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NINTH ITEM ON THE AGENDA

324th Report of the Committee on Freedom of Association

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Introduction

1. The Committee on Freedom of Association, set up by the Governing Body at its 117th Session (November 1951), met at the International Labour Office, Geneva on 8, 9, 10 and 16 March 2001, under the chairmanship of Professor Max Rood.

2. The members of Panamanian, Venezuelan, Mexican and Danish nationality were not present during the examination of the cases relating to Panama (Case No. 1965), Venezuela (Cases Nos. 1986, 2067 and 2080), Mexico (Case No. 2013) and Denmark (Case No. 2060), respectively.

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3. Currently, there are 82 cases before the Committee, in which complaints have been submitted to the governments concerned for observations. At its present meeting, the Committee examined 46 cases on the merits, reaching definitive conclusions in 32 cases and interim conclusions in 14 cases; the remaining cases were adjourned for the reasons set out in the following paragraphs.

New cases

4. The Committee adjourned until its next meeting the examination of the following cases: Nos. 2107 (Chile), 2110 (Cyprus), 2111 (Peru), 2112 (Nicaragua), 2113 (Mauritania), 2114 (Japan), 2115 (Mexico), 2116 (Indonesia), 2117 (Argentina) and 2118 (Hungary), because it is awaiting information and observations from the governments concerned. All these cases relate to complaints or representations submitted since the last meeting of the Committee.

Observations requested from governments

5. The Committee is still awaiting observations or information from the governments concerned in the following cases: Nos. 2017 (Guatemala), 2050 (Guatemala), 2095 (Argentina), 2096 (Pakistan), 2103 (Guatemala) and 2105 (Paraguay).

Partial information received from governments

6. In Cases Nos. 1995 (Cameroon), 2049 (Peru), 2068 (Colombia), 2094 (Slovakia) and 2097 (Colombia), the Government has sent partial information on the allegations made. The Committee requests all of 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

7. As regards Cases Nos. 1888 (Ethiopia), 1951 (Canada/Ontario), 2079 (Ukraine), 2082 (Morocco), 2087 (Uruguay), 2088 (Venezuela), 2098 (Peru), 2099 (Brazil), 2100 (Honduras), 2102 (Bahamas), 2104 (Costa Rica), 2106 (Mauritius), 2108 (Ecuador) and 2109 (Morocco), the Committee has received the governments' observations and intends to examine the substance of these cases at its next meeting.

Urgent appeal

8. As regards Case No. 2052 (Haiti), the Committee observes that, despite the time which has elapsed since the submission of the complaint, 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 if its observations or information have not been received in due time. The Committee accordingly requests the Government to transmit or complete its observations or information as a matter of urgency.

Direct contacts mission

9. As regards Case No. 1970, the Government of Guatemala states in its communication of 20 February 2001 that it accepts the sending of a mission, as proposed by the Committee on Freedom of Association at its November 2000 meeting [see 323rd Report, para. 284], and that it henceforth offers all necessary cooperation so that the mission may take place without delay. The Committee hopes that it will be possible to hold this mission, as part of the follow-up to its recommendations in Case No. 1970, and requests the Office to organize it with the Government.

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

10. The Committee considered that it should especially draw the Governing Body's attention to certain cases due to the seriousness and urgency of the issues raised in them. These cases concern the following countries: Djibouti (Cases Nos. 1851, 1922 and 2042) and Haiti (Cases Nos. 2035 and 2072).

Transmission of cases to the Committee of Experts

11. The Committee draws the legislative aspects of the following cases to the attention of the Committee of Experts on the Application of Conventions and Recommendations: Ukraine (Case No. 2038), Belarus (Case No. 2090), Bosnia and Herzegovina (Case No. 2053), Canada/New Brunswick (Case No. 2083), Lithuania (Case No. 2078), Luxembourg (Case No. 1980), Romania (Case No. 2091) and Venezuela (Case No. 2067).

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

Case No. 1949 (Bahrain)

12. The Committee last examined this case at its meeting in November 2000 when it once again urged the Government to take the necessary measures to bring its legislation, in particular Orders Nos. 9 and 10 of 1981, into line with the principles of freedom of association so that workers' right to organize freely is effectively guaranteed. It also recalled that the technical assistance of the Office was available should the Government so desire [see 323rd Report, paras. 25-27]. In a communication dated 8 January 2001, the

Government indicates that the Executive Council of Labour and Social Affairs Ministers signed a Memorandum of Understanding with the ILO in November 1999 and that in the framework of this Memorandum, the Government will endeavour to benefit from ILO technical assistance and will keep the ILO informed of any development regarding the revision of its labour legislation.

13. *The Committee takes note of this information. It once again expresses the firm hope that the labour legislation, and in particular Orders Nos. 9 and 10 of 1981, will be brought into line with the principles of freedom of association so that workers' right to organize freely is effectively guaranteed. It again requests the Government to keep it informed of all measures taken or envisaged to amend the legislation in this respect.*

Case No. 1998 (Bangladesh)

14. At its March 2000 meeting, the Committee examined this case concerning allegations of denial of the right of trade union officers to leave the country to participate in international trade union meetings as well as acts of anti-union discrimination, in particular the transfer of a number of trade unionists employed by the Bangladesh Water Development Board (BWDB) [see 320th Report, paras. 242-256]. The Committee called on the parties to come to an agreement on the frequency of attendance to international trade union meetings by trade union officers, which would take into account the nature of their work and responsibilities within the BWDB. The Committee had also requested the Government to conduct investigations into the allegations of victimization through transfers of 76 persons, and in this context requested the complainant to provide further information. The Committee also called on the Government to guarantee that the rulings of the Labour Appeal Tribunal against several of the transfer orders are applied.

15. In a communication dated 24 October 2000, the Government states that the management of Bangladesh Water Development Board carried out an extensive inquiry into the allegations of denial of permission to participate in international meetings, and found that there had been no such denials. *Noting, however, that this conflicts with the former information provided by the Government to the effect that there had been some refusals due to work exigencies, the Committee again calls on the parties to come to an agreement on the frequency of attendance at such meetings, taking into account the nature of the work and the responsibilities within the organization.*

16. Concerning the allegation of anti-union discrimination against trade unionists in the form of transfers, the Government states that the management of BWDB have re-established the inquiry committee to investigate this matter further. The inquiry committee had previously asked the complainant to provide it with detailed information concerning the 76 employees to facilitate the investigation; however, the Government states that such information has not been forthcoming. The Government points out that the Committee also requested the complainant to provide this additional information. In the absence of this information, the Government could only repeat the previous findings of the inquiry committee. *In this context, the Committee can only regret that the complainant did not provide the additional information requested by the Government and the Committee.*

Case No. 1849 (Belarus)

17. The Committee last examined this case at its June 2000 meeting when it requested the Government urgently to take the necessary measures to ensure a satisfactory solution, including full compensation for lost wages, for the Minsk metro workers and Gomyel trolleybus drivers who were dismissed for having undertaken strike action [see 321st Report, paras. 15-18.]

18. In a communication dated 4 October 2000, the Government provided a full list of all 56 Minsk metro workers and 15 Gomyel trolleybus drivers who had been dismissed and their current employment status.

19. *The Committee takes due note of this information. In particular, it notes that 19 of the Minsk metro workers have now found other employment, mostly through the national employment services, while the remaining 37 have been said to have "not applied" to the national employment services. No further information is given on the efforts made to provide satisfactory employment solutions to these latter workers, nor is there any mention of any compensation for lost wages. As for the Gomyel trolleybus drivers, the Committee notes from the information provided that 12 out of the 15 workers concerned appear to have been reinstated, while three others are simply described as unemployed. Again, no information has been given on any compensation provided for lost wages following their dismissal for the exercise of legitimate trade union activity.*

20. *The Committee is bound once again to emphasize that the dismissal of workers for taking part in legitimate strike action constitutes anti-union discrimination and recall its previous recommendation when it first examined this case in 1996 that the workers who were dismissed in connection with the strikes in Minsk and Gomyel in August 1995 should be ensured reinstatement in their jobs without delay [see 302nd Report, para. 222]. Given that six years have elapsed since these workers were dismissed, the Committee can only once again request the Government to take the necessary measures, as a matter or urgency, to ensure a satisfactory solution for the situation of the remaining unemployed workers, including full compensation for the lost wages of all those dismissed.*

Case No. 1992 (Brazil)

21. The Committee last examined this case (concerning dismissals following a strike and other anti-union acts) at its meeting in November 2000 [see 323rd Report, paras. 32-34]. On that occasion, the Committee requested the Government to inform it of the final outcome of all pending judicial proceedings concerning the 54 workers of the Brazilian Post and Telegraph Enterprise (ECT) who were dismissed after the strike held in September 1997.

22. In a communication dated 10 January 2001, the Government states that six individual court cases are still pending before lower courts, 21 are the subject of appeals, three have yet to be declared receivable, the complaints in question having originally been ruled inadmissible. In 18 cases, the dismissed workers were reinstated; in two cases, the disputed dismissals were upheld after being ruled admissible; in one case, the dismissal was confirmed and compensation agreed upon by the parties; in one case, a worker was reinstated under the terms of a judicial decision; and in another case, dismissal with compensation was authorized by the court. Lastly, a court case was initiated by a worker who is currently on sick leave. Consequently, since the last meeting, eight workers have been reinstated following the resolution of their cases by lower courts.

23. *The Committee notes this information and requests the Government to inform it of the final outcome of all the judicial proceedings in question.*

Case No. 1943 (Canada/Ontario)

24. When it last examined this case concerning compulsory interest arbitration in certain sectors of the public service [see 320th Report, paras. 38-40] the Committee had requested to be provided with the decision of the Ontario Court of Appeal concerning the appointment of arbitrators under the Hospital Labour Disputes Arbitration Act (HDLAA).

25. In its communication of 8 January 2001, the Government provided the judgement of the Court of Appeal, which ruled that "abandoning the established practice of selecting chairpersons from the roster and the unilateral adoption by the Minister of a practice of personally selecting retired judges to replace them … gives rise to a reasonable apprehension of bias and gives the appearance of interference with the institutional independence and the institutional impartiality of the boards of arbitration established under HLDAA" (paragraph 99 of the judgement of 21 November 2000).

26. *Noting that the Government is currently reviewing the Court's ruling, the Committee recalls that chairpersons of arbitration boards should not only be strictly impartial but should also be seen to be so, if the confidence of both sides in the system is to be gained and maintained [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 549] and trusts that the Government will bring its law and practice into conformity with these principles.*

Case No. 1975 (Canada/Ontario)

27. The Committee examined this case at its May-June 1999, June and November 2000 meetings [see 316th Report, paras. 229-274; 321st Report, paras. 103-118; 323rd Report, paras. 45-48, respectively]. At its November 2000 meeting, the Committee strongly urged the Government to take the necessary measures to amend the legislation concerning community participation activities in order to extend the right to organize to persons involved in such activities. The Committee also reiterated its request that the Government take all the necessary measures to amend the legislation to ensure that collective bargaining in the construction industry, below the provincial level, may be initiated by either the workers' or employers' representatives at any stage of the project.

28. In a communication of 8 January 2001, the Government asserts with respect to the legislation concerning community participation activities that it does not violate the principles of freedom of association and "at this time, it is not the intention of the Ontario Government to amend Bill No. 22". Concerning collective bargaining in the construction industry, the Government states that "the Government's position remains that Bill No. 31 does not impede free and voluntary collective bargaining, and that amendments to the legislation are not required". In the context of the legislation governing collective bargaining in the construction industry, the Government notes that the Labour Relations (Amendment) Act, 2000 (Bill No. 139) was recently passed into law and clarifies that project agreements may apply to multiple or future projects developed within the term of the agreement. Bill No. 139 also indicates that project agreements cover non-construction work on a project. The Government forwarded a copy of Bill No. 139 under cover of a communication dated 11 January 2001.

29. *The Committee deeply regrets the Government's staunch refusal to consider the Committee's recommendations concerning the need to amend Bills Nos. 22 and 31 in order to bring them into conformity with freedom of association principles. With respect to community participation activities, the Committee strongly urges the Government to take the necessary measures to ensure that those involved in such activities are no longer denied a fundamental right, namely the right to organize, and again requests the Government to keep it informed in this regard. With respect to Bill No. 31, the Committee notes the recent amendments arising out of Bill No. 139; however, in the view of the Committee, these amendments do not address the concerns previously raised. The Committee therefore again requests in the strongest terms the Government to take the necessary measures to amend the legislation to ensure that collective bargaining in the construction industry, below the provincial level, may be initiated by either the workers' or employers' representatives at any stage of the project, and to keep the Committee informed in this regard.*

Case No. 1942 (China/Hong Kong Special Administrative Region)

30. The Committee examined this case at its November 1998, November 1999 and March 2000 meetings [see respectively: 311th Report, paras. 235-271; 318th Report, paras. 26-34; and 320th Report, paras. 44-53] and, on that last occasion, made the following recommendations:

– as regards conditions of eligibility to union office, the Committee once again requested the Government to repeal section 5 of the Employment and Labour Relations (Miscellaneous Amendments) Ordinance, 1997 (ELRO), which restricts union office to persons actually or previously employed in the trade, industry or occupation of the trade union concerned (paragraph 46);

– as regards restrictions on financial contributions to trade unions and on the use of union funds, the Committee once again requested the Government to repeal sections 8 and 9 of the ELRO (paragraph 48);

– as regards the scope of protection against acts of anti-union discrimination, the Committee once again requested the Government to review the Employment (Amendment) (No. 3) Ordinance, 1997, to ensure that the right of reinstatement would not be conditional upon the prior mutual consent of both the employer and the employee concerned (paragraph 50);

– concerning the right to bargain freely with employers, the Committee once again requested the Government seriously to consider adopting appropriate provisions with respect to freedom of association principles (paragraph 52).

31. In its communication of 20 October 2000, the Government states as regards the conditions of eligibility to trade union office that, under section 17(2) of the Trade Union Ordinance (TUO), a person who has some experience in a trade, industry or occupation with which a trade union is directly concerned could become an officer of the union; flexibility is built into this section for persons from other trades to become union officers with the consent of the Registrar of Trade Unions. Since 1980, only 41 applicants from 20 registered trade unions have asked for the Registrar's consent under section 17(2) of the TUO. This reflects the overwhelming choice of local unions to entrust union affairs to persons with work experience in their respective trades. The Government underlines that the Registrar has promptly approved all applications. Therefore, in practice, the Government of the Hong Kong Special Administrative Region (HKSAR) has not hindered the election of officers of the union's choice by virtue of section 17(2) of the TUO.

32. In addition, the Government has reviewed the occupational requirement for trade union officers and consulted the Labour Advisory Board (LAB) on the outcome of its review (the LAB, comprising an equal number of employer and employee members, is the most respected and representative tripartite consultative forum on labour matters in the HKSAR; all employee members are trade unionists). The Government informed members of the LAB that it had considered all relevant factors and proposed to relax the occupational requirement stipulated in section 17(2) of the TUO. Under the proposal, a proportion of union officers of a registered union would not be required to have work experience in the concerned trade and it would not be necessary for these officers to seek the Registrar's consent in order to assume office. During the consultation, some employee members of the LAB expressed reservations on the proposal. The employee members decided to conduct a questionnaire survey themselves to collect the views of all registered trade unions in Hong Kong. The Government was not involved in the design or administration of the questionnaire survey. In August 2000, employee members informed the LAB that, out of

the 595 registered employee unions surveyed, 242 unions responded and 74.4 per cent of the responding unions did not support relaxing the occupational requirement. Indeed, the occupational requirement stipulated in section 17(2) of the TUO only seeks to ensure that union officers should generally have some experience in the trade concerned so that they know the interests and needs of union members better. This principle, as demonstrated by the results of the aforementioned survey, is widely accepted by local unions. Having considered the survey results, the LAB arrived at a consensus view that section 17(2) of the TUO should not be changed. The Government respects the views of the LAB and will take them into full consideration in deciding on the way forward.

33. As regards the use of trade union funds, the Government indicates that it has not imposed a blanket prohibition on the use of trade union funds for political purposes. Trade unions could use their funds for political activities in the elections to the Legislative Council and the district councils. In the election of the Legislative Council in September 2000, a total of 417 employee unions registered as voters to elect representatives of the labour functional constituency to the Council. Amongst other functions, the Legislative Council enacts laws, debates on any issues concerning public interest, examines and approves budgets, taxation and public expenditure. Trade unionists have also been elected as members of the district councils and they have been active in advising the Government on district affairs that affect the well-being of the people in the district. The Government has recently completed a review of the provisions relating to the use of trade union funds under the TUO and consulted the LAB, which considered it undesirable to relax the use of union funds for political activities other than for local elections. These provisions now ensure that trade unions perform their true and prime functions of promoting and protecting the interests of their members and that they are not engaged essentially in political activities. On the other hand, members supported the proposal to allow trade unions to make charitable donations to lawful organizations outside Hong Kong in accordance with their registered rules.

34. Concerning the scope of protection against anti-union discrimination, the Government has also consulted the LAB to amend the requirement of mutual consent from employer and employee for reinstatement under the Employment Ordinance. After detailed deliberations, the LAB agreed that the reinstatement provisions should be amended so that the Labour Tribunal may make an order of reinstatement/re-engagement without the need to secure the consent of the employer if the Tribunal considers it appropriate and reasonably practicable. The Government will proceed with the necessary action to introduce the legislative amendments before the Executive and Legislative Councils of the HKSAR.

35. As regards collective bargaining, it has been the policy of the HKSAR Government to take measures appropriate to local conditions to encourage and promote collective bargaining on a voluntary basis. At the enterprise level, the authorities actively encourage employers to engage in effective communication with their employees' and workers' unions and to consult them on employment matters. Practical guides have been published to assist employers and employees to develop good people-management practices and handle retrenchments in consultation with employees. The Government is preparing a new publication to provide practical guidelines on workplace cooperation in the enterprise. At the industry level, the Government is actively putting in place new tripartite committees, which comprise representatives of workers' unions, employers and their organizations and the Labour Department with the objective of fostering an environment conducive to collective bargaining. Since the Government's last response to the Committee in January 2000, three new tripartite committees have been set up in the printing, hotel and tourism, as well as the cement and concrete trades. These new committees and similar ones in the catering, construction, theatre, warehouse and cargo transport and property management trades, have been holding regular meetings to discuss and agree on industry-specific issues. At present there exist altogether eight tripartite committees for the different industries.

36. Through the joint efforts of members of the committees, sample work arrangements for outdoor work in times of adverse weather have been produced, and a territory-wide promotional activity for safe driving and proper rests for drivers in the warehouse and cargo transport industry have been established. A practical guide on distinguishing employer-employee relationships from contractor-subcontractor relationships is being prepared for the warehouse and cargo transport industry. In respect of the catering trade, the committee is producing a computer software programme and CD-ROM for roster scheduling and leave management. A code of labour relations practice for the catering trade is also under preparation. As for the printing industry, the tripartite committee is preparing a guide to training opportunities for skills upgrading in the industry. The Government will continue to work towards the objective of fostering effective partnership between employers and employees.

37. The Government concludes that the HKSAR Government has a policy of making progressive improvements to employees' rights and benefits in the territory. In doing so, it always takes into full account the current social and economic circumstances, and the views of the LAB, while seeking to maintain a reasonable balance between the interests of employees and employers.

