exited the factory. According to the complainant, the Government, in collusion with the factory management, has denied workers their freedom of association through a variety of means and the brands have done the same.

7. **552.** With regard to the application for registration, the complainant indicates that the Office of the Registrar-cum-Labour Commissioner of the Haryana State rejected the application of the MWU by letter No. IR-2/2013/20846 dated 8 July 2013 because the union did not fulfil the requirement under section 4 of the Trade Unions Act as more than 50 per cent of its applicants ceased to be members of the trade union. However, the complainant points out that the rejection was based on fabricated and imaginary reasons, was made without due-diligence and without proper investigation of the factory. The complainant further states that the Registrar clearly denied having received the relevant documents from the union and although section 7 of the Trade Unions Act gives the Registrar the power to call for further required particulars from trade unions in the process of registration, the union had not received any communication from the office of the Registrar. On 19 July 2013, the office-bearers of the union submitted a petition to the Registrar-cum-Labour Commissioner to review the denial of registration claiming that the reasons for refusal were factually wrong and indicating that Vinod Kumar was the treasurer and active member of the union and that the management had forcefully terminated the concerned union leaders but that these had since been re-employed. However, the petition was refused stating that the Office had no power to review its own order and the petitioners were instructed to approach the Labour Court of the concerned district. The complainant claims that the Registrar-cum-Labour Commissioner had not performed his legal duty under the Trade Unions Act and victimized the MWU, especially considering that the Labour Department was aware of the unfair labour practices by the management and was involved in the conciliation process. It further affirms that the rejection of registration was based on wrong assumptions, wilful ignorance of relevant documentary and other evidence, prejudice, inaction and non-performance of statutory duties and obligations by the State of Haryana. According to the complainant, the refusal to register the union is thus in violation of the Trade Unions Act as well as of section 2 of article 3 of the ILO Constitution and section 2 of Article 8 of Convention No. 87 and is a blatant case of negligence and a deliberate attempt to deny workers of the factory their right to organize and bargain collectively. The complainant urges the Committee to direct the Government of India, Ministry of Labour and Employment to inquire into the matter of non-registration of the MWU by the Labour Department of the State of Haryana and adopt the necessary measures to register the trade union and reinstate all the workers dismissed for their trade union activities.

8. **553.** The complainant further indicates that although there are numerous garment factories in Gurgaon that manufacture for export, garment workers are not given secure conditions of employment, are exploited, do not benefit from the welfare measures to which they are statutorily entitled under the Factories Act, 1948, and are made to work for long hours but live below subsistence level. Therefore, the workers always aspire to form trade unions but when they exercise their freedom of association guaranteed under article 91(1)C of the Constitution of India they are terminated from service and victimized, making their life worse than before. According to the report of the United Workers Congress, the General Secretary of the New Trade Union Initiative – a national independent trade union federation – explained that employers in India often use retaliation, intimidation and threats to maintain an artificial sense of industrial peace rooted in human and labour rights violations and added that unions also face barriers to recognition, registration and collective bargaining.

B. The Government's reply

1. **554.** In its communication dated 4 July 2016 the Government indicates that: (i) on the basis of a decision dated 15 August 2012 made in the meeting of the general body of the trade union, ten applicants, namely Retu Singh, Ashok, Sharwan Kumar, Hem Narayan Jha, Bramhanand Bhuyan, Murari, Shakuntala Devi, Ramraj, Manoj Kumar Singh and Vinod Kumar, submitted an application for registration of the trade union; (ii) **out of the ten applicants, six were no longer employed in the company at the time of considering the application: Sharwan Kumar, Bramhanand Bhuyan, Murari and Manoj Kumar Singh submitted resignations after accepting full and final dues, Retu Singh is considered as an outsider and Vinod Kumar submitted in writing that he was not interested in the formation of the trade union; only four out of ten applicants thus remained;** (iii) although section 4(2) of the Trade Unions Act provides that an application for registration shall not be rendered invalid by reason of the fact that after submission of the application but before registration of the union, some applicants have ceased to be members, it also states that in case more than half of its total applicants who made the application for registration have ceased to be members of the union then such application becomes invalid and the union does not remain entitled for its registration; (iv) since more than half of the applicants were no longer employed at the factory, the application for registration became invalid in line with section 4(2) of the Trade Unions Act; and (v) the Labour Commissioner in the Haryana State informed that the registration was declined and passed an order rejecting the application, which is legal and in line with provisions of the Trade Unions Act.

The Committee's conclusions

1. **555.** The Committee notes that in the present case the complainant alleges acts of anti-union discrimination, in particular forced transfer and dismissal of union leaders and members, harassment, intimidation and physical threats by the company Modelama Exports in retaliation for union activities, as well as denial of registration by the Registrar of trade unions in the State of Haryana.
2. **556.** While observing that the specific issues raised in this case concern the State of Haryana, the Committee is bound to remind the federal Government that the principles of freedom of association should be fully respected throughout its territory. The Committee invites the Government to bring its conclusions and recommendations to the attention of the competent authorities in the State of Haryana with a view to resolving the issues of the case and to obtain full particulars from the State of Haryana for the Committee's next examination.