38. *The Committee notes with interest that social dialogue within the Labour Advisory Board (LAB) led to progress on the issue of protection against anti-union discrimination and that legislative amendments empowering the Labour Tribunal to order reinstatements without the employer's consent will be presented to the competent councils of the HKSAR Government. The Committee trusts that these amendments will be adopted in the near future.*

39. *As regards the issue of free collective bargaining, while noting the explanations given by the Government concerning the efforts made at the enterprise and industry levels with a view to fostering an environment conducive to collective bargaining, the Committee must recall once again that the right to bargain freely work conditions with employers is an essential element of freedom of association, and requests the Government to give serious consideration to adopting provisions laying down objective criteria and procedures for determining the representative status of trade unions for collective bargaining purposes.*

40. *Concerning the restrictions on eligibility to trade union office, the Committee notes the explanations given by the Government concerning the consultations within the LAB and the results of the ensuing survey, and the flexibility built in section 17(2) of the TUO, according to the Government. The Committee nevertheless observes that this flexibility is subject to the consent of the Trade Union Registrar; it recalls once again that the determination of eligibility conditions is a matter that should be left to the discretion of union by-laws and that the authorities should refrain from any intervention which might impair the exercise of this right. The Committee points out that, in a situation where trade unions are given the choice, those workers' organizations which decide to impose such restrictions are free to do so in their by-laws, while other organizations which prefer, for their own reasons or out of necessity, to call on larger pool of potential candidates would also be free to do so. The Committee therefore requests once again the Government to repeal section 5 of the Employment and Labour Relations (Miscellaneous Amendments) Ordinance, 1997 (ELRO).*

41. *As regards the use of union funds, while noting that a debate took place in the LAB on this issue, that a number of unions participated in the election to the labour constituency of the Legislative Council, that some trade unionists have been elected as members to the district councils, and that LAB members supported the proposal to allow trade unions to make charitable donations to lawful organizations outside Hong Kong, the Committee must recall that provisions which restrict the freedom of trade unions to administer and utilize*

their funds as they wish for normal and lawful trade union purposes are incompatible with principles of freedom of association. The Committee once again requests the Government to amend sections 8 and 9 of the ELRO.

42. *The Committee requests the Government to keep it informed of the measures taken to give effect to its recommendations and reminds it that it may avail itself of the technical assistance of the ILO on all these issues.*

Case No. 2031 (China)

43. The Committee last examined this case at its June 2000 session [see 321st Report, paras. 140 to 176]. On this occasion, it had requested the Government to: (a) take the necessary measures to ensure that sections 4, 5, 8, 9, 11 and 13 of the 1992 Trade Union Act are amended in line with freedom of association principles; (b) take the necessary measures to ensure the immediate release of Zhao Changqing, Qin Yongmin, Zhang Shanguang, Yue Tianxiang, Guo Xinmin and Wang Fengshan, who were all sentenced to imprisonment ranging from one to 12 years in 1998 and 1999. In the case of Mr. Zhang Shanguang, the Committee had urged the Government to institute without delay an independent inquiry into the allegations of torture and ill-treatment inflicted on Zhang while in detention.

44. In a communication dated 9 January 2001, the Government repeats once again that the 1992 Trade Union Act does not violate principles of freedom of association. More specifically, the Government indicates that section 4 of the said Act, which provides that "the National Congress of Trade Unions formulates or amends the Constitution of Trade Unions of the People's Republic of China which shall not contravene the Constitution and other laws" is consistent with Article 8 of Convention No. 87 since it is common practice in countries governed by the rule of law to state that no organization is allowed to place itself above the Constitution and law of the country. With regard to sections 5, 8 and 9 of the Act, the Government indicates that while the substance of these sections does not contravene freedom of association principles, they are being revised and necessary adjustments will be introduced so that the abovementioned sections can be more consistent with the expressions used in international conventions. As for sections 11 and 13 of the Act which provide that "the establishment of basic-level trade union organizations, local trade union federations, and national or local industrial trade union organizations shall be submitted to a higher-level trade union organization for approval", the Government reiterates that the establishment of the unified All-China Federation of Trade Unions was decided by the historic reality of China and the will of the Chinese workers and is in line with the basic interests of the broad masses of workers.

45. Concerning the situation of Zhao Changqing, Qin Yongmin, Zhang Shanguang, Yue Tianxiang, Guo Xinmin and Wang Fengshan, the Government indicates that it has conducted further verifications which lead to the following conclusions. All these persons have been sentenced to imprisonment because of their breach of provisions of the Criminal Code of China and some of them are repeat offenders. The Government explains once again that their activities have nothing to do with freedom of association and they were all sentenced for criminal offences. In addition, the Government indicates that following its investigation, it appears that Mr. Zhang has not been maltreated during his custody.

46. *The Committee takes note of the information provided by the Government. With regard to the conformity with freedom of association principles of section 4 of the 1992 Trade Union Act, the Committee recalls once again that in exercising their right to freedom of association, workers and their organizations shall respect the law of the land provided that the law of the land shall not be such as to impair, nor shall it be so applied as to impair, the principles of freedom of association. The Committee further notes that sections 5, 8 and 9 of the Act are being reviewed in order that they can be more consistent with the*

expressions used in international conventions. However, the Committee must recall that several provisions of the Trade Union Act are contrary to the fundamental principles concerning the right of workers without distinction whatsoever to form and join organizations of their own choosing without previous authorization and the right of trade unions to establish their constitutions, organize their activities and formulate their programmes. The Committee therefore once again in the strongest terms requests the Government to take the necessary measures to ensure that sections 4, 5, 8, 9, 11 and 13 of the Act are amended in line with freedom of association principles.

47. *With regard to the situation of the six individuals who have been sentenced to imprisonment mainly on charges of instigating disturbances and serious disruption of social order, the Committee regrets that the Government merely reiterates the information it had provided previously. The Committee recalls its previous conclusion that these persons were sentenced to imprisonment for exercising legitimate trade union activities. In this regard, the Committee considers that while persons engaged in trade union activities 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 and detention of trade unionists [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, paras. 64 and 83]. Therefore, the Committee once again strongly urges the Government to take the necessary measures to ensure the immediate release of Zhao Changqing, Qin Yongmin, Zhang Shanguang, Yue Tianxiang, Guo Xinmin and Wang Fengshan. The Committee requests the Government to keep it informed of developments in this regard.*

Case No. 1964 (Colombia)

48. At its June 2000 meeting, the Committee made the following conclusions and recommendations [see 322nd Report, paras. 78-81]:

> The Committee observes that the complainant organization in this case had alleged a number of acts of anti-union interference and discrimination by the management of CONALVIDRIOS S.A., as well as non-compliance by it of the terms of the collective agreement. In its previous examination of the case, the Committee requested the Government to order a thorough investigation into each of the allegations and to keep it informed of the findings.
>
> The Committee notes the Government's statements that the Ministry of Labour and Social Security has carried out an administrative inquiry into the allegations presented by SINTRAVIDRICOL, and that it was decided, through Ministerial Resolution No. 0661 of 3 May 2000, not to take any administrative measure against CONALVIDRIOS since the regular labour jurisdictions are the ones which have jurisdiction to decide whether workers were dismissed for just cause, and because the complainants have not submitted evidence to support the allegations as regards the refusals of trade union leave, the recognition of trade union organizations, the non-functioning of some committees provided for in the collective agreement, the obstacles to proper industrial relations and the violations of the right to associate. The complainants are still within the prescribed time limits to file revision or appeal proceedings should they so wish.
>
> The Committee emphasizes that the initial complaint was presented by the complainant in communications of April and May 1998 and deeply regrets that until very recently, for a period of two years during which it did not send sufficiently detailed information, the Government should have merely stated that it was up to the courts to make a decision on the dismissals of 20 trade unionists and that the complainants had not submitted evidence to substantiate their allegations. The Committee recalls that no person should be dismissed or prejudiced in his or her employment by reason of trade union membership or

legitimate trade union activities, and that cases concerning anti-union discrimination contrary to Convention No. 98 should be examined rapidly, so that the necessary remedies can be really effective; an excessive delay in processing cases of anti-union discrimination, and in particular a lengthy delay in concluding the proceedings concerning the reinstatement of trade union leaders dismissed by an enterprise, constitute a denial of justice and therefore a denial of trade union rights of the persons concerned [*Digest of decisions and principles of the Freedom of Association Committee*, 4th edition, 1996, paras. 748-749]. This being so, the Committee stresses that the dismissed trade union leaders may launch the corresponding judicial proceedings and requests the Government to keep it informed of the results of any proceedings filed against Ministerial Resolution No. 0661 of 3 May 2000.

Finally, the Committee observes that, according to the Government, the SINTRAVIDRICOL trade union has in this case the option of bringing its case before the ordinary courts or before the penal courts on the grounds that its freedom of association has been violated or of seeking the courts' protection if its fundamental rights have been violated by CONALVIDRIOS S.A. In these circumstances, observing that the complainant refers to more than 100 judicial proceedings with respect to trade union rights violations on which the courts have already ruled, the Committee requests the Government to inform it of any court decision that may be or has been handed down in connection with the allegations presented by the complainant.

49. In its communications of 24 October 2000 and 4 January 2001, the Government states that the Ministry of Labour and Social Security decided in Ministerial Resolution No. 0661 of 3 May 2000 not to take any administrative measures against CONALVIDRIOS. This Ministerial Resolution was not appealed by the parties and, under article 62 of Decree No. 01 of 1984 (Administrative Code), it has remained executory and has passed through all stages of the legislative process. Nevertheless, SINTRAVIDRICOL, in a document dated 24 August 2000, began proceedings to revoke the aforementioned administrative decision. However, an administrative decision of 19 October 2000 rejected this application for reconsideration. *The Committee notes this information.*

50. The Government also states that the trade union organization SINTRAVIDRICOL-SECSOACHA has informed the Ministry of Labour and Social Security of special trade union proceedings in the ordinary courts involving 15 trade union officials; conciliation has been reached in five cases. *The Committee requests the Government to keep it informed of the outcome of the proceedings currently under way and expresses the hope that these will be concluded in the near future.*

Case No. 1966 (Costa Rica)

51. At its November 1999 meeting, the Committee noted the proposed amendments of the Labour Code submitted to the Legislative Assembly following tripartite consultations and expressed the hope that the amendments would be adopted in the very near future and requested the Government to keep it informed in this regard [see 318th Report, para. 46]. These proposed amendments should strengthen protection against anti-union persecution, and make existing procedures more flexible.

52. In its communication of 14 August 2000, the Government states that the proposed amendments are currently before the legislative plenary. *The Committee requests the Government to provide it with the text of the law as soon as it is adopted.*

Case No. 2024 (Costa Rica)

53. In its March 2000 meeting, the Committee made the following recommendations on the outstanding allegations [see 320th Report, para. 567]:

- deeply regretting the acts of anti-union discrimination and interference carried out by the Southern Banana Cooperation (COBASUR), the Committee requests the Government to keep it informed of the results of the decision handed down by the legal authority concerning the complaint submitted by the administrative authority relating to the dismissal of the trade union leader, Mr. Adrián Herrera Arias and to the acts of anti-union discrimination and interference carried out by the enterprise;

- the Committee requests the Government to keep it informed about action taken by the Attorney-General's Office concerning the complaint relating to the beatings, threats and aggression inflicted on the trade union leader, Mr. Adrián Herrera Arias, to ensure a judicial inquiry is promptly carried out and to send it the results.

54. In its communication dated 14 August 2000, the Government sent a communication from the Labour Inspectorate that states that the judicial proceedings against COBASUR (dismissal of the trade union official, Mr. Adrián Herrera Arias, alleged aggression inflicted against this trade union leader) are paralysed because it has not been possible to notify the company. The Government states that documents have been drawn up to correct the process and make it more flexible. *The Committee notes this situation with concern, in particular the inability to notify the company, and expresses the hope that the proceedings will be concluded as soon as possible. It requests the Government to keep it informed of the outcome.*

Case No. 2030 (Costa Rica)

55. At its March 2000 meeting, the Committee requested the Government to inform it of the outcome of the administrative proceedings on the matter dealt with in this complaint (proceedings against decision 18-97 of 17 April 1997 taken by the administrative board of the National Registry) [see 320th Report, para. 597]. In its communication of 14 August 2000, the Government stated that the proceedings were currently before the Administrative High Court awaiting a decision. *The Committee requests the Government to send it this decision as soon as it is handed down.*

Case No. 1890 (India)

56. At its November 2000 meeting, the Committee last examined this case concerning the dismissal of Mr. Laximan Malwankar, President of the Fort Aguada Beach Resort Employees' Union (FABREU), the suspension or transfer of 15 FABREU members following strike action, and refusal to recognize the most representative workers' organization for collective bargaining purposes [see 323rd Report, paras. 65-67].

57. In a communication dated 9 January 2001, the Government repeats its previous information according to which out of the three inquiries which were in progress in respect of Shri Ashok Deulkar, Sitaram Ruthod and Shyam Kerkar, the case of Mr. Deulkar was settled amicably and thus two inquiries are still in progress. With regard to the second group of seven workers suspended pending inquiry, the Government indicates that only two inquiries are still in progress and that a further report will follow. As regards the case of Mr. Malwankar, the Government indicates that the adjudication proceedings are in progress and the case pending for arguments on preliminary issues. The hearings are

adjourned at the instance of Mr. Malwankar and the next date for hearing is fixed for 20 February 2001. As for the Charter of Demands served by Fort Aguada Beach Resort Employees' Union, the Government indicates that the Industrial Tribunal of Goa has already given award to it and ruled that the workers of the said union were entitled to the benefits of the settlements agreed upon in 1995 and 1998.

58. *The Committee takes note of the information provided by the Government. It recalls that this case related to various acts of harassment and anti-union discrimination carried out against the President of FABREU, Mr. Malwankar, from 1992 to 1994, which culminated in the dismissal of this trade union leader in January 1995 and the suspension or transferral of FABREU members in April 1995 following a strike action in the hotel industry which was declared a public utility service and thus referred to the Industrial Tribunal contrary to the principles of freedom of association since the hotel industry is in no way an essential service in which strikes can be prohibited [see 307th Report, paras. 366-375]. The Committee once again must deeply deplore the fact that the events to which the various proceedings and inquiries are related occurred in 1995 and earlier. With respect to Mr. Malwankar, the Committee expresses the firm hope that the court proceedings will be expedited and requests the Government to continue to keep it informed of the outcome of the proceedings, including forwarding copies of the preliminary and final decisions. Furthermore, the Committee requests the Government to continue to keep it informed of all the other pending issues related to this case.*

Case No. 1877 (Morocco)

59. At its November 2000 session, the Committee had requested the Government to keep it informed of the developments in the legal proceedings filed by workers of the Somadir company in Casablanca and El Jadida [see 313th Report, para. 38]. In a communication of 17 January 2001, the Government provided the following information regarding the labour dispute at the Somadir company: the cases of two workers are still pending before the court of the first instance of Casablanca; the Court of Appeal has handed down a decision in favour of five of the 11 workers who had appealed the decision of the court of the first instance, ruling that they were entitled to compensation, but has not yet examined the remaining six cases; the Somadir company has appealed the decision of the Court of Appeal ruling in favour of the workers, and the Supreme Council has not yet handed down a decision on the matter. *The Committee takes due note of this information and requests the Government to continue to keep it informed of developments in the judicial proceedings concerning this case.*

Case No. 2048 (Morocco)

60. The Committee last examined this case at its November 2000 session [see 323rd Report, paras. 384-396] and on that occasion requested the Government to transmit the decision of the Rabat Court of Appeal concerning the Avitema farm workers, who had been conditionally released, and the ruling of the Court of the First Instance of Rabat concerning Mr. Abderrazak Chellaoui, Mr. Bouazza Maâche and Mr. Abdelslam Talha. The Committee had also urged the Government to ensure that all necessary measures were taken without delay so that the workers dismissed from Avitema farm would be reinstated in their posts.

61. In its communication of 8 January 2001 the Government states that neither the decision of the Rabat Court of Appeal, nor the ruling of the Court of the First Instance of Rabat have been handed down, the hearings having been postponed to 18 June and 18 January 2001, respectively. As regards the reinstatement of the Avitema farm workers, the Government points out that, following steps taken by services of the Ministry of Employment,

12 employees have been reinstated in their posts and ten others have received their legal compensation.

62. *The Committee notes this information. It further notes with interest the reinstatement of some of the Avitema farm workers who had been dismissed on account of their having exercised their legitimate right to strike. The Committee also notes however that, so far, neither the Rabat Court of Appeal nor the Court of the First Instance of Rabat have handed down their decisions concerning the events which took place in September 1999. The Committee expresses the firm hope that these decisions will be taken without delay and once again requests the Government to transmit them as soon as they have been handed down.*

Case No. 2009 (Mauritius)

63. At its November 1999 meeting, the Committee had called upon the parties to come promptly to an agreement on all the modalities concerning the granting and use of time-off facilities, and requested to be kept informed of developments [see 318th Report, paras. 272-297].

64. In its communication of 9 January 2001, the Government indicates that no deductions have been made from the salary of trade union officials in respect of the time-off taken in excess of their entitlement and that meetings are being held to sort out the issue of time-off facilities.

65. *The Committee takes note of this information and requests the Government to keep it informed of the result of these discussions.*

Case No. 1698 (New Zealand)

66. The Committee last examined this case at its November 1999 meeting [318th Report, paras. 66-68] at which time it strongly reiterated its previous conclusion that provisions that prohibit strikes, if they are concerned with the issue of whether a collective employment contract will bind more than one employer, are contrary to the principles of freedom of association on the right to strike; therefore, the Government was requested to amend section 63(e) of the Employment Contracts Act (ECA).

67. In a communication dated 28 September 2000, the Government indicates that the Employment Relations Act (ERA), which repeals the ECA, will come into force on 2 October 2000. In particular, the Government indicates that the ERA effectively promotes collective bargaining and permits strikes over whether a collective agreement will bind more than one employer, in accordance with established ILO principles.

68. In a communication dated 16 November 2000, the New Zealand Council of Trade Unions (NZCTU), which was the complainant organization in that case, indicated its desire to withdraw its complaint against the Government of New Zealand since the 1991 Employment Contracts Act has now been repealed.

69. *The Committee takes note of this information and, in particular, the changes in the arrangements for multi-employer agreements brought about by the Employment Relations Act, with satisfaction.*

Case No. 2006 (Pakistan)

70. The Committee last examined this case at its November 2000 meeting [see 323rd Report, paras. 408-430] on which occasion it made the following recommendations:

(a) The Committee notes that the ban on trade union activities in the Pakistan Water and Power Development Authority (WAPDA) has now been lifted.

(b) The Committee once again requests the Government to ensure that the practice of deducting trade union dues is resumed without delay in WAPDA. It asks the Government to keep it informed of developments in this regard.

(c) Reiterating the principle that recourse to measures of suspension or dissolution of trade union organizations through administrative channels constitutes a clear violation of Article 4 of Convention No. 87, the Committee once again requests the Government to keep it informed of the outcome of the appeal filed by the Pakistan WAPDA Hydro Electric Central Labour Union to the Lahore High Court against the decision of the Deputy Registrar to cancel its registration.

(d) The Committee requests the Government to confirm that the ban on trade union activities in KESC which was to continue until 31 October has now been lifted and that the workers' trade union rights have now been restored. It further urges the Government to restore the collective bargaining rights of KESC workers without delay and requests the Government to keep it informed of developments in this regard.

(e) The Committee requests the Government to take the appropriate measures to ensure that the rights of the Pakistan WAPDA Hydro Electric Central Labour Union and the KESC Democratic Mazdoor Union, respectively, as collective bargaining agents (CBAs) are restored to them without delay. It asks the Government to keep it informed of developments in this regard.

(f) The Committee requests the Government to keep it informed of any developments in respect of the WAPDA and KESC union officials who were forcibly retired.

71. In a communication dated 3 January 2001, the All Pakistan Federation of Trade Unions (APFTU) indicates that: (i) the trade union rights of WAPDA workers have been restored by Presidential Ordinance No. XXVII of 2000; (ii) the registration and the legal status as "collective bargaining agent" of the WAPDA union has been restored by a judgement of 3 August 2000 pronounced by the National Industrial Relations Commission of Pakistan; (iii) the facility of check-off to the said union has been restored by WAPDA management on 30 August 2000. *The Committee takes note of this information with interest.*

72. *With regard to the other pending issues related to this case, the Committee requests once again the Government to confirm that the ban on trade union activities in the Karachi Electricity Supply Company (KESC) has now been lifted and that the workers' trade union rights have now been restored. It further urges the Government to take the appropriate measures to ensure that the rights of the KESC Democratic Mazdoor Union as collective bargaining agents are restored without delay. Finally, the Committee requests the Government to keep it informed of any developments in respect of the WAPDA and KESC union officials who were forcibly retired.*

Case No. 1785 (Poland)

73. When it last examined this case at its June 2000 meeting, the Committee had noted with interest the detailed information provided by the Government regarding the issue of cash compensations to trade union organizations and assignment of real estate property to NSZZ "Solidarność" and the Polish Trade Union Alliance (OPZZ), and requested the Government to keep it informed of developments [see 321st Report, paras. 66-70].

74. In its communication of 31 January 2001, the Government indicates that as of 30 September 2000, 762 claims were under review by the Social Commission for Vindication (which reviews its earlier decisions and fixes the amounts of state treasury liabilities). According to the Commission, all these proceedings may be finalized by October or November 2001, that is earlier than previously planned. The Minister of Finance, taking into account the fact that the total value of state treasury liabilities claimed by authorized entities for compensation in the form of bonds at different stages was too small, had renounced to issue bonds, as provided for by the Act of 3 December 1998. In this situation, article 3(8) of the Act provides that the liabilities be paid in cash. To satisfy them, the Government had earmarked sufficient funds in the 1999 and 2000 budgets.

75. However, as other more pressing socially important needs arose in both years those funds were diverted to finance those needs rather than pay the liabilities in question. As a result, liabilities arising from the rulings made by the Commission before 30 November 1998, from 1 December 1998 to 31 May 1999 and after 31 May 1999 have not been paid yet. However, statutory interest accrues on all of them. That being so, the Minister of Finance decided to pay the outstanding and newly arising liabilities of this kind with bonds, provided that all payees agreed. On 18 September 2000, the Minister submitted for inter-ministerial consultation a draft regulation concerning the detailed conditions respecting the issue of bonds for payment of state treasury liabilities in connection with the restitution of trade union and voluntary associations' property seized under the martial law. The bonds will have a total nominal value of PLN 300 million with maturity on 21 August 2002, with option for earlier purchase by the Ministry of Finance by tender. The bonds will be freely tradable on the secondary market.

76. Work in the Government continues on a legislation concerning the legal status of property of the former trade union association (CRZZ) and of the trade union organizations outlawed under the martial law (the so-called "branch" and "autonomous" trade unions). As the National Commission of the Independent Self-governing Trade Union "Solidarność" refrained from offering their suggestions on future legislation in this regard, which the Government would have welcomed, the Government will submit the draft to the National Commission for formal consultations.

77. *The Committee notes that the Commission in charge of settling the various financial issues in question here plans to conclude its work by October 2001. While aware of the complexity of factual and legal issues, the Committee recalls that this representation dates back to 1995 and expresses once again the firm hope that all remaining issues will be finally settled by October 2001. It requests the Government to keep it informed in this regard.*

Case No 1972 (Poland)

78. When it last examined this case at its June 2000 session [see 321st Report, paras. 71-79] the Committee requested the Government to provide the final court decision concerning the dismissal of Mr. Grabowski, chairperson of the trade union Sprawiedliwosc; as regards the allegations presented by the All Poland Trade Union Alliance, (OPZZ), the Committee

recalled the necessity to consult with social partners on draft legislation and requested the Government to provide the text of the Act extending the mandate of the National Tripartite Commission, which is intended to be a forum for consultation and negotiation of social issues.

79. In its communication of 3l January 2001, the Government indicates that the Warsaw Court of First Instance, which will re-examine the case of Mr. Grabowski, has requested the Prime Minister Chancellery to produce additional documents, but has not set a trial date yet. Concerning the OPZZ allegations, the Government explains that the principle of consulting social partners on draft legislation is respected by the Government; violations of this principle rarely occur and, when they do, are unintended. In the present case, the Prime Minister's Chancellery intervened as soon as the issue was brought to its attention and reminded the Ministry concerned of the obligation to consult social partners. The Government further indicates that the draft Act on the Social and Economic Commission is currently being discussed in a commission of the Sejm.

80. *The Committee takes due note of this information. The Committee hopes that the judicial proceedings concerning the dismissal of Mr. Grabowski will be concluded soon and requests the Government to provide the final court decision. The Committee also requests the Government to provide the text of the Act on the Social and Economic Commission as soon as it is adopted.*

Case No. 2089 (Romania)

81. The Committee last examined this case at its November 2000 meeting [see 323rd Report, paras. 478-492] and made the following recommendation:

> Noting that the Government has held talks with the trade union organizations on procedures for implementing an emergency Order suspending collective agreements freely entered into in the public sector and has reached a consensus on amendments to the original text of that Order, the Committee invites the Government and the complainant to keep it informed of developments in this regard.

82. In a communication dated 10 January 2001, the Government states that the amended emergency Order remained in force only until 31 December 2000 and is therefore no longer applicable. *The Committee notes this information with satisfaction*.

Case No. 1994 (Senegal)

83. During its last examination of this case at its November 2000 meeting concerning a labour dispute within the National Electricity Company of Senegal (SENELEC), which resulted in the arrest of strikers following a general power cut that took place in July 1998 and the dismissal of many members of the Single Trade Union of Electricity Workers (SUTELEC), the Committee had requested the Government to take measures to ensure that the SUTELEC union members and officials who were dismissed following incidents that took place in July 1998 were offered reinstatement in their posts without loss of pay.

84. *Following a communication of 21 December 2000, the Committee notes with satisfaction the signing of an agreement between representatives of SENELEC and trade union officials from SUTELEC on 15 December 2000. The agreement, a copy of which was annexed to the communication, details reinstatement procedures for those who wish to take up their posts again, compensation for those who do not wish to be reinstated, including compensation for the heirs of the two workers who have died in the meantime, and priority*

hiring procedures for those workers who were on fixed-term contracts when this situation took place and whose contracts have not been renewed.

Case No. 2038 (Ukraine)

85. The Committee last examined this case at its June 2000 meeting when it requested the Government to keep it informed of all relevant developments concerning the amendment of sections 11 and 16 of the Act on Trade Unions (hereinafter, the Trade Unions Act), their rights and safeguards of their activities in line with the principles of freedom of association and drew the Government's attention to the availability of ILO technical assistance in this regard [see 321st Report, paras. 91-93].

86. In a communication dated 7 November 2000, the Government transmitted a copy of the judgement of the Constitutional Court of Ukraine which has declared unconstitutional the clauses of sections 11 and 16 of the Trade Unions Act which restrict the right to freedom of association and orders that these provisions will immediately cease to have effect. The Government states that this ruling will make it possible to eliminate the divergences between the Act and Convention No. 87 and responds positively to the offer of ILO technical and advisory assistance in respect of the implementation of the court judgement.

87. *The Committee takes notes of this information with satisfaction, as well as of the prospects of a technical assistance mission to the country. The Committee draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to the follow-up given to this case.*

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88. Finally, as regards Cases Nos. 1512/1539 (Guatemala), 1618 (United Kingdom), 1796 (Peru), 1826 (Philippines), 1843 (Sudan), 1884 (Swaziland), 1895 (Venezuela), 1914 (Philippines), 1925 (Colombia), 1937 (Zimbabwe), 1939 (Argentina), 1952 (Venezuela), 1957 (Bulgaria), 1959 (United Kingdom/Bermuda), 1961 (Cuba), 1967 (Panama), 1996 (Uganda), 2005 (Central African Republic), 2007 (Bolivia), 2008 (Guatemala), 2018 (Ukraine), 2019 (Swaziland), 2027 (Zimbabwe), 2047 (Bulgaria), 2056 (Central African Republic), 2058 (Venezuela), 2075 (Ukraine), 2081 (Zimbabwe) and 2085 (El Salvador), the Committee requests the governments concerned to keep it informed of any developments relating to these cases. It hopes that these governments will quickly provide the information requested. In addition, the Committee has just received information concerning Cases Nos. 1581 (Thailand), 1785 (Poland), 1813 (Peru), 1862 (Bangladesh), 1878 (Peru), 1944 (Peru), 1963 (Australia), 1970 (Guatemala), 1978 (Gabon), 1987 (El Salvador), 1989 (Bulgaria), 2028 (Gabon), 2034 (Nicaragua) and 2059 (Peru), which it will examine at its next meeting.

CASE NO. 2037

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

Complaint against the Government of Argentina presented by — the Congress of Argentine Workers (CTA) and — the Association of State Workers (ATE)

Allegations: Provincial decree restricting trade union rights – Replacement of strikers

89. The complaint was submitted in a communication from the Congress of Argentine Workers (CTA) and the Association of State Workers (ATE) dated June 1999. The Government sent its observations in a communication dated 11 May 2000.

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

A. The complainants' allegations

91. In their communication dated June 1999, the Congress of Argentine Workers (CTA) and the Association of State Workers (ATE) state that as from 1995 the Government of the Province of Tierra del Fuego, Antártida e Islas del Atlántico Sur began a series of attempts to restrict freedom of association. The complainant organizations explain that Provincial Act No. 278 respecting the reorganization of the structure of the provincial government was issued in 1996, followed by Provincial Decree No. 1865/98 and Decree No. 2441/98, the latter repealing the former and being the source of the complainant organizations' criticism.

92. The complainant organizations state that Provincial Decree No. 2441/98 relates to freedom of association and that the ATE has lodged an action of unconstitutionality before the judicial authorities on which no decision has yet been handed down. They indicate that the decree in question contains provisions to regulate the holding of assemblies in workplaces and during working hours. They explain that article 5 of Annex I to the decree establishes that the right to hold meetings or assemblies established in Act No. 23551 respecting trade union associations can only be exercised at the end of the working day and in a location assigned by the employer. Only in exceptional circumstances may the corresponding authorization be requested for meetings to be held during working hours, in which case – if the grounds are acceptable – the administrative instrument to authorize the meeting will be issued. The complainants consider that the rule prevents the exercise of the right of assembly during working hours and affects communication between the trade union and the workers. They are also of the view that the criticized provision implies undue interference in the life of the trade union association, given the requirement for permission to be requested in order to hold meetings during working hours.

93. The complainant organizations go on to refer to a conflict that ended in an open-ended strike being called in conjunction with the submission of a complaint relating to maintenance and service workers employed by the public administration of the Province of Tierra del Fuego, Antártida e Islas del Atlántico Sur. The complainants explain that the main duties of these workers, as established by way of collective agreement, are to fully

clean school premises, carry out specific tasks involved in the preparation of daily meals, supervise and oversee the work of kitchen hands, serve meals in school dining-rooms, serve breakfast and/or tea to pupils, supervise and oversee hygiene measures in kitchens and dining-rooms and general kitchen work, order the necessary ingredients for the weekly menu, assist in the preparation of ingredients for meals, do the washing up, ensure kitchens and dining areas are kept scrupulously clean, etc. Most of the staff in question work in schools governed by the public administration in the Province of Tierra del Fuego, Antártida e Islas del Atlántico Sur.

94. The complainant organizations state that as from 1997 the provincial government made a number of attempts to privatize the abovementioned sector. In addition, there are also people working in the sector not covered by the standard labour agreements (under so-called work or labour schemes) who perform the same tasks as maintenance and service workers; this form of contracting workers has come under heavy criticism. The complainants add that in November 1998 the ATE announced its decision to go on strike, calling for a wage increase for the entire central administration and for the repeal of all rules that adversely affect the development of freedom of association; the compulsory conciliation procedure was then initiated. Following a number of negotiations, on 20 May 1999 it was finally decided that a full-time strike and industrial action would begin until further notice for all shifts as from 21 May 1999. According to the complainant organizations, immediately the measure was taken the authorities announced that they would contract cooperatives to replace the strikers and on 25 May the strikers were told to return to work or the appropriate sanctions would be applied. On 26 May members of the police force of the Province of Tierra del Fuego, Antártida e Islas del Atlántico Sur went to a school in Ushuaia to detain the staff involved in the strike action and demanded that the authorities establish a list of staff involved in the strike. As cooperatives had been contracted to perform the work of the strikers, they tried to stop the cooperative members doing the work, explaining the reasons for this measure of trade union action. The complainants state that judicial proceedings were initiated on the grounds that it was a criminal offence for staff from the ATE to prevent the access of staff from the Work Cooperative of Tierra del Fuego and that by the time the complaint was submitted 12 named strikers had been investigated in connection with the incident. The legal situation of those charged has not yet been resolved. Similarly, the complainant organizations allege that the provincial government used trade union action as a reason to replace the strikers by workers contracted under the abovementioned work schemes.

B. The Government's reply

95. In its communication dated 11 May 2000 the Government states with regard to Provincial Decree No. 2441/98, criticized by the complainant organizations, that the requirement for acceptable grounds and prior authorization to hold assemblies at the workplace and during working hours can in no way be considered as violating freedom of association. This is because no limitations are placed on the holding of assemblies or meetings, and neither are any restrictions imposed, if the assemblies and meetings are held outside working hours. Furthermore, there is no prohibition on the possibility of holding assemblies or meetings in the workplace or during working hours. The fact is that this activity is regulated in view of the unquestionable principle that the worker is at the employer's disposal during working hours, something that is particularly relevant when it comes to activities relating to the public in general, which would be seriously affected if, without any notification whatsoever, it were permitted for assemblies or meetings to be held at the workplace and during working hours.

96. As regards the conflict concerning maintenance and service staff, the Government states that on no occasion was the right to strike limited, nor was the concept of essential services invoked to establish minimum services, nor was the measure declared illegal, nor was any

sanction adopted against those involved in the open-ended strike. The Government adds that, as explained by the complainants, the main duties of the staff participating in the open-ended strike include fully cleaning school premises, serving food in school dining-rooms, overseeing hygiene in kitchens, preparing daily glasses of milk for pupils, serving children their breakfast and tea, etc., all of this in public schools coming under the provincial administration. In this respect the Government mentions that in accordance with the criteria established both by the Committee on Freedom of Association and the Committee of Experts, essential services are services which could endanger the life, personal safety or health of the population. On this point the Government notes that unfortunately in a number of provinces in Argentina school canteens are the principal source of nourishment for underprivileged children of school age. As a result the failure to provide cleaning services in schools (classrooms, toilets, kitchens, etc.), particularly for an indeterminate length of time, constitutes a source of infection that could endanger the health of the children and other members of the educational community. This being the case, the lack of cleaning and the closure of canteens in schools endanger the health and safety of an enormous number of children. Despite this fact, it has never been invoked as a restriction on the right to strike. Owing to the circumstances mentioned, and given the extension of the action, the most imperative duties of the striking staff were carried out by staff from labour cooperatives or participants in public employment schemes. Needless to say, the reason for this was the need to re-establish – as a form of stopgap – a service of such vital importance to the community (above all for lower-income sectors) as the abovementioned canteens and to maintain the level of hygiene of toilets, kitchens and other areas in public schools where hundreds of children congregate daily, which constitutes a basic principle of public health. It is simply a matter of balancing the right to strike with the most basic needs of the community. Given the circumstances, it is impossible to consider the situation described as one where outside manpower is being used to break an open-ended strike.

97. The Government declares that as regards the charges brought against certain individuals for preventing others from entering schools and the application of article 158 of the Penal Code cited by the complainant organizations, the argument put forward in the complaint is somewhat flimsy as a worker from a workers' cooperative is manifestly a worker; whether or not there is an employment relationship, the person is a worker. For the reasons given it is considered that in the case in question the principles of freedom of association were not infringed; on the contrary, attempts were made to align the legitimate exercise of the right to strike (without either restricting or limiting it) with the most basic needs of the community as regards the protection of life, health and personal safety.

C. The Committee's conclusions

98. *The Committee observes that in this case the complainant organizations: (1) raise objections to Provincial Decree No. 2441/98 of the Province of Tierra del Fuego, Antártida e Islas del Atlántico Sur, in view of the fact that it does not permit – except in exceptional cases and subject to authorization – the exercise of the right to hold meetings or assemblies by trade union organizations in the provincial public administration during working hours; and (2) allege that in the framework of a strike called by maintenance and service workers employed by the public administration in the Province of Tierra del Fuego, Antártida e Islas del Atlántico Sur, the authorities employed workers from cooperatives or participating in work schemes to replace the strikers, and that some strikers were accused of having committed an offence stipulated in the Penal Code relating to the exercise of violence against third parties to oblige them to participate in a strike.*

99. *As regards Provincial Decree No. 2441/98 objected to by the complainant organizations, the Committee notes the Government's declaration that the decree does not restrict the right to hold assemblies or meetings if they are held outside working hours, and that it*

cannot be considered as a violation of freedom of association to require prior authorization to hold assemblies at the workplace and during working hours. The Government considers that the decree does not prohibit assemblies or meetings at the workplace and during working hours, but instead regulates such meetings given that the activities concerned relate to the public which would be seriously affected if it were permitted, with no requirements whatsoever, to hold such assemblies and meetings in the workplace and during working hours.

100. *In this regard the Committee recalls that the Labour Relations (Public Service) Convention, 1978 (No. 151) – ratified by Argentina – provides in Article 6 that "Such facilities shall be afforded to the representatives of recognised public employees' organisations as may be appropriate in order to enable them to carry out their functions promptly and efficiently, both during and outside their hours of work"; and that "The granting of such facilities shall not impair the efficient operation of the administration or service concerned". This being the case, the Committee considers that the Provincial Decree objected to by the complainant organizations does not violate the provisions contained in Convention No. 151 nor the principles of freedom of association relating to the right of workers' organizations to hold trade union meetings.*

101. *As regards the allegation concerning the employment of workers from cooperatives or participating in work schemes to replace maintenance and service workers employed by the public administration of the Province of Tierra del Fuego, Antártida e Islas del Atlántico Sur who had called an open-ended strike, the Committee notes the Government's declaration that: (i) at no time was the right to strike restricted, nor the measure declared illegal, nor were sanctions adopted against the strikers, nor was the concept of essential services invoked to establish a minimum service; (ii) the main duties of the staff who went on strike are the cleaning of schools (classrooms, toilets and kitchens) and the serving of food in school canteens (the pupils' breakfast and tea); (iii) in various provinces of Argentina school canteens are the principal source of nourishment for underprivileged children of school age; (iv) the lack of cleaning and the closure of school canteens endangers the health and safety of an enormous number of children; and (v) given the extension of the strike, the most important aspects of the staff's duties were carried out by staff from work cooperatives or by participants in public employment schemes.*

102. *In this respect the Committee considers that the activities performed by maintenance and service workers employed by the public administration of the Province of Tierra del Fuego, Antártida e Islas del Atlántico Sur, which have been described in similar terms by the complainant organizations and the Government, fall within the definition of essential services. In effect, the provision of food to pupils of school age – particularly in areas located away from the main urban centres – and the cleaning of schools are services which if interrupted could endanger the life, personal safety or health of pupils. As a result, the use of a group of people to carry out the functions of workers on strike in the sector in question, which is considered to be an essential service, does not violate the principles of freedom of association. In this respect, the Committee has only objected in the past to the hiring of workers to break a strike in sectors which are not essential [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 570].*

103. *With regard to the allegation that some strikers (listed by name by the complainant organizations) from among the maintenance and service workers employed by the public administration of the Province of Tierra del Fuego, Antártida e Islas del Atlántico Sur had been charged for having committed an offence stipulated in the Penal Code of Argentina relating to the exercise of violence against third parties to oblige them to participate in a strike, the Committee notes that the Government has not sent any specific observations in this regard. This being the case, the Committee requests the Government to keep it*

informed about developments in the legal proceedings, as well as about the situation of the workers charged (whether they have been tried or their cases dismissed, etc.). The Committee also requests the Government to send it a copy of any decisions handed down in this respect.