3. 557. With regard to the alleged acts of anti-union dismissals, forced resignations and transfers, the Committee notes that a few days after the union submitted an application for registration, the factory management started retaliation against the union's office-bearers and members mainly by means of dismissals, forced resignations and transfers to different units. The Committee observes that all dismissals, resignations and transfers of trade union leaders and members, as described by the complainant, were coupled with harassment, intimidation and threats, in that workers were called by the management, surrounded by a group of people, including security forces, told to provide fingerprints, threatened with accusations of criminal charges, forced to sign resignation letters and bribed. The Committee further notes with concern the allegations that even though an agreement had been reached on the reinstatement of 14 trade union leaders, the management went back on the deal in April 2014 and 16 office-bearers and around 200 union members were dismissed or forced to resign in the following months. The Committee considers that the situation described above raises serious concerns of anti-union discrimination and regrets that the Government did not provide any observations on this point. In this regard, the Committee wishes to emphasize 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. The dismissal of workers on grounds of membership of an organization or trade union activities violates the principle of freedom of association. The necessary measures should be taken so that trade unionists who have been dismissed for activities related to the establishment of a union are reinstated in their functions, if they so wish. In a case involving a large number of dismissals of trade union leaders and other trade unionists, the Committee considered that it would be particularly desirable for the Government to carry out an inquiry in order to establish the true reason for the measures taken [see Digest of decisions and principles of the Freedom of Association Committee, 5th (revised) edition, 2006, paras 769, 789, 852 and 812]. As regards the 16 office-bearers, namely Bramhanand Bhiuyan, Brijesh Prasad, Manoj Kumar Singh, Murari Prasad, Rajendra Prasad, Ramnath, Manju Devi, Ashok Kumar, Vinod Kumar, Hem Narayan Jha, Shishu Pal, Ashutosh Yadav, Sharwan Kumar, Pramod Kumar, Ranjeet Kumar, and Grijesh Kumar, who had been dismissed or forced to resign, the Committee regrets that the Government did not provide any comments on this allegation and requests it to ensure that the State of Haryana carries out an independent inquiry to determine whether their dismissals or forced resignations were due to their trade union activity, with due attention being paid to their role in the union and the abovementioned principles, and should it be found that their dismissals or forced resignations were motivated by trade union membership or legitimate trade union activities, takes the necessary measures for the reinstatement of workers in their functions without loss of seniority or the payment of adequate compensation. The Committee further requests the Government to ensure that the State of Haryana conducts an independent inquiry into the allegations of large-scale dismissals and forced resignations of around 200 trade union members in order to determine the real motives behind these measures and, should it be found that they were motivated by

trade union membership or legitimate trade union activities, takes the necessary measures to reinstate the concerned workers in their functions without loss of seniority, if they so wish, or pay them adequate compensation. The Committee requests the Government to keep it informed of any developments in this regard.

4. **558.** The Committee further notes that, according to the complainant, all dismissals and forced resignations of workers were accompanied by harassment and intimidation and that on several occasions, the management disrupted peaceful protests of the dismissed, resigned and transferred workers and intimidated and harassed their participants both during the protests and after, including by surveillance, threatening them with physical harm, visiting their homes and attempting to bribe them. The Committee notes with concern the allegation that despite the fact that the trade union had submitted several complaints to the Office of Labour-cum-Conciliator alleging illegal and forceful termination of union members and unfair labour practices, no action was taken by the authorities to address the complaints. In this regard, the Committee also notes the general affirmation of the complainant stating that when workers in the garment sector in India form trade unions and exercise their freedom of association they are terminated from service and victimized, thus making their situation worse than before. It further observes that the documents provided by the complainant refer to regular practices of retaliation, intimidation and threats used by employers. The Committee considers that the environment described by the complainant raises serious concerns as to the climate for forming trade unions and freely exercising trade union activity and wishes to point out 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 the governments to ensure that this principle is respected. Acts of harassment and intimidation carried out against workers by reason of trade union membership or legitimate trade union activities, while not necessarily prejudicing workers in their employment, may discourage them from joining organizations of their own choosing, thereby violating their right to organize. The Government is responsible for preventing all acts of anti-union discrimination and it must ensure that complaints of anti-union discrimination are examined in the framework of national procedures which should be prompt, impartial and considered as such by the parties [see Digest, op. cit., paras 44, 786 and 817]. In light of these principles, the Committee requests the Government to respond to the complainant's allegations indicating why the Labour-cum-Conciliation Officer did not take any action in response to the complaints of illegal dismissals and unfair labour practices. The Committee further requests the Government to take the necessary measures to encourage a climate where trade union rights can be freely and safely exercised, by effectively ensuring that trade union members and leaders are not subjected to anti-union discrimination or harassment, including dismissal, transfers, threats and other acts prejudicial to the workers based on their trade union membership or activities and that any complaints of anti-union discrimination or harassment are examined by prompt and impartial procedures.