The Committee's recommendation

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

The Committee requests the Government to keep it informed about developments in the criminal proceedings brought for acts of violence against third parties to oblige them to participate in a strike, as well as about the situation of the workers charged (whether they have been tried or their cases dismissed, etc.). The Committee also requests the Government to send it a copy of any decisions handed down in this respect.

CASE NO. 2062

DEFINITIVE REPORT

Complaint against the Government of Argentina presented by the Staff Association of the University of Buenos Aires (APUBA)

Allegations: Anti-union transfers and dismissals

105. The complaint is contained in communications dated 24 August, 29 October and 9 November 1999 from the Staff Association of the University of Buenos Aires (APUBA). The Government replied in a communication dated 18 January 2001.

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

A. The complainant's allegations

107. In its communication dated 24 August 1999, the Staff Association of the University of Buenos Aires (APUBA) alleges that, in a context of anti-union and political persecution and an atmosphere of dispute between non-teaching staff and their representatives, on the one hand, and the authorities of the Faculty of Architecture, Design and Town Planning of the University of Buenos Aires (FADU-UNBA), on the other, administrative proceedings were instituted on 4 November 1997 in respect of the transfer of Ms. Alicia Rosa Di Grazia, a trade unionist who was working in the kindergarten while simultaneously serving as secretary in charge of the records of the Staff Committee. Although she took the matter to court, there has been no final judicial decision to date.

108. Moreover, deterioration in the work situation prompted the Workers' Assembly to declare a 24-hour stoppage of work on 31 August 1998. Around that same period, the Dean of the Faculty had ordered the institution of two administrative proceedings, on 23 June and 18 August 1998 respectively, against Mr. Carlos Guillermo Pelloli, a trade unionist

and member of the Staff Committee, on the grounds of "sexual harassment". On 17 September 1998, after a number of irregularities, the trade unionist was transferred, as a preventive measure, and was prohibited from entering the Faculty building. The complainant points out that Mr. Pelloli had made accusations of corruption and of irregularities being committed within the Faculty. In August 1998, further administrative proceedings were instituted in respect of the trade union officer on the grounds that a student of architecture, who was also a member of the Faculty's non-teaching staff, had been enrolled in courses of study without observing the course requirements. The complainant states that the Faculty authorities have not complied with the first-instance ruling handed down in December 1998, ordering that Mr. Pelloli be immediately reinstated in his position, or the judgement of the National Labour Appeal Court confirming the first-instance ruling and thus rendering that ruling final and enforceable.

109. The complainant also alleges that the Faculty authorities acted to discredit and prejudice Ms. Delia Casal, Delegate-General of the Staff Committee, by instituting administrative proceedings that led to her transfer in violation of her trade union rights, and by attempting to implicate fellow trade unionist Mr. Carlos Pelloli and Ms. Elsa Casal, a member of the Faculty's non-teaching staff and the sister of trade unionist Ms. Delia Casal, in the alleged acts (illicit transfer of Faculty documents). The legal action brought by Ms. Delia Casal was still pending at the time the complainant sent its first communication.

110. In its communications dated 29 October and 9 November 1999, the complainant states that pursuant to a decision in August 1999 of the Dean of the Faculty of Architecture, Ms. Elsa Casal was suspended and Ms. Delia Casal was relieved of her duties (the question of the application of sanctions being deferred until the end of the period of trade union immunity). The courts of first and second instance later ruled in favour of Ms. Delia Casal ordering her reinstatement, but the university authorities have refused to comply with the order. The courts of first and second instance ruled against trade unionist Ms. Alicia Rosa Di Grazia; she, therefore, lodged a special appeal with the Supreme Court without, however, being authorized to do so by the National Court of Appeal, which regards this as contrary to the provisions of ILO Conventions. The complainant encloses the relevant rulings.

B. The Government's reply

111. In its communication of 18 January 2001, the Government forwards a communication dated 16 November 2000 from the Faculty of Architecture, Design and Town Planning of the University of Buenos Aires, in which the Faculty states that the complainant, in order to evade an analysis of the three proceedings in which it is involved and in a final and desperate move to defend its position before the Committee, is attempting to put forward a list of supposed "victims" of anti-union and ideological harassment. The complainant thus describes an imaginary authoritative regime, omitting the fact that it is referring to an institution of higher education whose authorities are voted in once every four years by the institution's three constituent bodies (students, graduates and teaching staff). It also neglects to mention that the UBA's highest authority is the University Assembly, which is open to all members; that the Rector is elected from among those members; and that this procedure has been strictly followed since the restoration of democracy in the country. It further refers to episodes in the university's institutional life, all of which occurred in accordance with the UBA's statutory framework, adding value judgements and putting forward subjective and biased views on the subject.

112. According to the Faculty of Architecture, the complainant distorts the purpose of the examination *(auditoría)* and inquiry proceedings qualifying them as persecution whereas these are statutory mechanisms for supervising and investigating the functioning of administrative and academic activity. Herein lies the heart of the matter, as the

complainant evades an analysis of the proceedings initiated to investigate complaints of irregularities implicating the appellants. Examination proceedings are an institutional obligation in the event of a presumed irregularity, designed to permit investigation of the facts, establish responsibilities and apply whatever sanctions may be required. Instead of trying at least to challenge the validity of the investigations on the basis of an analysis of the proceedings and the merits of the cases, the complainant claims that the investigations were conducted in an arbitrary manner, with the aim of persecuting those concerned. The proceedings, which were opened in an appropriate manner, were as follows:

– In File No. 253,941, one of Mr. Pelloli's subordinates accuses him of sexual harassment. There is so little suspicion of connivance on the part of the said subordinate with Mr. Pelloli's "harassers" that her name is not even mentioned in the complaint under examination. The fact is, however, that the young Ms. Jessica Marcus' accusation led to an investigation with unexpected consequences. Not only was the alleged act established, but it also came to light that, in his position as director of student management, Mr. Pelloli had behaved in a similar manner towards other female employees and that, through his bizarre and arbitrary behaviour, he instituted a reign of terror over his staff. A further fact that the written statement omits to mention is that up to that point Mr. Pelloli enjoyed excellent relations with and the full confidence of the Faculty authorities. He now accuses those same authorities of anti-union persecution, incidentally, after being proved guilty of sexual harassment; neither the proceedings nor the statement signed by him indicate any real attempt to defend himself except through the theory of conspiracy against him. The Faculty takes pride in having complied with the statutory obligation of investigating – without prejudice or being subjected to any form of manipulation – a complaint filed by a young administrative employee against a member of the university's professional staff (with a bachelor's degree in sociology) holding the post of director. In reply to the allegation, a copy of the full contents of File No. 235,941 was enclosed with the Government's reply. The previous investigation brought another irregularity to light: Mr. Pelloli was strongly suspected of having supplied his personal password for accessing the enrolment procedure to former employee Mr. Jorge Cuesta (who was also a regular student in the Faculty of Architecture), thus enabling the latter to enrol, against the regulations, in degree courses of study. The facts were established in this investigation (File No. 236,252) as well, and today Mr. Jorge Cuesta is no longer a student or an employee of the university; the statement fails to mention this, perhaps because Mr. Jorge Cuesta did not hold any trade union office and there was therefore no way that the persecution theory would stand up as far as he was concerned. In reply to the allegation, a copy of the full contents of File No. 236,252 was enclosed with the Government's reply.

– As the abovementioned proceedings were under way, a complaint was made that documents had been removed from the student management department. This was investigated separately, and in this instance as well those responsible were identified and the facts proven. It was thus established that employee Ms. Mónica Blengini, and Mr. Jorge Cuesta (the employee-student given favourable treatment by Mr. Pelloli against university regulations), Ms. Delia Casal and Ms. Elsa Casal (both of them sisters-in-law of Mr. Pelloli) had participated, to varying degrees and as accessories, in the removal of three boxes of documents (including public instruments) belonging to the Faculty's student management department and in their transfer to the premises of the Faculty's non-teaching mutual association of which Mr. Pelloli was Chairperson. Apart from this evident accumulation of power and nepotism there exists a strong presumption – though no irrefutable evidence – of his involvement as the instigator of the above acts. The complaint lodged by the complainant does not analyse the merits of the case and puts forward the persecution theory once again. The evidence of yet another extremely serious instance of misconduct was so

overwhelming, however, that all the tactics aimed at confusing and obstructing the proceedings (the preferred strategy of the defence led by lawyer Ms. Norma Casal, Ms. Delia and Ms. Elsa Casal's sister and wife of Mr. Pelloli) failed in this case as well. In reply to the allegation a copy of the full contents of File No. 236,467 was forwarded; this provides a detailed list of the documents removed from the student management department and found in the premises of the non-teaching staff mutual association.

– In File No. 234,770/97 pertaining to employee Ms. Alicia Rosa Di Grazia, the defence adopts the same diversionary tactic. Indeed, there is no mention of the object of the inquiry, but a description of the situation and an appraisal of the running of the kindergarten where Ms. Di Grazia was working; this has nothing to do with the investigation into the administrative employee's wrongful management of funds. Although the facts were established once again, it should be pointed out that in Ms. Di Grazia's case, the ruling was as mild as possible under the circumstances and the relevant regulations.

113. In conclusion, the Faculty states that there can be no greater or more convincing evidence for shattering the image of the persecuted worker which these individuals are trying to build for themselves than the opinions, feelings and judgements expressed about Mr. Pelloli by his own subordinates. These views highlight the despotic manner in which he ran the student management department (of which he was the "boss" supported by a system of loyalties founded on corruption and family ties) and the domination that he exercised through fear over all those who did not satisfy his often incomprehensible demands. A reading of the documents (especially File No. 235,941 pertaining to sexual harassment) shows Mr. Carlos Pelloli to be a harasser who, when the time comes to face a charge, shirks his responsibilities by claiming to be a victim of persecution, securing the assistance, as accessories, of his sisters-in-law and subordinates Ms. Delia and Ms. Elsa Casal.

C. The Committee's conclusions

114. *The Committee notes that, in the present case, the complainant alleges on different dates and in an atmosphere of anti-union persecution the transfer of three trade unionists (Mr. Carlos Pelloli, Ms. Delia Casal and Ms. Alicia Rosa Di Grazia) and the suspension of one worker, Ms. Elsa Casal. The Government has forwarded the observations submitted by the Faculty of Architecture of the University of Buenos Aires in which the three trade unionists are declared guilty on the evidence of administrative proceedings, of serious misconduct, namely: sexual harassment (Mr. Carlos Pelloli); removal of three boxes of documents, including public instruments, from the Faculty premises (Ms. Delia Casal); and wrongful management of funds (Ms. Alicia Rosa Di Grazia). The administrative proceedings regarding the worker Ms. Elsa Casal, who was not a trade unionist, concluded that she was an accessory in the aforementioned removal of documents.*

115. *The Committee notes that, in view of the fact that Mr. Carlos Pelloli and Ms. Delia Casal had been transferred without the formal requirements of judicial authorization stipulated by the legislation in the case of trade unionists being applied, the judicial authority ordered their reinstatement without considering the acts of which they were accused. However, given that both trade unionists were found guilty of serious misconduct, the Committee will not continue its examination of the allegations in question.*

116. *Finally, the Committee takes note of the fact that the courts of first and second instance ruled against trade unionist Ms. Alicia Rosa Di Grazia.*

The Committee's recommendation

117. ***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. 2065

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

Complaint against the Government of Argentina presented by — the National Federation of University Teaching Staff (CONADU) and — the Riojan Association of University Teaching Staff (ARDU)

Allegations: Initiating academic proceedings against a trade union official

118. The complaint is contained in a joint communication from the National Federation of University Teaching Staff (CONADU) and the Riojan Association of University Teaching Staff (ARDU) dated December 1999. The Government replied in a communication dated 4 December 2000.

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

A. The complainants' allegations

120. In their communication of December 1999, the National Federation of University Teaching Staff (CONADU) and the Riojan Association of University Teaching Staff (ARDU) from the province of La Rioja allege anti-union practices, trade union persecution and the violation of national and international protective standards by the National Executive Power and the authorities of the National University of La Rioja (UNLaR). More specifically, the complainants allege that on 26 February 1999 the Board of Governors of the UNLaR ordered that an academic proceeding be initiated against the teacher Estela Cruz de García in her capacity as trade union representative (Secretary General of ARDU) on the grounds of the exercise of her trade union representation work; it was also decided to order CONADU to rectify alleged statements made concerning the university authorities. The UNLaR based this decision on an article that appeared in the local daily newspaper *El Independiente* on 17 February 1999, and in which "… in view of the virtual non-existence at the UNLaR of teaching staff who belong to CONADU and ARDU, we have observed the persistence of a campaign to discredit and undermine this university by the teacher Estela Cruz de García, in terms that go beyond the healthy principles of democratic coexistence and the exercise of rights".

121. According to the complainants, initiating academic proceedings, an administrative procedure intended to remove the trade union representative on the grounds of her trade union activities, solely on the basis of the above quotation, clearly constitutes a violation of the guarantees that protect trade union activities and the stability of the delegate in question. Also, the academic proceedings stipulated in the resolution were initiated without any type of notification or right to defence. CONADU was not notified of the order contained in article 3 of the administrative act.

122. The complainants emphasize that the resolution issued by the Board of Directors of the UNLaR is based on a newspaper publication. From the records it does not appear that the administrative and employing authority has checked the source of the information or the veracity of its content. Neither CONADU or the teacher Ms. Cruz were ever required to ratify or rectify the information, thus damaging the guarantee of defence and making the act voidable as it lacks cause and foundation de facto and *de jure*. Also, the basis for the discriminatory resolution is in short that "… we have observed the persistence of a campaign to discredit and undermine this university by the teacher Estela Cruz de García …", but at no time has the content of that campaign been clearly established. It is in fact nothing more than the regular exercise of the rights which Ms. Cruz is entitled to in her capacity as trade union representative. Under the National Constitution (article 14bis), "Union representatives shall have the necessary guarantees to perform their union tasks and to ensure the stability of their employment". This stipulation is operative as it is directly established by the Constitution and is not conditional on any regulation.

B. The Government's reply

123. In its communication of 4 December 2000, the Government refers to the observations made by the UNLaR, which declares that it is absolutely foolhardy and incomprehensible, as well as being legally indefensible, to accuse an autonomous and autarchic institution of persecuting a trade union official, or of engaging in anti-union practices simply because it initiates academic proceedings against a teacher in the framework of the most absolute legality and institutional legitimacy. In this respect, provision is made for academic proceedings both in the statutes of the university (articles 54 to 61 inclusive) and in the Higher Education Act No. 24521 (article 57), in coinciding and coordinated terms. Furthermore, the statutes of the UNLaR, which are attached, make provisions for both the composition of the academic tribunal, which corresponds to the provisions of the Higher Education Act (article 54), the guarantee of the right to defence (article 60), the obligation to give reasons for the pronouncement (article 61, first part) and the possibility of appealing the decision adopted before the university assembly (article 61 *in fine*). Likewise, while the academic proceedings were initiated on the basis of the Board of Directors resolution No. 317/99 referred to in the complaint, they were certainly not based solely on the sentence quoted by the complainants ("… in view of the virtual non-existence at the UNLaR of teaching staff who belong to CONADU and ARDU, we have observed the persistence of a campaign to discredit and undermine this university by the teacher Estela Cruz de García, in terms that go beyond the healthy principles of democratic coexistence and the exercise of rights …"), but on the manifest existence of a campaign to discredit the university which, in the words of the pronouncement made by the Board of Governors of the university, "goes beyond the healthy principles of democratic coexistence and the exercise of rights". Lastly, and as shown below, the grounds motivating this decision were not restricted and did not only comprise only one newspaper article. This is clear from the content of Board of Governors resolution No. 317/99 and also from other facts expressly invoked that can be cited as follows:

> … this decision by the trade union entity, on the basis of the report by Ms. Estela Cruz de García, a member of ARDU, demonstrates a complete ignorance of the standards that regulate the Argentine university system, and in particular those that regulate this university; they seek to question and challenge the decisions legitimately adopted by the collegiate bodies of the UNLaR, which are comprised of representatives of the university bodies. The UNLaR community defined an institutional project and the person chosen to present it won over 75 per cent of the vote by members of the university assembly in July 1998, which demonstrates the absolute collective conviction which endorses the decisions of its governing bodies. The UNLaR has clearly and consistently formulated its educational policy to "ensure increasing levels of quality and excellence" (article 4(d) of Act No. 24521) "to intensify the process of

democratization in higher education to contribute to the equitable distribution of knowledge and to ensure equal opportunities" (article 4(d) of Act No. 24521), in the framework of the true transformation that society and the world demand of institutions of higher education …

124. Furthermore, the initiation of academic proceedings cannot in any way be taken to signify the restriction or infringement of freedom of association, nor opposition to the trade union leadership, even if it is not covered by an "indemnity bill" or by special protection under the applicable national or international legislation. The fact remains that any teacher can be questioned about ethical/disciplinary matters in accordance with the provisions of the Higher Education Act No. 24521 (article 57) which reads as follows: "The statutes will provide for the establishment of a university tribunal which will have the function of hearing academic proceedings and deciding on any ethical/disciplinary matters in which teaching staff are involved. It will be constituted of emeritus or consultant professors, or by teaching staff who have won their positions in open competitions and who have over ten years experience in university teaching". It goes without saying that the ethical/disciplinary matters relating to teaching staff must be dealt with by a specific academic tribunal constituted in compliance with the corresponding statutory provision (article 59(c) and (d) of the UNLaR statutes). An overview of legislation does not reveal any injury or damage associated with the initiation of academic proceedings against a teacher who happens to exercise a trade union function. Furthermore, the academic proceedings initiated, as well as complying fully with prevailing legislation, do not constitute any type of persecution, and certainly not an anticipated sentence, since specific regulations stipulate that they must be decided by a tribunal comprised of peers or colleagues of the actual defendant and it must be possible to appeal the decision, where appropriate.

125. It should also be pointed out that the current stage of the proceedings, in accordance with the provisions governing them, and as specified in an attached document, far from signifies an inquisitorial procedure or a prejudgement of the conduct of Ms. Estela Cruz de García. Nevertheless, there has not yet been any response regarding the report submitted to *El Independiente*, and once this is done, the article published by this newspaper on 13 February 1999 will either be substantiated or not. This, together with the other proceedings, will show whether the academic tribunal is justified or not in approving the academic proceedings requested of the tribunal by the Board of Governors, in accordance with the provisions of article 54 of the statutes of the UNLaR.

126. Without prejudice to the fact that article 60 of the statutes of this organization expressly determines that: "In all instances the right of defence of the accused will be duly ensured", it must also be stated that from the time she took up the position of Secretary General of ARDU, Ms. Estela Cruz de García generated a campaign of ongoing slander against the university and its authorities, announcing non-existent and unfounded institutional situations that were never corroborated. By way of example, an article in *El Independiente* dated 11 December 1998 reports, on this "record" (a different article to that mentioned in the Board of Governors' resolution). The matter denounced on that occasion is false, as also proved to be false – according to a judicial decision – alleged improper salary deduction which could have been detrimental to Ms. Cruz de García. Her claim was rejected by the federal judge of La Rioja (a certified photocopy of the decision is attached). In this same context mention should be made, as it is linked to the same slander, of the formal request made by the rector of the university of Ms. Estela Cruz de García and of the members of the executive committee of ARDU, dated 19 May 1999, to confirm, or otherwise, the remarks deemed by him to be slanderous and offensive, contained in another article in the newspaper *El Independiente*, dated 18 May 1999, and published on page 3 under the title "ARDU denounces the UNLaR", a photocopy of which is attached. There was no response to this request. The Government also attaches five other articles published in the same newspaper (the only one in circulation in the provincial capital), containing further false and slanderous accounts.

127. In these circumstances, as the academic proceedings initiated against the teacher have not been concluded, nor, as stated by CONADU in its complaint, was there any notification of the Board of Governors resolution No. 317/99, CONADU cannot consider itself to have been wronged by the third provision of that decision ordering it to ratify or rectify its statement (it had declared the rector of the university to be "*persona non grata*"). Nevertheless, the newspaper version has not yet been confirmed. The UNLaR was not notified (and thus this is not contained in the complaint submitted to the ILO) of the application for annulment of the Board of Governors resolution No. 317/99, allegedly requested by CONADU.

128. The main proof of the lack of anti-union practices or violations of standards governing the exercise of the collective rights of teachers at the UNLaR can be seen in the entirely normal manner in which the joint academic commission is conducting its business, as demonstrated by recent attached minutes of meetings, and the corresponding decisions taken by the university authorities. This should have been honourably recognized by CONADU since it is fully aware of this matter. However, the unjustified omission by the trade union member of the joint commission in no way detracts from the institutional will of this organization to recognize systematically the collective and individual rights of its workers.

C. The Committee's conclusions

129. *The Committee observes that the complainants allege that the lodging of academic proceedings against the teacher Estela Cruz de García, Secretary-General of ARDU, was an anti-union measure as it was motivated by the exercise of her tasks in the area of trade union representation; they also criticize the order addressed to the trade union organization CONADU to rectify alleged decisions or statements relating to the authorities of the UNLaR. The complainants maintain that these measures do not respect the right of defence, that they are based on a newspaper article (17 February 1999), and that the source of the information has not been confirmed; they mention a campaign to discredit the university being pursued by the teacher in question but do not specify the details of that campaign.*

130. *The Committee notes that in its reply the Government refers to observations made by the UNLaR whereby: (1) it denies that the lodging of the academic proceedings was an anti-union measure as the statements, and behaviour of the trade union official teacher that led to them, went beyond the healthy principles of democratic coexistence and the exercise of rights; (2) it stresses that the procedure is being conducted by an academic tribunal comprised of teachers and that there are the appropriate guarantees of the right of defence and there is the possibility to appeal; (3) legislation provides that academic proceedings can be initiated for matters of an ethical/disciplinary nature; (4) the current status of the proceedings far from signifies an inquisitorial procedure; (5) in addition to her statements contained in the press article dated 17 February 1999, the trade union official teacher conducted a campaign of ongoing slander against the university, inventing non-existent and unfounded institutional situations, denouncing false facts, including alleged improper deductions of her wages which she complained about in 1998, allegations that were also shown to be false (the judicial authority rejected an action in this connection given that it was a matter of an administrative rather than a criminal nature); the university provides the text of this decision and several press articles; (6) Ms. Cruz de García has yet to confirm or not her statements to the newspaper, only then will the academic tribunal be in a position to determine whether there is a legal basis for the academic proceedings requested by the Board of Governors of the university; (7) the teaching authorities asked that the statements contained in the press article of 17 February 1999 be rectified owing to their defamatory, slanderous and damaging nature.*

131. *The Committee observes that in the article published in **El Independiente** on 17 February 1999 (provided by the Government), the trade union official Ms. Estela Cruz de García states that the teachers of the UNLaR did not receive their 1998 pay increase, warns of the possible immediate suspension their participation in exams as a trade union measure and notes that the trade union is examining how to proceed in respect of the improper wage deductions; this article announces that the trade union organization, CONADU, declared the rector of the university to be **persona non grata**. In the view of the Committee, such statements do not go beyond the normal limits of the right to expression of trade union organizations. The Committee notes that the initiation of academic proceedings by way of a resolution of the Board of Governors of the university was based not only on the statements made in this press article but also on "the persistence of a campaign to discredit and undermine this university by the teacher Estela Cruz de García, in terms that go beyond the healthy principles of democratic coexistence and the exercise of rights" (resolution of the Board of Governors of the UNLaR dated 26 February 1999). The Committee observes that in this resolution, as the complainant indicates, no details are given of the substance of the campaign nor – apart from the press article dated 17 February 1999 – is any reference made to other press articles or to decisions or facts mentioned in the written reply of the university to this Committee. This being the case, the Committee recalls the principle that "the right to express opinions through the press or otherwise is an essential aspect of trade union rights" [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 153], and hopes that the proceedings initiated will guarantee due process and that the conclusions of the investigations will take fully into account the principles of freedom of association.*

The Committee's recommendation

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

> ***As concerns the proceedings initiated against the trade union official Estela Cruz de García, the Committee hopes that these proceedings will guarantee due process and that the conclusions of the investigation will take fully into account the principles of freedom of association.***

CASE NO. 2090

INTERIM REPORT

Complaints against the Government of Belarus presented by
— the Belarus Automobile and Agricultural Machinery Workers' Union (AAMWU)
— the Agricultural Sector Workers' Union (ASWU)
— the Radio and Electronics Workers' Union (REWU)
— the Congress of Democratic Trade Unions (CDTU)
— the Federation of Trade Unions of Belarus (FPB)
— the International Confederation of Free Trade Unions (ICFTU) and
— the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF)

Allegations: denial of trade union registration, government interference in trade union activities and elections, dismissal of trade unionists and freezing of trade union bank accounts

133. In a communication dated 16 June 2000, the Belarus Automobile and Agricultural Machinery Workers' Union (AAMWU), the Agricultural Sector Workers' Union (ASWU), the Radio and Electronics Workers' Union (REWU) and the Congress of Democratic Trade Unions (CDTU) submitted a complaint of violations of freedom of association against the Government of Belarus. The Federation of Trade Unions of Belarus (FPB) joined the complaint in a communication dated 6 July 2000 and submitted additional information in a communication dated 28 September 2000. The International Confederation of Free Trade Unions (ICFTU) and the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) associated themselves with the complaint in communications dated 29 June and 18 July 2000, respectively. Additional information was submitted by the AAMWU, the Belarusian Free Trade Union (affiliated to the CDTU) and the REWU in communications dated 9, 24 and 25 January 2001.

134. The Government sent its observations in communications dated 29 September 2000 and 11 January 2001 and transmitted additional information in reply to some of the new allegations in a communication dated 23 February 2001.

135. Belarus 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).

136. From 18 to 21 October 2000, a preliminary contacts mission as envisaged in paragraph 65 of the Committee's procedures for the examination of complaints was carried out in Belarus with Mr. Kari Tapiola, Executive Director of the Sector on Standards and Fundamental Principles and Rights at Work, heading the delegation. Mr. Tapiola was accompanied by Ms. Karen Curtis, Senior Legal Officer, Freedom of Association Branch, and Mr. Vitali Savine, Senior Standards Specialist in the multidisciplinary team in the ILO Moscow office. The report of this mission is attached as Annex I.

A. The complainants' allegations

137. In their communication dated 16 June 2000, the complainants allege that: trade unions cannot organize without prior authorization; state authorities are interfering with trade union activities; the minimum membership requirement for trade union registration and the legislation concerning the right to strike are in contravention of the freedom of association Conventions; and there is insufficient protection against anti-union discrimination.

138. In particular, the complainants state that Presidential Decree No. 2 of 26 January 1999 "on certain measures ruling the activities of political parties, trade unions and other public associations" without any apparent reasons obliges all trade unions and their associations to pass a second registration process, regardless of the fact that a previous registration process had just been undertaken in 1996 after the adoption of the Law of the Republic of Belarus "on public associations". Moreover, Decree No. 2 introduced obligatory state registration of trade unions' sub-organizational structures, which had to be executed by the local executive and administrative bodies according to the place of location of the trade union organization. In the previous registration exercise, enterprise-level organizations were not required to pass state registration.

139. According to the complainants, the Decree contains several provisions violating ILO Conventions Nos. 87 and 98: recurring registration of trade unions; minimum membership requirements for registration of trade union organizations at different levels; compulsory liquidation of trade unions that have failed to be re-registered.

140. The accompanying "Regulations of state registration (re-registration) of political parties, trade unions and other public associations" require a wide range of documents to be submitted for registration, entail a complicated procedure of trade union registration, and provide a wide range of grounds justifying the refusal to register trade unions. The Ministry of Justice further issued the "Rules of drawing up and examination of documents submitted for the state registration of political parties, trade unions and other public associations, and also recording and state registration of their organizational structures".

141. Section 5 of the Law on Trade Unions states that trade unions can be liquidated only according to the decision of the members of the trade union as foreseen by their statutes. However, in violation of the abovementioned law, Decree No. 2 provides that: activities of associations, which were not registered or not re-registered on the territory of the Republic of Belarus, are forbidden (paragraph 3, subsection 6); and associations which have not been re-registered must stop their activities and be liquidated according to the established procedure as of 1 July 1999 (paragraph 3, subsection 7). The Byelorussian Independent Association of Industrial Trade Unions (BIAITU), in accordance with its statute, made an application to the Ministry of Justice on 16 June 1999 for state registration. However, in a letter of the Ministry dated 1 October 1999 the BIAITU was informed that it was refused registration, "as the association is formed of the trade unions which represent and protect rights and legal interests of their members" and, besides, "there are other observations" (it is not specified which ones).

142. The associations appealed to the Supreme Court of the Republic of Belarus against the illegal refusal of the registration. The Supreme Court judgement of 6 December 1999 denied the appeal. While recognizing that the refusal of the Ministry of Justice to re-register the organization was not based on the law, the Supreme Court independently established other grounds for the refusal. The said judgement came into force immediately and the association had to be liquidated.

143. Another problem arising from the Regulations of state registration (paragraphs 3 and 4) concerns the wide range of documents required for registration, including confirmation of

the legal address of the association, even for local trade union organizations. Trade unions are required to submit a document attesting the legal address of the local trade union organizations. In practice, a letter of the director of the enterprise where the trade union organization was created is required. Many organizations (including for example the local trade union organization OAO "Steklozavod Oktiabr" (Mogilev region), the local organization of Minsk Automobile Plant Free Trade Union of Metalworkers (Minsk), the local organization of "Tsventron" plant Free Trade Union of Metalworkers (Brest), the local trade union organization "Khimvolokno" (Grodno)) were refused such letters from their directors and subsequently were denied registration. As a result, the following local organizations have not been registered: the local trade union organization of the Belarusian Free Trade Union at the Grodno Fine Fibers Production Amalgamation (Grodno), the local organization of the workers of the "Minsk Instrument Engineering plant" (Minsk), the local organization of the Minsk Automobile Plant of the Free Trade Union of Metalworkers, the local trade union organizations of the Free Trade Union of the Byelorussian "Zenith" Plant (Mogilev), Mogilev construction trust No. 12 (Mogilev), Flax Processing Plant (Orsha), Companies "Electroseti" (Orsha), "BelVar" (Minsk), "Naftan" Production Amalgamation (Novopolotsk), "Avtogydrousilitel" plant (Borisov), Production and Technical Association "Shveinik" (Borisov).

144. According to the complainants, trade union pressure in early 2000 persuaded the Government that such procedures infringed the right to create workers' associations. As a result the Ministry of Justice wrote a letter on 3 February 2000 (annexed to the complaint) which allowed organizations to submit for registration the following types of documents attesting the legal address of the sub-organizational structures: record of the organizational meeting where the trade union enterprise organization was founded, or the record of the republican trade union body about the creation of a sub-organizational structure of the trade union. However, a month later the Ministry of Justice issued a new letter clarifying that the legal address is indeed the address of the premises given to the trade union by the employer, and the director may, but is not obliged to, allocate such premises.

145. Trade unions are thus completely dependent on the will of the head of the enterprise to issue a document confirming the union's legal address. In some cases managers of enterprises provided trade unions with a legal address, but recalled these documents later. For example, the director of the Mogilev Automobile Plant refused to confirm that the location of the Free Trade Union of the Workers of MoAZ corresponded to the legal address of the plant. The legal address of the local organization at the "Ecran" Mogilev plant was also recalled. As a result, the registration of many local organizations has become very difficult.

146. The Decree also requires executive authorities to put sub-organizational structures of trade unions on record (paragraph 17 of the Regulations). However, the Rules of drawing up and examination of documents for the state registration foresee compulsory state registration of the organizational structures of trade unions and do not differentiate between state registration and recording. In many cases the executive authorities refuse to record local trade union organizations, demanding the initial registration as legal entities in the Ministry of Justice. The administration of the Oktiabrski region of Mogilev refused on these grounds to re-register three local organizations (local trade union organizations of the workers of the Mogilev Automobile Plant by the name of Kirov, OAO "Ecran", private employers of Mogilev.

147. Decree No. 2 also stipulates that the creation and functioning of: republican trade unions require not less than 500 founding members, representing the major number of regions of the Republic of Belarus and Minsk; territorial trade unions require not less than 500 founding members, representing most administrative and territorial units of the respective territory; trade unions at enterprises, offices, organizations and in other places of work

require not less than 10 per cent of workers of the overall number at the relevant enterprise, office and organization, but not less than ten people. According to the complainants, these requirements make the creation of new republican and territorial trade union organizations practically impossible and limit the chances of creation of trade unions at large enterprises. For example, these requirements underpinned the refusal to recognize the local trade union organization of the Belarusian Free Trade Union at the "Belgoles" State Timber Processing Amalgamation.

148. The complainants further allege that the state authorities have increased their interference in the affairs of the trade unions. The policy of broadening state influence in trade unions is now reflected in legislation. The previous Law on Trade Unions, their Rights and Guarantees of Activities (part 1, article 3) banned all kinds of interference capable of limiting the rights of trade unions or impeding their execution unless otherwise specified by the legislation. A similar provision was contained in the draft of the new law on Trade Unions but was deleted by the President when signing this Law. The Chamber of Representatives of the National Convention examined the objections of the President and made the following amendment: "Activities of trade unions can be restricted in cases foreseen by the legislative acts of the Byelorussian interests of national security, public order, provision of the rights and freedom for the other persons".

149. Lately cases of public state authority interference in trade unions activities have become more and more frequent to influence strongly the decision making processes and activities of trade unions. On 11 February 2000, the head of the Presidential Administration gave the following instructions to ministers and the chairmen of state committees:

1. The ministers and chairpersons of government committees (trusts) shall submit personally to the Presidential Administration proposals for candidates who they shall recommend and support to be elected as leaders of branch trade unions at their republican congresses.
by 25 February 2000

2.1 The chairpersons of oblispolkoms (regional executive committees) shall submit to the Presidential Administration a list of candidates who they will recommend and support; for the election of leaders of regional committees of branch trade unions and regional associations of trade unions at the respective conferences.
by 25 February 2000

3. The heads of respective ministries and government committees shall present information about the nature of participation of their subordinate officials in preparation and organization of republican congresses of branch trade unions, including the personal and quantitative aspects of the results of the trade union election processes.
by 25 February 2000

…

5. Turning the attention of the Minister of Industry of the Republic of Belarus to the necessity of more active personal participation: in the election process of branch trade unions; the fulfilment of the current tasks; the collaboration with the branch unions during the preparation of their republican congresses and the congress of the Federation of Trade Unions of Belarus (FPB). For the quick elimination of the abovementioned shortcomings to submit to the Presidential Administration, information on the trade unions' election process in regions and at large enterprises, and on measures taken by the ministry jointly with interested persons to resolve the conflicts concerning trade union associations not affiliated to FPB.
by 28 February 2000

6. The chairperson of the State Aviation Committee shall take necessary steps to improve the interaction with the branch trade union organizations in view of their preparation for their republican congress and the elections of delegates to the Congress of Byelorussian Federation of Trade Unions. He should also examine the possibility of broadening the branch trade union of the aviation workers through the incorporation of the Trade Union of Air Traffic Controllers and to the Trade Union of Airport Workers. In case of necessity he should take the according measures. The results should be reported to the Presidential Administration.
by 13 March 2000

150. Following these orders the directors of many enterprises, in accordance with the instructions of the ministries, tried to influence the elections of the delegates for the republican congresses of branch trade unions. As a result, the directors of some enterprises or their deputies were elected as delegates to the 3rd Republican Congress of Automobile and Agricultural Machinery Workers' Union and to the congresses of other trade unions.

151. On 20 April 2000 at the republican meeting of the representatives of trade union organizations and workers' collectives held in the FPB headquarters, a telephoned telegram from the head of the Presidential Administration was read. It said that the administration of Minsk is supposed to meet with the directors and activitists of enterprise trade unions on 27 April 2000. For the speeches on trade union activities, the head of the Presidential Administration recommended that the focus should be on supporting the policy of the country's leadership policy; implementation of decisions of the President and the Government through the workers' collectives; and criticizing shortcomings, especially in the work of the elected trade union officials.

152. At the abovementioned meeting held by the Minsk City Executive Committee, the organizers drafted the following resolution which they tried to get adopted:

Participants of the meeting believe:

– that the attempts of some leaders of branch trade unions to aggravate political tensions by pressing through ill-thought resolutions and populist slogans are unacceptable. Participants call upon the rank and file trade union members to support in the forthcoming election meetings and conferences the constructive forces in the trade union movement; people ready to cooperate with state authorities to improve the living standard of the population;

– that it is necessary to create a city association of branch trade unions with the same rights as a regional (oblast) trade union organization and call upon all (local) organizations to switch affiliation toward the existing city trade union committees.

153. Furthermore, the complainants allege that the Committee of State Security also interferes in trade unions activities. For example, in response to the inquiry made by the chairperson of the Free Trade Union of Metalworkers of Maz, the manager of AO "Priorbank" specified that the cash flow statement of the union was submitted among others to the Committee of State Security.

154. The complainants also refer to restrictions on the rights to strike set out in the Labour Code which came into force on 1 January 2000. First, sections 379-387 of the Labour Code require long (not less than two months) and complicated conciliation procedures. Second, according to part 2 of section 388 of the Code, a strike can be held within three months after the rejection of the proposals of the conciliation commission, or – if the parts were addressed to a mediator and/or to labour arbitration – after the rejection of the proposals of

the mediator and/or denial of the decision of the labour arbitration. Together this amounts to a period of five months. Third, the President is able to postpone the strike or suspend it for up to three months in the case of the creation of a real threat to the national security, public order, health of the population, or rights and freedom of other persons (section 393).