5. **559.** With regard to the alleged refusal to register the MWU, the Committee notes that on 19 December 2012 an application for registration was submitted to the Registrar in Chandigarh but was refused by letter dated 8 July 2013 because the trade union did not fulfil the requirement under section 4 of the Trade Unions Act as more than 50 per cent of its applicants ceased to be members of the union. The Committee also notes that, as alleged by the complainant, a petition to review the denial of registration dated 19 July 2013 was refused stating the Office of the Registrar had no power to review its own order. The Committee notes that while the complainant alleges that the Registrar had not performed his legal duty, ignored relevant documents, did not investigate the situation in the factory and acted without due-diligence thus victimizing the MWU workers, especially considering that the Labour Department was aware of the allegations of acts of anti-union discrimination, the Government asserts that the rejection of the registration was in line with the Trade Unions Act as six out of ten applicants were no longer employed at the factory (hence, no longer union members) when the Registrar considered the application. The Committee is concerned that although the trade union submitted several complaints of anti-union dismissals and unfair labour practices to the Ministry of Labour claiming that its leaders and members were dismissed or forced to resign due to their union membership and activities, the Registrar rejected the application without conducting any further investigation into the conditions at the factory, especially considering that this would be within the Registrar's power in line with section 7 of the Trade Unions Act. In this regard, the Committee wishes to point out 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. Given that workers' organizations are entitled to elect their representatives in full freedom, the dismissal of a trade union leader, or simply the fact that a trade union leader leaves the work that he or she was carrying out in a given undertaking, should not affect his or her trade union status or functions unless stipulated otherwise by the constitution of the trade union in question [see Digest, op. cit., paras 295 and 411]. The Committee requests the Government to ensure that the State of Haryana re-examines the application for registration fully taking into account all the documents submitted to the Registrar and duly bearing in mind the allegations of anti-union discrimination only weeks after the request for registration and to inform it of any developments in this regard. The Committee trusts that the Government will ensure that situations where there are serious allegations of anti-union dismissals, which may have an impact on the union's registration, are carefully examined by the Registrar in order to avoid anti-union practices further penalizing trade unions in their application for registration.
6. **560.** The Committee regrets that it had to examine this case without being able to take account of the observations of the enterprise concerned and requests the Government to obtain, through the relevant employers' organization, information from the enterprise on the questions under examination.

The Committee's recommendations

1. **561.** In light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:
- (a) While observing that the specific issues raised in this case concern the State of Haryana, the Committee is bound to remind the federal Government that the principles of freedom of association should be fully respected throughout its territory. The Committee invites the Government to bring its conclusions and recommendations to the attention of the competent authorities in the State of Haryana with a view to resolving the issues of the case and to obtain full particulars from the State of Haryana for the Committee's next examination.
 - (b) As regards the 16 office-bearers, namely Bramhanand Bhiuyan, Brijesh Prasad, Manoj Kumar Singh, Murari Prasad, Rajendra Prasad, Ramnath, Manju Devi, Ashok Kumar, Vinod Kumar, Hem Narayan Jha, Shishu Pal, Ashutosh Yadav, Sharwan Kumar, Pramod Kumar, Ranjeet Kumar and Grijesh Kumar, who had been dismissed or forced to resign, the Committee regrets that the Government did not provide any comments on this allegation and requests it to ensure that the State of Haryana carries out an independent inquiry to determine whether their dismissals or forced resignations were due to their trade union activity, with due attention being paid to their role in the union and the abovementioned principles, and should it be found that their dismissals or forced resignations were motivated by trade union membership or legitimate trade union activities, takes the necessary measures for the reinstatement of workers in their functions without loss of seniority or the payment of adequate compensation. The Committee further requests the Government to ensure that the State of Haryana conducts an independent inquiry into the allegations of large-scale dismissals and forced resignations of around 200 trade union members in order to determine the real motives behind these measures and, should it be found that they were motivated by trade union membership or legitimate trade union activities, takes the necessary measures to reinstate the concerned workers in their functions without loss of seniority, if they so wish, or pay them adequate compensation. The Committee requests the Government to keep it informed of any developments in this regard.
 - (c) The Committee requests the Government to respond to the complainant's allegations indicating why the Labour-cum-Conciliation Officer did not take any action in response to the complaints of illegal dismissals and unfair labour practices. The Committee further requests the Government to take the necessary measures to encourage a climate where trade union rights can be freely and safely exercised, by effectively ensuring that trade union members and leaders are not subjected to anti-union discrimination or harassment, including dismissal, transfers, threats and other acts prejudicial to the workers based on their trade union membership or activities and that any complaints of anti-union discrimination or harassment are examined by prompt and impartial procedures.

- (d) The Committee requests the Government to ensure that the State of Haryana re-examines the application for registration fully taking into account all the documents submitted to the Registrar and duly bearing in mind the allegations of anti-union discrimination only weeks after the request for registration and to inform it of any developments in this regard. The Committee trusts that the Government will ensure that situations where there are serious allegations of anti-union dismissals which may have an impact on the union's registration are carefully examined by the Registrar in order to avoid anti-union practices further penalizing trade unions in their application for registration.
- (e) The Committee regrets that it had to examine this case without being able to take account of the observations of the enterprise concerned and requests the Government to obtain, through the relevant employers' organization, information from the enterprise on the questions under examination.