155. In addition, section 395 of the Code provides that a strike or a decision to stage a strike can be recognized as illegal by the decision of the regional (Minsk city) court in cases when the strike is staged or a decision to strike was made in violation of the requirements of this Code and other laws. Section 397 of the Labour Code specifies that the participants of the illegal strike can be subject to disciplinary or other measures envisaged by the laws. Thus, if the court makes a decision recognizing the strike illegal even after the termination of the strike, the workers can be fired not for the participation in the strike but for the unauthorized absence without good reason.

156. Finally, the complainants allege that various trade unions are subject to discrimination, and the rights and interests of workers are infringed due to their trade union affiliation. For example, the chairman of the local trade union organization at the OAO "Oktiabr" SPB, Mr. Evmenov, was punished and then dismissed. Pressure is applied (such as threat of dismissal) to workers who are members of the local organization GPO "Khimvolokno" of the Belarusian Free Trade Union. They are urged to leave the trade union.

157. Furthermore, the administration of the Minsk Automobile Plant refused to employ – after the expiration of the term of office – the re-elected chairperson of the Free Trade Union of Metalworkers and, at the "Zenit" plant, members of the Free Trade Union were threatened with dismissal if they refused to leave the trade union.

158. In its communication dated 6 July 2000, the Federation of Trade Unions of Belarus (FPB) indicated its decision to support the complaint sent to the ILO and to associate themselves with the position set forth in the complaint regarding violations of ILO Conventions. They added that the absolute majority of trade unions in Belarus have now associated themselves with the complaint and demand the authorities to respect both national legislation and ILO Conventions.

159. To complement the already well-known cases of interference by the authorities in the conduct of trade union elections – for instance the imposition of the authorities' own delegates to conferences and congresses to attempt to replace "awkward" trade union leaders with ones more accommodating to the authorities and the exertion of pressure in decision-making processes – the FPB annexed a copy of a letter from the President's Assistant to the regional executive committees inviting them to attend a meeting with the head of the Presidential Administration to discuss preparations for the congress of the Byelorussian Trade Union of Workers of the Agro-Industrial Complex. The FPB considers this as an attempt to interfere in the congresses' work and to put pressure on the delegates in the election of the trade union leader.

160. In addition, the FPB indicated in a communication dated 28 September 2000 that the government authorities continue to interfere in the internal affairs of the federation and of its member organizations.

161. On 27 and 28 September 2000, just before the opening of the congress of the federation, its regular financial accounts were frozen on formal grounds and threats were proliferated against the leadership of the federation. Moreover, under pressure from the Ministry of Industry, attempts are being made to compel trade union committees of various enterprises ("Integral", Zhlobinsky metalworks factory) to withdraw themselves from existing industrial unions and to create their own unions.

162. In conclusion, the FPB alleges that the Government is pursuing the task to destroy and to slander the trade union movement in Belarus in a steady and planned manner.

163. In its communication dated 9 January 2001, the Radio and Electronics Workers' Union transmits additional documentation to support their allegations of acts of interference in their internal trade union affairs. In its communication of 24 January 2001, the Belarusian Free Trade Union documents their allegations of continuing difficulties to obtain registration for certain enterprise-level unions, and the Belarus Automobile and Agricultural Machinery Workers' Union submitted additional information in its communication of 25 January 2001 concerning alleged acts of interference.

B. The Government's reply

164. In its communication dated 29 September 2000, the Government states that it has reviewed all the issues raised in the complaint very seriously and that it understands the need to continue to improve national labour law and the system of social partnership in the light of ILO experience. The Government asserts, however, that the allegations in the complaint have no foundation and the law of the country directly reflects the principles embodied in Conventions Nos. 87 and 98. Moreover, the Government does not consider that Presidential Decree No. 2 in itself can be considered as restricting trade union rights. As for the legislative provisions concerning the right to strike, the Government states that these take into account the needs of the social partners and of society and are not in contradiction with the freedom of association Conventions.

165. On 14 January 2000, a new version of the Law on Trade Unions was adopted, which gives the trade union broad powers in defending the rights and economic interests of the country's workers. The provisions of this law are based on generally accepted principles of international law and do not contravene the provisions of either Convention No. 87 or Convention No. 98. In particular, in accordance with Article 2 of Convention No. 87, part 1 of section 2 of the law guarantees the citizens the right to organize trade unions of their own choice, as well as to join trade unions on condition of observance of their charter (rules). In accordance with Article 3 of Convention No. 87, part 2 of section 3 of the law sets out that "trade unions independently formulate and confirm their charters (rules), determine their structure, elect their governing bodies, organize their activities, convene meetings, conferences, plenary sessions, congresses". Article 5 of the Convention was reflected in part 2 of section 2 and part 4 of section 3 of the said law: "Trade unions may freely set up national and other associations which are granted trade union rights, as well as to join these associations. Trade unions, in accordance with their proclaimed aims and tasks, shall have the right to cooperate with trade unions of other countries, of their own choice, to join international and other trade union associations and organizations". The law does not provide for a possibility to disband or temporarily ban trade unions on administrative orders, in accordance with Article 4 of the Convention. Part 3 of section 3 sets out that trade unions (trade union associations), their symbolism, changes and supplements to their charters shall be subject to state registration, as prescribed by the law. This provision, according to the Government, does not contravene the provisions of Convention No. 87 since the Committee on Freedom of Association and Industrial Relations, in its report to the 1948 International Labour Conference, declared that "the States are free to provide in their legislation for such formalities which are deemed necessary to ensure normal functioning of trade union organizations".

166. As concerns the right to strike, section 22 of the law guarantees to trade unions the right to declare and carry out strikes in accordance with the national legislation. Moreover, section 25 sets out that trade unions, in order to implement their proclaimed tasks, shall have the right to organize and conduct, in accordance with the national legislation, meetings, street processions, demonstrations and other collective actions to protect their members'

interests. Unlawful restrictions on trade union rights and creating obstacles to the implementation of their powers shall be prohibited (section 26).

167. The Government further indicates that Decree No. 2 was issued because of the need to improve the activities of all legal persons, including the trade unions, in view of the adoption of new Civil and Housing Codes. Decree No. 2 sets out that in order to organize and operate a national trade union no less than 500 founders from the majority of regions of the Republic of Belarus and the city of Minsk are needed; for setting up a territorial trade union – no less than 500 founders from the majority of districts of the given territory are needed; and to set up a trade union in an enterprise, institution, organization or other workplace – no less than 10 per cent of the total workforce are needed, but no less than ten persons.

168. The Government emphasizes that only the last provision sets out the condition for establishing a trade union as such and recalls that in earlier cases the Committee had considered that a statutory minimum of 20 workers should not in itself be considered an obstacle to setting up a trade union. According to the Government, the requirement related to the 10 per cent trade union membership in an enterprise, institution and organization does not seem to be too high either.

169. As regards the conditions for setting up national and territorial trade unions, they are aimed, first of all, to ensure representativeness of the trade union in the course of conducting consultations and negotiations, participation in tripartite bodies and in sending delegates to the International Labour Conference. The legislation sets out that national trade unions shall act as one of the parties to the general agreement, to participate on an equal footing in the work of the National Council on Labour and Social Matters. Though the national legislation does not contain the notion of "the most representative trade unions", in fact these are those unions which have the national status. Thus, paragraph 3 of the Decree sets out clear and objective criteria for determining "the most representative trade unions" in the country.

170. It should be noted that the non-recognition of the national or territorial status of a given trade union does not prevent it from exercising its rights with regard to protection of its members' occupational interests, to independently organize its activities, to formulate its chapter and programmes and to join federations and confederations of its own choice. The Government adds that Decree No. 2 provides for the registration (re-registration) of trade unions. Since, in accordance with the Law on Trade Unions, trade unions and their organizational structures are legal persons, registration is a necessary condition for their normal functioning.

171. The Decree approved the Regulations on state registration (re-registration) of political parties, trade unions and other voluntary associations. With a view to clarify the procedural issues of registration the Ministry of Justice approved the rules on drawing up and considering the documents submitted for state registration of political parties, trade unions and other voluntary associations, as well as on registration of their organizational structures. Paragraph 11 clearly lists the cases when an association may be denied state registration; thus, the registration bodies cannot at their discretion decide who is to be registered and who can be denied registration. However, the denial to be registered can be appealed against in a court (paragraph 16 of the Regulations).

172. The Government affirms that state registration should not be regarded as a preliminary permit to set up an organization, since registration is effected with regard to an already established, without any state interference, trade union which has its chapter, governing body and structure.

173. As regards the requirement that the trade union (its organizational structure) must confirm, in the course of registration, its place of location (legal address), the Government states that the Law on Trade Unions gives the employer the right, in accordance with a contract (agreement), to place at the disposal of the trade unions, acting in the enterprise, institution or organization, premises, equipment, means of transportation and communication necessary for their activities. Thus, the issue of allocation of accommodation must be resolved in the course of collective bargaining between the employer and the trade union. On the other hand, there are no provisions that the legal address of the trade union of an enterprise, institution, organization (its organizational structure) must necessarily coincide with the address of the given enterprise, institution or organization. Thus, the issue of granting the trade union a legal address is no obstacle to its state registration.

174. As concerns the right to strike, the Government states that the Labour Code provides for the formation, at the initial stage of a labour conflict, of a conciliatory commission composed of representatives of the sides to the conflict. The Government asserts that the use of voluntary mediation and arbitration is in line with Convention No. 98. As regards the code provisions regulating the declaration and carrying out of a strike, ensuring the minimum services during a strike, and the possibility to postpone or put an end to a strike in the event it poses a real threat to national security, public order, health of the population, rights and freedoms of other persons, the Government believes that these provisions do not contravene Conventions Nos. 87 and 98 and fully guarantee the lawful workers' right to defend their economic interests through a strike.

175. Finally, as concerns anti-union discrimination, the Government cannot agree with the claim that workers' rights and interests are impaired on grounds of trade union membership. The Government considers that the cases cited in the complaint, as a confirmation of existence of corresponding practices in the country, are not fitting enough and in no way serve as a ground for such claims.

176. For example, the dismissal of Mr. Evmenov, who occupied the post of the head of compressor department at the glass factory "Oktiabr", is in no way connected with his membership in the Belarusian Free Trade Union. According to Order 230 of 13 December 1999, Mr. Evmenov was dismissed for systematic non-fulfilment of the duties of his job.

177. In 1999, Mr. Evmenov had been disciplined and denied bonuses several times: Order 78 of 26 April 1999 – a strict reprimand with a 50 per cent bonus cut for a failure to ensure the participation of the department's workforce in a "subbotnik" (unpaid voluntary labour on Saturday) (this Order was appealed against and the appeal was rejected by the courts); Order 166 of 27 August 1999 – reprimand for insufficient control over the workforce activities; Order 241 of 29 October 1999 – rebuke for violation of regulations concerning the operation of high-risk facilities; Order 268 of 25 November 1999 – a reprimand with a 25 per cent bonus cut for non-efficient use of electricity. The Belarusian Free Trade Union appealed the dismissal of Mr. Evmenov in the Osipovich district court and in the board on civil cases of the Mogilev regional court, but the claim was rejected. On 6 September 2000, the Supreme Court considered this issue and left the previous rulings unchanged.

178. The Government adds that the claims about infringements upon the rights of "Zenith" members have not been confirmed either. As regards the activities of the Free Metalworkers' Trade Union local at the state enterprise "Minsk Automobile Plant", it should be noted that the difficulties in the local's relations with the factory administration, including those in the course of implementation of the collective agreement, arose first of all because of the violations in the process of the factory local's joining the Free Trade Union. At the same time the Government concedes that in some enterprises the employers do infringe upon trade union rights, and this is a cause of concern to the Government. The management of the "Minsk Automobile Plant", because of the difficult financial situation

in the enterprise, has delayed the transfer of trade union dues, accumulated by the local of the Free Metalworkers' Trade Union. During July and August, out of the total arrears of 2.5 million roubles, 1.8 million have been transferred. The remaining sum will be transferred in the nearest future.

179. The Government concludes that the relations between the Government and its bodies with trade unions and employers are based on principles of social partnership, as well as respect for the national legislation and ILO Conventions and Recommendations. The contradictions and conflicts which arise during the registration (re-registration) of trade union organizations and the fact that their head associations lodge complaints with the ILO prove that in some cases the parties to this procedure do not have sufficient experience and are unprepared for the proper implementation of the conditions and actions prescribed by the legislation, and for the utilization of the existing possibilities. This applies also to the registration bodies. In some cases, a negative role was played by leaders of trade unions and by employers who were unwilling to settle their differences through agreement. The Government is of the opinion that such differences should be settled in a timely and flexible manner.

180. In its communication dated 11 January 2001, the Government provided the following additional information in respect of the registration requirement to provide the legal address of the trade union. As a rule, a trade union gives the address of the premises provided to it by the employer as its legal address. On the other hand, the employer has no obligation to provide premises and the question of providing premises to a trade union in the enterprise is decided in the course of negotiations between the employer and the trade union.

181. Since the legislation of Belarus does not contain any provisions prescribing that a trade union (or an organizational unit of the trade union) in an enterprise, institution or organization shall have its legal address only at the address of that enterprise, institution or organization, in the absence of an agreement with the employer the trade union may give the registering authority the address of appropriate premises outside the enterprise as its legal address. The letter from the Ministry of Justice referred to in the complaint specifies that: "the legal address is the address of the premises (building) in which the executive body of the legal entity represented by the owner or the person authorized by him is located". In this case reference is made to the owner (or person authorized by him) of the premises, and not to the employer as asserted by the complainants.

182. The Government therefore cannot agree with the complainants' assertion that there is currently total dependency of the trade union on the employer with regard to acquiring the legal address needed to undergo state registration. The individual instances of refusal to register a trade union owing to lack of confirmation of the existence of a legal address do not involve the independent trade unions, all of which have been registered in the Republic, but rather the primary trade union organizations in the enterprise, which are organizational units of higher level republic unions.

183. Under the legislation, trade unions in the Republic of Belarus independently formulate and adopt their by-laws and determine their structure. Thus a trade union decides itself in its by-laws whether its organizational units will be vested with the rights of a legal entity and accordingly undergo state registration just as all legal entities in the Republic of Belarus, or whether they will be recorded without acquiring legal personality. The absence of legal personality does not restrict the organizational units of trade unions in the exercise of their fundamental trade union rights and labour relations rights, including the right to bargain collectively and conclude collective agreements.

184. At the same time it should be pointed out that the current system makes provision for confirming the existence of a legal address both in the case of state registration and when recording an organization. To a certain extent this encourages trade unions to opt for applying for legal personality for their organizational units, since this confers additional rights on them as business entities. Today most trade unions in the Republic include a provision in their by-laws for acquisition of legal personality by their organizational units.

185. Given that there are over 28,000 organizational units of trade unions in the Republic and that most of these have their executive bodies only in premises provided by the employer within the enterprise, it is foreseeable that in some cases, for various reasons including objective ones, the employer may refuse to give the trade union organizational unit premises at its legal address.

186. In order to solve the problems involved in registering the organizational units of trade unions, the Government is currently considering amending the legislation in force on registration, including Decree No. 2. The intention is to remove the need to confirm the existence of a legal address when recording organizational units that do not have legal personality according to the by-laws of their trade unions. It is also envisaged to allow trade union organizational units that have legal personality according to their by-laws to give as their legal address the address of premises within the locality where the organizational unit is located. Thus, if necessary, the organizational units of the same trade union in the same locality may use the same premises at the same legal address, and if the organizational unit is located in the same locality as its higher level organization, that organization's address may also be used as its legal address. The Government will keep the ILO informed of progress in the preparation of draft legislation.

187. In reply to the allegations made by the FPB, the Government states that the trade union of the Byelorussian Metal Works in Zhlobin is not considering withdrawing from the branch union. The trade union of the "Integral" research and production organization has however withdrawn its membership of the Byelorussian Trade Union of the Radioelectronic Industry. It took the decision to do so independently. The main reason was the refusal of the branch union to reduce the dues paid at the enterprise to the branch union from 28 to 11 per cent.

188. As concerns the freezing of the FPB bank account, the Government states that during the period from September to November 2000 the tax authorities carried out audits of the financial and economic activity of the FPB and its structural units to determine whether calculations were correct and whether tax and non-tax payments to the budget and special extra-budgetary funds of the State had been made in full and on time.

189. Based on the results of the audits, the tax authorities ordered a total of 71,532,400 roubles in taxes and penalties to be paid into the state budget. The main violations identified during the audits were: carrying out activities requiring a licence without obtaining the necessary licence; concealing earnings; excessively raising the cost of goods sold; breach of cash discipline.

190. The actions of the State Committee on Taxation inspectorates in freezing the accounts of the council of the FPB, the administrative department of the council, and the "Belprofsoyuzkurort" sanatoria and health resort enterprise were well founded and did not exceed the bounds of the legislation in force. In accordance with the legislation in force, the directors of the abovementioned organizations of the federation had the right, if they disagreed, to contest in the arbitration court the tax authorities' decision to freeze their accounts. However, it did not institute proceedings to void this decision.

191. In view of the steps taken by the abovementioned organizations to settle their debts to the state budget, and of appeals made by the council of the FPB concerning the need to provide timely financing to children's and young persons' sports schools and clubs, and to pay electricity, heating, communications and transport bills, as well as wages and supplies to sanatoria and health resorts, the tax authorities sent instructions to the banks to partly lift the suspension of the accounts of the council of the FPB (dated 12 October 2000), the administrative department of the FPB (dated 10 October 2000) and the FPB's enterprise "Belprofsoyuzkurort" (dated 3 October 2000) so that they might settle the abovementioned expenses.

192. Taking into consideration the fact that the taxes and penalties imposed have been paid in full by these organizations (which can also be regarded as an admission of the violations committed), on the instructions of the Minsk Central District Inspectorate of the State Committee on Taxation, operation of their accounts was fully resumed in accordance with instructions dated 24 October, 2 November and 5 December 2000.

193. On another point, the Government states that a timetable for the settlement of arrears in dues to the primary trade union organization of the Free Trade Union of Metalworkers is now in force at the Minsk motor works. The management has created the necessary conditions for the primary union to carry out its activities. Based on the collective agreement, the plant is providing the union with premises, transport and communication. As for the "Khimvolokno" production association in Grodno, the Government states that no union members were dismissed.

194. In its communication dated 23 February 2001, the Government replies to a number of the allegations raised in the additional communications made by the complainants. As concerns the issue of re-registration raised in the initial complaint and expanded upon by the Belarusian Free Trade Union in its communication dated 24 January 2001, the Government reiterates its previous indications about the need for a legal address in order to be registered and annexes a draft Presidential Decree which would eliminate this requirement for the purposes of being recorded in the case of organizations without any legal personality.

C. The Committee's conclusions

195. *The Committee notes that the allegations in this case concern: the imposed process of re-registration of trade unions by Presidential Decree No. 2 of January 1999 on some measures on regulation of activity of political parties, trade unions and other public associations, resulting in the denial of registration of a number of enterprise-level trade unions, as well as one branch-level association; government interference in trade union activities and elections; anti-union discrimination and harassment at the workplace; and excessive restrictions in strike legislation.*

196. *The Committee takes note of the report of the preliminary contacts mission which took place from 18 to 21 October 2000 and wishes to thank the mission for its report which has provided useful insight into the problems raised in the complaint.*

Trade union registration

197. *The Committee notes that the complainants contest both certain legal provisions in Presidential Decree No. 2, as well as the application of the Decree to certain primary or enterprise-level trade union organizations. In the first instance, the complainants allege that the minimum membership requirements to form a trade union, particularly at the enterprise level, and the provision calling for dissolution where a trade union has not been registered or re-registered under the Decree, not to mention the mere fact of being obliged*

to re-register only three years after the previous registration exercise, are contrary to the principles of freedom of association. The Government for its part explains that Presidential Decree No. 2 was issued because of the need to improve the activities of all legal persons in view of the new Civil and Housing Codes, considers that the minimum membership requirements for registration are not too high and states that the clause concerning dissolution has never been used.

198. *The Committee first notes that section 3 of the Decree sets forth minimum membership requirements at the enterprise level of at least 10 per cent of the workers at the enterprise. The Committee considers that, while a minimum membership requirement is not in itself incompatible with the Convention, the number should be fixed in a reasonable manner so that the establishment of organizations is not hindered. What constitutes a reasonable number may vary according to the particular conditions in which a restriction is imposed [see Freedom of association and collective bargaining, General Survey, 1994, para. 81]. In this respect, the Committee notes from the mission report that discussions held with both the workers' and employers' organizations have indicated that this requirement has had a severe impact upon the Free Trade Unions which have become, as a result, virtually non-existent at the local level.*

199. *The Committee also notes that the notion of legal address necessary for registration under the corresponding Regulations and Rules has given rise to several denials of registration. The Government's explanations concerning confirmation of the legal address, both in its replies and as related in the mission report, do not appear to be entirely consistent. In its reply of 11 January 2001, the Government states that the union may give the address of appropriate premises outside the enterprise, yet also refers to the possible need to amend the Decree so as to permit trade union organizational units to give the address of the premises within the locality where the organizational unit is located. Furthermore, while according to the Government the absence of legal personality as a result of a denial of registration for primary-level trade unions does not restrict their fundamental trade union rights, including the right to bargain collectively, the Committee also takes due note of the various communications annexed to the complaint from the Ministry of Industry, and from several enterprise directors (as well as the information obtained by the mission), stating that in the absence of re-registration, the trade union in question loses its collective bargaining rights, including the cancellation of already existing agreements, as well as the suppression of other established rights concerning access to the workplace and the provision of premises, and are vulnerable to disciplinary action for carrying out activities on behalf of an "illegal" organization. As for the distinction between having a trade union placed on record and being a registered trade union (with legal personality), which was underlined to the mission, the Government admits in its latest reply that confirmation of the legal address is indeed necessary in both cases. Thus, the issue of legal address may even be an obstacle to the mere setting up of an organization, even without the rights attached to acquired legal personality.*

200. *These conditions for registration should also be seen in the light of the provisions of the Decree that the "activity of non-registered associations and of associations that have not been re-registered shall be banned in territory of the Republic" and that "associations that have not been re-registered shall terminate their activity and shall be liquidated according to the established procedure". The Committee wishes to recall in this respect that the principle of freedom of association would often remain a dead letter if workers and employers were required to obtain any kind of previous authorization to enable them to establish an organization. Such authorization could concern the formation of the trade union organization itself, the need to obtain discretionary approval of the constitution or rules of the organization, or, again, authorization for taking steps prior to the establishment of the organization. This does not mean that the founders of an organization are freed from the duty of observing formalities concerning publicity or other similar*

formalities which may be prescribed by law. However, such requirements must not be such as to be equivalent in practice to previous authorization, or as to constitute such an obstacle to the establishment of an organization that they amount in practice to outright prohibition [see ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 244]. The Committee notes that, while, according to the Government, the clause concerning dissolution has not been used, the denial of registration to the Belarus Independent Association of Industrial Trade Unions (BIAITU) is tantamount to dissolution.*

201. *Nevertheless, in the light of the above, and given in particular the potentially serious consequences of non-registration (banning of activities and liquidation), the Committee considers that Decree No. 2 as it is currently applied constitutes a violation of freedom of association. The Committee therefore requests the Government to exclude trade unions either from the entire scope of the Decree's application (if necessary, instituting a more simplified registration process), or from the excessive restrictions in the Decree particularly in respect of large enterprises requiring 10 per cent minimum membership at the enterprise level and the last two subsections of section 3 concerning the banning of activities of non-registered associations and their liquidation, so as to ensure that the right to organize is effectively guaranteed. As concerns the application of the notion of legal address under the Decree, the Committee notes from the Government's reply of 11 January 2001 that it is considering amendments to the legislation in force so as to eliminate the obstacles to registration caused by this requirement. It further notes, however, that the changes suggested in the draft Decree accompanying the Government's reply of 23 February 2001 would appear to be limited to the recording of organizations which have no legal personality and which would appear to have limited rights as noted above. The need to furnish a legal address for organizations wishing to be registered remains. Given the difficulties in obtaining the necessary legal address for registration purposes previously cited in the complaint and noted in the mission report, the manner in which the draft Decree will actually resolve the problems raised in the complaint in this respect is not yet evident to the Committee. The Committee therefore requests the Government and the complainants to provide additional information as to the practical resolution of the difficulties for registration encountered by the complainants. In addition, the Committee draws this aspect of the case to the attention of the Committee of Experts on the Application of Conventions and Recommendations.*

202. *As regards the specific allegations concerning the practical application of Presidential Decree No. 2, the Committee notes with regret that the Government has not provided any specific information in respect of the trade union organizations cited in the complaint which were allegedly denied registration. The Committee therefore requests the Government to provide detailed information on the status of the following organizations: OAO "Steklozavod Oktiabr" (Mogilev region); the Minsk Automobile Plant Free Trade Union of Metalworkers; the "Tsvetron" Plant Free Trade Union of Metalworkers (Brest); the local organization of "Khimvolokno" (Grodno); the Belarussian Free Trade Union at the Grodno Fine Fibres Production Amalgamation; the local organization of the Minsk Instrument Engineering Plant; the Free Trade Union of the Byelorussian "Zenith" Plant (Mogilev); Mogilev Construction Trust No. 12; Flax Processing Plant (Orsha); Companies "Electroseti" (Orsha); "BelVar" (Minsk); "Naftan" Production Amalgamation (Novopolotsk); "Avtogydrousilitel" Plant (Borisov); Production and Technical Association "Shveinik" (Borisov); Free Trade Union of the Workers of MoAZ (Mogilev Automobile Plant); local organization at "Ecran" Mogilev Plant; private employers of Mogilev; Belarussian Free Trade Union at the "Belgoles" State Timber Processing Amalgamation.*

Government interference

203. *The Committee takes note of the Instructions dated 11 February 2000 issued by the Head of the Presidential Administration which call upon the ministers and chairs of government committees to interfere in the elections of branch trade unions, their congresses, as well as the Congress of the Federation of Trade Unions of Belarus (FPB). It also notes the allegations of further interference in trade union activities at the meeting between the Minsk city executive committee and trade union leaders and activists in April 2000. The Committee notes that the Government has not denied these allegations and appears to have tacitly admitted to them when it met with the preliminary contacts mission in October 2000, while adding that the Instructions are no longer relevant since the elections have taken place and the union-favoured candidates have won. The Committee must nevertheless recall in this regard that, when the authorities intervene during the election proceedings of a union, expressing their opinion of the candidates and the consequences of the election, this seriously challenges the principle that trade union organizations have the right to elect their representatives in full freedom. Furthermore, any interference by the authorities and the political party in power concerning the presidency of the central trade union organization in a country is incompatible with this principle [see* ***Digest****, op. cit., paras. 397 and 395].*

204. *The Committee further notes the allegations made by the Federation of Trade Unions of Belarus (FPB) that, under pressure from the Ministry of Industry, attempts are being made to compel trade union committees of various enterprises to withdraw themselves from existing industrial unions and to create their own unions in order to encourage fragmentation in the trade union movement. While noting the Government's indication that in the case of "Integral", the union broke off of its own free will and that, on the other hand, no such schism occurred in Zhlobin, the Committee recalls that the Presidential Instructions of February 2000 also gave explicit instructions to the Minister of Industry to be more personally involved in the election process of branch trade unions and to inform of election processes in regions and at large enterprises and on measures taken to resolve the conflicts concerning trade unions not affiliated to the FPB.*

205. *In the light of the above, the Committee is of the opinion that these Presidential Instructions constitute a serious interference in the internal affairs of trade unions and believes that they may have also had an impact upon the decision of the abovementioned enterprise union to break off with its branch union, particularly in the light of the information provided to the preliminary contacts mission concerning further obstacles placed in the way of the relevant branch union by the directors of affiliated enterprises, including denial of access to the workplace to officers of the branch union.*

206. *The Committee therefore urges the Government to take the necessary measures to ensure that such interference will not occur in the future, including through the revocation of the relevant instructions and, if necessary, by the issuing of clear and precise instructions to relevant authorities that interference in the internal affairs of trade unions will not be tolerated.*

207. *As concerns the freezing of the FPB bank accounts just prior to their annual congress, the Committee notes the Government's indication that the tax authorities had discovered a number of violations when auditing the financial and economic activity of the FPB and its structural units. The Committee does not pretend to substitute itself for the tax authorities in respect of any violations of national tax laws which might have been determined. On the other hand, the Committee notes with regret that, rather than informing the FPB of the violations discovered and corresponding fines, as well as the possibility of appealing any relevant orders, the Government appears to have immediately opted for freezing the union's bank accounts, just prior to their annual congress. In this respect, the Committee*

*recalls that the freezing of union bank accounts may constitute a serious interference by the authorities in trade union activities [see **Digest**, op. cit., para. 439]. While noting that, according to the Government, all frozen bank accounts have now been fully restored to the FPB, the Committee requests the Government to avoid having recourse to such measures in the future.*

Anti-union discrimination and interference with trade unions

208. *The Committee notes the allegations that various trade unions are subject to discrimination and the rights and interests of workers are infringed due to their trade union affiliation. In particular, the complainants refer to the dismissal of the chairperson of the local trade union organization at OAO "Oktiabr" SPB, Mr. Evmenov. The Committee notes the Government's indication that Mr. Evmenov was dismissed for systematic non-fulfilment of his duties, including and beginning with his failure to ensure the participation of the department's workforce in a "subbotnik" (unpaid voluntary labour). The Committee notes from the documentation annexed to the complaint that Mr. Evmenov immediately challenged the disciplinary punishment for non-participation in the "subbotnik" which was initially rejected on the basis that execution of the "subbotnik" was obligatory and later clarified that the punishment was due to his refusal to carry out an order given by his employer to organize the "subbotnik" and, further, that he actually opposed the action. The Committee cannot accept that the failure to organize voluntary unpaid labour should be considered a breach of labour discipline subject to penalty and ultimately to dismissal. The Committee raises these doubts all the more so because Mr. Evmenov, as chairperson of the local trade union, may have very well opposed the organization of "subbotniks" because of his trade union convictions. In this respect, the Committee would recall more generally that one of the fundamental principles of freedom of association is that workers should enjoy adequate protection against all acts of anti-union discrimination in respect of their employment, such as dismissal, demotion, transfer or other prejudicial measures. This protection is particularly desirable in the case of trade union officials because, in order to be able to perform their trade union duties in full independence, they should have a guarantee that they will not be prejudiced on account of the mandate which they hold from their trade unions [see **Digest**, op. cit., para. 724].*

209. *As concerns threats of dismissal to members of the GPO "Khimvolokno" Free Trade Union urging them to leave the union, the Committee notes that the Government has only indicated that no dismissals have taken place at this enterprise, but has not replied to the allegations of pressure and threats being brought to bear on union members, despite the documents attesting to such pressure which accompanied the complaint. Similarly, the Government has not replied to the allegations of threats of dismissal if Free Trade Union members did not leave the union in the "Zenith" plant. As regards allegations of anti-union tactics carried out by an enterprise, in the form of bribes offered to union members to encourage their withdrawal from the union and the presentation of statements of resignation to the workers, as well as the alleged efforts made to create puppet unions, the Committee has considered such acts to be contrary to Article 2 of Convention No. 98, which provides that workers' and employers' organizations shall enjoy adequate protection against any acts of interference by each other or each other's agents in their establishment, functioning or administration [see **Digest**, op. cit., para. 760].*

210. *As for the Free Trade Union of Metalworkers at the Minsk Automobile Plant, the Committee notes the Government's indication in its latest reply that a timetable for the settlement of arrears in union dues to the union is now in force and that the management has created the necessary conditions for the union to carry out its activities. It notes with regret however that the Government has not replied to the complainants' allegations that the plant has refused to employ, after the expiration of the term of office, the re-elected chairperson, Mr. Marinich.*

211. *As concerns the general and specific allegations of anti-union discrimination and interference and the Government's general reference to legislative provisions protecting against such acts, the Committee is obliged to note from the report of the preliminary contacts mission the lack of faith in the judiciary expressed by the trade unions and the serious questions posed by the UN Special Rapporteur in respect of the independence of the judiciary. Under these circumstances, the Committee considers that the most constructive approach to these remaining allegations of anti-union discrimination, harassment and interference would be best addressed through independent investigations that would enjoy the confidence of all parties concerned. The Committee therefore requests the Government to take the necessary measures to institute independent investigations into all the above matters and, where acts of anti-union discrimination or interference have been discovered, to ensure that the effects of such discrimination are redressed. The Government is requested to keep the Committee informed of the progress made in this respect and of the outcome of these investigations.*

212. *In respect of the dismissal of Mr. Evmenov for, among others, the refusal to organize a "subbotnik", the Committee considers that the information provided gives rise to a strong presumption that Mr. Evmenov was dismissed for the exercise of legitimate trade union activities. It therefore requests the Government to take the necessary measures to ensure that Mr. Evmenov is reinstated in his post with full compensation for any lost wages and benefits and to keep the Committee informed in this regard.*

Strike legislation

213. *The Committee notes that the allegations concerning the restrictions on the right to strike in the new Labour Code concern the long process of conciliation, mediation and arbitration and the authority granted to the President to suspend a strike for up to three months in the case of a threat to national security, public order, health of the population, or rights and freedom of other persons.*

214. *The Committee indeed notes that section 388 of the Labour Code permits legislative limitations on the right to strike in the interests of national security, public order, health of the population, and rights and freedom of other persons. Furthermore, section 393 permits the President to postpone, or to stop, the strike for up to three months in the same abovementioned cases. In this regard, the Committee recalls that the right to strike may be restricted or prohibited: (1) in the public service only for public servants exercising authority in the name of the State; or (2) in essential services in the strict sense of the term (that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population) [see* ***Digest****, op. cit., para. 526]. The Committee considers that the possibility of imposing restrictions to strike action under sections 388 and 393 goes beyond this principle and requests the Government to take the necessary measures to ensure that any legislative or other limitations on strike action will be restricted to public servants exercising authority in the name of the State and to workers in essential services in the strict sense of the term. The Committee draws this aspect of the case to the attention of the Committee of Experts on the Application of Conventions and Recommendations.*

215. *As for the duration of the conciliation, mediation and arbitration procedures set out in the Labour Code, the Committee notes that only conciliation is obligatory under the Code and that the work of the conciliation commission is to be terminated within five days after the commission's formation which must take place within six days after the employer has refused the workers' demands (sections 379-381 of the Labour Code). The Committee is of the opinion that the duration of the conciliation procedures under the Code is sufficiently limited so as not to restrict excessively the exercise of the right to strike. In these*

circumstances, the Committee considers that these provisions do not constitute a violation of the principles of freedom of association.

216. *In conclusion, when reviewing the allegations as a whole, the Committee must express its deep concern over the numerous and varied attacks on trade union rights and the trade union movement in Belarus which can only be described as a regular and systematic interference in trade union activities in violation of the most basic principles of freedom of association. The Committee trusts that the Government will do everything in its power to ensure that all such attempts to interfere in the internal affairs of trade unions will immediately stop, thus enabling the trade union movement in Belarus to develop in full independence and autonomy.*

217. *Finally, the Committee requests the Government to transmit any further information it considers relevant in reply to the additional allegations of interference raised in the complainants' most recent communications.*

The Committee's recommendations

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

(a) Given in particular the potentially serious consequences of non-registration (banning of activities and liquidation), the Committee considers that Presidential Decree No. 2 on some measures on the regulation of activity of political parties, trade unions and other public associations, as it is currently applied, constitutes a violation of freedom of association. The Committee therefore requests the Government to exclude trade unions either from the entire scope of the Decree's application (if necessary, instituting a more simplified registration process), or from the excessive restrictions in the Decree, particularly in respect of large enterprises, requiring 10 per cent minimum membership requirement at the enterprise level and the last two subsections of section 3 concerning the banning of activities of non-registered associations and their liquidation, so as to ensure that the right to organize is effectively guaranteed. As concerns the application of the notion of legal address under the Decree, the Committee notes that the Government is considering amendments to the legislation in force so as to eliminate the obstacles to registration caused by this requirement and requests the Government and the complainants to provide additional information as to the practical resolution of the difficulties for registration encountered by the complainants.

(b) As regards the specific allegations concerning the practical application of Presidential Decree No. 2, the Committee requests the Government to provide detailed information on the status of the following organizations: OAO "Steklozavod Oktiabr" (Mogilev region); the Minsk Automobile Plant Free Trade Union of Metalworkers; the "Tsvetron" Plant Free Trade Union of Metalworkers (Brest); the local organization of "Khimvolokno" (Grodno); the Belarusian Free Trade Union at the Grodno Fine Fibres Production Amalgamation; the local organization of the Minsk Instrument Engineering Plant; the Free Trade Union of the Byelorussian "Zenith" Plant (Mogilev); Mogilev Construction Trust No. 12; Flax Processing Plant (Orsha); Companies "Electroseti" (Orsha); "BelVar" (Minsk); "Naftan"

Production Amalgamation (Novopolotsk); "Avtogydrousilitel" Plant (Borisov); Production and Technical Association "Shveinik" (Borisov); Free Trade Union of the Workers of MoAZ (Mogilev Automobile Plant); local organization at "Ecran" Mogilev Plant; private employers of Mogilev; Belarussian Free Trade Union at the "Belgoles" State Timber Processing Amalgamation.

(c) Considering that the Presidential Instructions of February 2000 constitute a serious interference in the internal affairs of trade unions, the Committee urges the Government to take the necessary measures to ensure that such interference will not occur in the future, including through the revocation of the relevant instructions and, if necessary, by the issuing of clear and precise instructions to relevant authorities that interference in the internal affairs of trade unions will not be tolerated.

(d) As concerns the freezing of the FPB bank accounts just prior to their annual congress, the Committee recalls that the freezing of union bank accounts may constitute a serious interference by the authorities in trade union activities and requests the Government to avoid having recourse to such measures in the future.

(e) As concerns the general and specific allegations of anti-union discrimination and interference, the Committee requests the Government to take the necessary measures to institute independent investigations into all the above matters noted in its interim conclusions and, where acts of anti-union discrimination or interference have been discovered, to ensure that the effects of such discrimination are redressed. The Government is requested to keep the Committee informed of the progress made in this respect and of the outcome of these investigations.

(f) As regards the dismissal of Mr. Evmenov for, among others, the refusal to organize a "subbotnik" (unpaid voluntary labour), the Committee requests the Government to take the necessary measures to ensure that Mr. Evmenov is reinstated in his post with full compensation for any lost wages and benefits and to keep the Committee informed in this regard.

(g) The Committee requests the Government to take the necessary measures to ensure that any legislative or other limitations to strike action arising out of sections 388 and 393 of the Labour Code are restricted to public servants exercising authority in the name of the State and to workers in essential services in the strict sense of the term.

(h) The Committee requests the Government to transmit any further information it considers relevant in reply to the additional allegations of interference raised in the complainants' most recent communications.

(i) The Committee draws the legislative aspects of this case to the attention of the Committee of Experts on the Application of Conventions and Recommendations.

Annex I

Report of the preliminary contacts mission to Belarus (18-21 October 2000)

Case No. 2090

I. Introduction

By a communication dated 16 June 2000, the Belarus Automobile and Agricultural Machinery Workers' Union, the Belarus Agricultural Sector Workers' Union, the Belarus Radio and Electronics Workers' Union and the Congress of Democratic Trade Unions (CDTU) transmitted a complaint alleging the violation of trade union rights in Belarus (Case No. 2090). The Federation of Trade Unions of Belarus (FPB) joined the complaint by a communication dated 6 July 2000 and sent additional information in a communication dated 28 September 2000. The International Confederation of Free Trade Unions (ICFTU) and the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers (IUF) associated themselves with the complaint in communications dated 29 June 2000 and 18 July 2000 respectively.

Given the serious nature of the allegations raised, including impediments to the right to organize and governmental interference in trade union activity and elections, it was agreed with the Government, after having received the prior approval of the Chair of the Committee, to send a representative of the Director-General to carry out a preliminary contacts mission. In accordance with paragraph 65 of its procedures the mandate of such a mission is, inter alia, to transmit to the competent authorities the concern to which the events described in the complaint have given rise, to obtain from the authorities their initial reaction, as well as any additional comments and information and, above all, to ascertain the facts and to seek possible solutions on the spot.

The preliminary contacts mission took place from 18 to 21 October, led by Mr. Kari Tapiola, Executive Director of the Standards and Fundamental Principles and Rights at Work Sector who was accompanied by Ms. Karen Curtis, Senior Legal Officer, Freedom of Association Branch, and Mr. Vitali Savine, Senior Standards Specialist in the ILO multidisciplinary team in Moscow.

II. Conduct of the mission

The mission had meetings with the following government officials and their aides: First Deputy Prime Minister and Co-Chair of the National Council for Labour and Social Issues; Minister of Justice; First Deputy Minister of Labour; First Deputy Minister of Foreign Affairs; and First Deputy Head of the Presidential Administration and Chair of the Commission for Registration (re-registration) of political parties, trade union organizations and other organizations. The mission also met briefly with the Prime Minister on its final day. (See the appendix for a list and names of persons met.)

The mission met with the complainants in this case: the FPB and the complainant branch-level affiliates (listed above), as well as the CDTU and the Free Trade Unions of Belarus (FTUB). The mission also met with the two employers' confederations: the Byelorussian Union of Entrepreneurs and Employers (BUEE) named after Prof. M. Kouniavski and the Byelorussian Confederation of Industrialists and Businessmen (BCIB). (See the appendix for a list and names of persons met.)

Finally, the mission had general background meetings with the Head of the Advisory and Monitoring Group in Belarus of the Organization for Security and Cooperation in Europe, Mr. Wieck, the UNDP Resident Representative, Mr. Buhne, and a representative of the Helsinki Committee on Human Rights in Belarus, Ms. Protko.

III. General summary of the allegations made

The complaint focuses on two main violations of trade union rights. The first concerns the obligatory re-registration process as a result of Presidential Decree No. 2 of 26 January 1999 on

some measures on regulation of activity of political parties, trade unions and other public associations. In particular, the complainants assert that the minimum membership requirements for registration restrict their right to organize, that the procedures are lengthy and complicated (particularly as concerns the certification of a legal address from the employer) and that the consequences of dissolution and the banning of activities are severe.

The second major focus was on state interference, in particular the issuance of Instructions from the Presidential Administration to the Council of Ministers and local authorities to participate in the electoral process of the branch trade unions and propose alternative leaders. As for the effect of these instructions, the complainants allege that enterprise directors and ministry officials had themselves elected as delegates to the trade union congresses so as to influence the outcome, and union members have been convoked by government officials in attempts to have them adopt a resolution criticizing the trade union movement and setting out its priorities to coincide with government policy. The latest communication from the FPB states that the Federation's bank account was frozen just prior to its annual congress. In addition, allegations were made concerning the restrictive nature of the strike provisions in the new Labour Code, as well as on specific cases of anti-union discrimination.

IV. Information obtained during the mission

At the outset, the mission had expressed its regret that, with the exception of the Minister of Justice and a brief meeting on the final day with the Prime Minister, all meetings were with First Deputy Ministers or Heads, rather than with the highest-ranking officials in positions to make commitments or take relevant decisions. The mission, originally scheduled for early September, had been postponed to the second half of October at the request of the Government. In requesting this, the Government had indicated that the very busy work schedule of the Government and other state organs in September and the first half of October might affect the intensity of meetings if the mission arrived as previously agreed in early September. The government officials with whom the mission met stated their desire to cooperate and find appropriate solutions while emphasizing that they would ultimately resolve these issues among the parties concerned. This was expressed in no unclear terms by the First Deputy Head of the Presidential Administration who was confident that in a couple of months there would be no case left to discuss.

The right to organize and the process of re-registration

The Minister of Justice and the Head of the Department of Public Organizations explained that they were responsible for various aspects of the re-registration process. They had been dealing with registration since 1990. The 1992 Trade Union Act had referred to the Law on Public Associations for the registration of trade unions. Decree No. 2 issued in January 1999 required all previously registered trade unions, as well as political parties and public (social) associations, to undergo a new registration process. Several government officials indicated that trade unions were not the primary concern of the Decree. They were included in it because of the need to distinguish some purely social or commercial associations from legitimate trade unions. For the Minister of Justice, registration was a means for the Ministry to ensure that the trade unions did not violate the law and was necessary because the Civil Code required registration of all legal personalities.

The Head of the Department of Public Organizations stated that all 38 branch-level trade unions had been re-registered, including the five Free Trade Unions. Only one branch-level organization, the BIAITU, was not registered. The Minister of Justice explained that the court judgement confirmed the Ministry's decision to refuse registration of BIAITU on the reasoning that the manner in which the Association had been formed was contrary to the procedure set out in the individual branch union rules. The Minister added, however, that the Ministry had not taken any steps to enforce the dissolution provisions of the Decree with respect to BIAITU.

As concerns the requirement of a certificate of the legal address of an organization to be supplied by the employer for registration purposes, the positions on this were diverse and occasionally contradictory. For the Ministry of Justice, the address had to be provided by the employer, whereas this was not necessary according to the Ministry of Labour. The Ministry of Labour officials stated that the problem rather stemmed from section 28 of the Trade Union Act concerning the provision of premises by the employer to trade unions. They indicated that prior to

the recent amendments of the Act, the employer had an obligation to provide premises to unions but that this was no longer the case. Consequently, the employer had no obligation to certify the legal address of a union as being on its premises. On the other hand, they believed that there would be no problem for registration if the unions provided a different address, such as one where their headquarters were located or, in the absence of such premises, the address of one of the founding members. Apparently no discussions with the unions concerned had taken place. The Ministry of Labour officials felt that the unions had made no such attempts because they wanted to insist on the employer providing them with premises. The CDTU and Free Trade Unions, however, denied that this was the case and stated that they merely wanted to be registered, but that registration was systematically refused if the employer did not certify the legal address; any subsequent attempts on their part to resolve the situation had been in vain.

The Head of the Department of Public Organizations stated that the issue of legal address which had only affected enterprise-level organizations had been resolved for the organizations in the Mogilev region and that these organizations were now registered and functioning normally. The Free Trade Unions maintain, however, that the registration issue has not been resolved for their unions, nor has the question of who is to certify the legal address. They further consider that, while their unions have been registered at the branch and national level, the true objective of the registration process is to cut off the local unions in order to weaken the national union.

Both employers' organizations stated that they considered that Decree No. 2 and the manner in which it was implemented were contrary to Convention No. 87 and the Constitution. The BUEE added that going through the registration process was quite difficult for them given that, under the Decree, they were now required to have at least 500 founder members who are to be natural persons and not legal entities as previously. In particular, this necessitated a reorganization of its founders, which had not been an easy task, but they were re-registered in the end. Their affiliates at regional level are now applying for registration. The BUEE expressed that they did not have any conflicts of the types raised in the complaint, such as questions of management interference, because the ministries cannot instruct the non-state-owned enterprises. Over 80 per cent of enterprises remain state-owned. Both the BUEE and the BCIB indicated that the Free Trade Unions suffered the most from the re-registration process and that they were practically non-existent now at the local level. In the first instance, these unions were still in the embryonic stage and it was very difficult for them to meet the necessary requirements of the Decree. They also pointed out that it was very difficult for their own organizations to function properly as they had no real legal reinforcement. They were registered but there was no law on employers' organizations clearly setting out the role they were to play in society and at the workplace. Given the preponderance of the state sector, the employers' organizations are small, and even though the Decree has affected them considerably, they abstained from openly criticizing the government authorities.

Issues of being a recorded organization as opposed to a registered organization were raised both by the officials of the Ministry of Justice and by those of the Ministry of Labour. It was maintained that, under the Trade Union Act, only three people at enterprise level are necessary to form a primary-level organization within an overall trade union organizational structure and that such organizations could act as trade unions and could bargain collectively. Such organizations would, however, only be recorded and not registered; they would therefore not have separate legal personality nor their own bank accounts. When asked by the mission about the provision in Decree No. 2 which states that the activity of all non-registered associations will be banned and that the organizations shall be liquidated, the Minister of Justice stated that these subsections did not apply and had not been applied to trade unions. As for the matter of whether a non-registered organization has the right to bargain collectively, the unions and the employers' organizations maintain that they do not, whereas the Ministry of Justice and Ministry of Labour officials state that they do. The Free Trade Unions state that in some cases where registration was denied, collective agreements that had been in force were unilaterally revoked, their organizations were considered to be "illegal" and their leaders were subject to threats of disciplinary action. Furthermore, their leaders are regularly denied access to the workplace to advocate unionization.

During the meeting at the Ministry of Justice it was further stated that the issue of registration was not raised at the meeting of the National Council on Labour and Social Issues when the two-year general agreement was signed in August 2000, thus implying that the outstanding disputes in this regard had been resolved. The representatives of the CDTU and the FTU, however, stated that the unions which had been the subject of the complaint had still not been registered. As for the

actual function of the National Council, the employers' organizations and the trade unions alike indicated that they considered it to be a rather formal body only, not a forum for real discussion and confrontation of these issues.

The First Deputy Head of the Presidential Administration stated that they were envisaging a solution for the problem of the legal address for registration and that they proposed to place this before Parliament as soon as it was reconstituted.

Government interference in trade union elections and activities

The general reply of all government officials met in respect of the Instructions of the Presidential Administration to the Council of Ministers and local executive bodies calling for measures to interfere in upcoming branch-level and national-level electoral congresses was simply to state that the fact that in each case the incumbents were re-elected proves that there was no administrative pressure and this should therefore not be seen as a problem. The existence of the Instructions was not denied; neither was it said that they had been revoked. The First Deputy Prime Minister stated that the Instructions were of an informal nature simply to collect information and not of a regulatory character as the Presidential Administration does not have such powers. He further emphasized that no violation resulted.

The First Deputy Head of the Presidential Administration recalled that the country's former system naturally affects the relationship between the social partners and the Government that has always had mutually dependent elements to it. He added that the Instructions of the Presidential Administration that were raised in the complaint were a small problem which practically did not exist anymore. The votes at the trade union congresses which had re-elected the previous leaders were statistical evidence that there had been no pressure from the State.

The FPB stated that the objective of the Government in respect of the Instructions from the Presidential Administration and the various efforts made to oust the incumbent union leaders was clearly to bring the unions under state control. For them, the process continues but now takes a different form. The Federation's bank account remains frozen, the union and their leadership are regularly criticized and threatened and the management of enterprises are now being used to try to influence the workers to break away from the traditional union. Enterprise directors are often interfering in the election process and denying or restricting access to the workplace for union leaders. These attacks have come most recently in the radio-electronic industry, where incidentally the Minister and Deputy Minister of Industry are members of the union and have become active in trying to influence its decisions. In the complex of enterprises known as "Integral", the management had convened meetings of the workers to convince them to quit their union for alternative representation; and in several cases the management was successful. At Tsvetetron, one of the Integral group, the union representative was permitted access to the enterprise only 15 minutes before the vote for union representation took place. However, there had been other cases where directors had relinquished membership of the trade union so as not to be in a position where they might be pressured to interfere in their functioning.

The FPB does not consider such attacks on their independence to be isolated ones, but rather an overall concerted attack on the entire trade union movement. They recognize, however, that one of the problems in this respect is that the employers' organizations are still not independent of the Government and enterprise managers remain trade union members and therefore have direct means of control. While managers have traditionally been considered eligible for trade union membership, in the current context the FPB is beginning to believe that this is perhaps no longer appropriate and that managers should have their own representative organizations distinct from the trade union base so as to avoid potential interference. The Free Trade Unions which were formed in the beginning of the 1990s have apparently not permitted membership of management.

The BCIB considered that the absence of legislation setting out the roles and functions of employers' organizations left their members vulnerable to state pressure to interfere in trade union activities which was often difficult to overcome. The fact that the owner can dismiss managers under the Labour Code makes management excessively dependent upon the state, and subject to its pressure, given that 80 per cent of the enterprises are state owned. They had proposed a Bill on

employers' organizations which had been approved by the Parliament but never signed by the President and had, therefore, never come into force. They too considered that it was important to separate management from trade unions and their affairs as this would facilitate the question of whose interests are represented. Several government officials, however, stated that they believed that the management of an enterprise should have the right to be a candidate for trade union elections, particularly in the interests of ensuring democratic elections with alternative candidates.

As concerns the freezing of the FPB bank account, the First Deputy Prime Minister indicated that this was as the result of a decision of the tax authority that there had been a violation in respect of certain licences. In reply to a question of due process in respect of this decision, he stated that the Federation could of course appeal the decision to the courts.

Other matters

The FPB expressed concern over recent information that the Council of Ministers was planning to make amendments to the Trade Union Act as concerns representation for collective bargaining purposes. At present, all registered unions have the right to bargain collectively. The fear was that the provisions in this respect would be toughened and that many unions would consequently lose their status for collective bargaining. All the unions agreed that this would have a particularly negative impact on the Free Trade Unions.

The Ministry of Labour stated that the trade unions themselves had raised the issue of representativeness and that they had every intention of consulting all parties concerned in the National Council on Labour and Social Issues before proposing any amendments to the Labour Code in this respect. Furthermore, it was indicated that ILO assistance on this matter would be welcome.

General discussions were held with all parties concerning the new provisions of the Labour Code regulating strike action. Two major concerns were raised by the trade unions: firstly, they believed that the President would not hesitate to make use of the general powers given to him under the Code to suspend strike action in the interests of national security or the freedom and rights of other persons and thus would, for all intents and purposes, render any industrial action impossible; secondly, a concern was raised that the requirement to provide minimum services was now required under the Code for every single enterprise, regardless of its nature.

The Free Trade Unions provided some additional information concerning Mr. Evmenov who they consider to have been dismissed because of his trade union activities. Normally, "subbotnik" (voluntary unpaid labour – for which Mr. Evmenov's refusal to organize was one of the elements in his dismissal) is a voluntary activity and no individual should suffer any consequences either for not participating in or for not organizing other workers in this respect. Furthermore, they stated that the additional disciplinary reprimands made to Mr. Evmenov leading to his dismissal were purely fabricated and intended only to get rid of him because of his trade union activities. While the government officials indicated that Mr. Evmenov had appealed to the courts which had found that his dismissal was justified, the trade unions had indicated that they had very little faith in the judiciary and were convinced that the judges would decide the cases in accordance with instructions given from above.

The UNDP Resident Representative provided some information concerning the June 2000 mission of the UN Special Rapporteur on the Independence of the Judges and Lawyers. The press release concerning the Special Rapporteur's mission notes that the President has excessive influence over the judiciary [and recommends constitutional changes in this respect (from final report?)]. The President has the power to appoint and dismiss most judges and they must pass a five-year probationary period before receiving tenure. Furthermore, the President appoints six of the 12 judges on the Constitutional Court at his own discretion and appoints the Chair who recommends the names of the other six candidates to be appointed by Parliament. As concerns the state of the laws, the Special Rapporteur notes that Presidential Decrees are given equal status to laws and the President was further given the power to issue temporary decrees of "special necessity". This power has been used to issue more than 70 decrees and some have been in force for over three years; many, according to the Special Rapporteur, are in contradiction with the Constitution and national laws.

V. Conclusions

While a great deal of time was spent going over the various issues involved in the complaint in detail, the conditions were not ripe for a tripartite summing-up meeting to attempt to find common solutions. This was partially due to the absence of decision-makers, as well as to the lack of openness on the part of the Government to potential solutions proposed by the mission and the absence of any alternative proposals. The mission therefore met separately with the government officials and trade unions to sum up the information it had received from the various parties and to provide some general conclusions.

Firstly, given the various difficulties for registration that had been posed by Presidential Decree No. 2, the mission suggested that the simplest solution would be to lift trade unions from the scope of application of the Decree. In fact, many of the observations made by the government representatives had expressed doubt as to the necessity of having had trade unions covered by the Decree in the first place. Alternatively, all the obstacles to registration discussed during the mission needed to be eliminated, as well as the severe consequences for non-registration, in consultation with the social partners. Re-registration should not be carried out in a manner that appears to be more related to government control than a mere formality. The remaining non-registered unions at the enterprise level should be registered without a delay in a simplified process that would not restrict the right to organize. The government authorities should help the trade unions to meet the technical requirements concerning a legal address, and they should also ensure that misunderstandings on what this legal address meant would not persist and could not be used, including by the employers, to deny trade unions the right to be registered.

Secondly, with respect to the Instructions of the Presidential Administration, the mission strongly suggested that they should be revoked, regardless of their current status which reportedly was almost non-existent. Clear instructions should be issued indicating, to the contrary, that public authorities must not interfere in trade union activities, elections and administration. If this was not done, the Instructions, albeit non-active now, would remain expressions of the Government's policy and could, at any subsequent time, be used as a justification for interference in trade union activities. Contradictory instructions which would recall the general principle of non-interference are particularly important given the potential for future interference by enterprise directors and managers. Furthermore, the enforcement of such instructions must be ensured.

Thirdly, as concerns the freezing of the bank accounts of the FPB, the mission suggested that due process would dictate that such extreme measures would only be taken as a result of a full investigation in which those directly affected would have the right to respond. The mission recommended that the accounts be unfrozen and that any tax irregularity or other discrepancy be the subject of such an investigation and that any proven violation be sanctioned according to the law, rather than blocking the Federation's entire bank account.

In the light of the above, the mission considered that all the elements taken together appeared to demonstrate a regular and systematic interference with trade union rights and activities. Such interference ranged from the denial of registration of previously registered unions (largely impacting upon the free trade unions) to a variety of efforts to divide traditionally established unions and bring them under state control. This pattern of interference was not only sanctioned by the Government, but also seemed to be ordered by the highest authorities in the country. The mission thus highlighted the importance of a clear message being given that interference in the internal affairs of trade unions would not be tolerated.

The mission recognized that the political and economic transition that had begun in the early 1990s was not yet complete. For this reason, it considered that special emphasis needed to be placed on the role of the social partners. There needed to be a reinforcement of the importance of the independence of the partners in order to ensure a balanced representation of interests essential to both economic and social development. It would be normal to use a forum such as the National Council on Labour and Social Issues for discussing, and settling, problems that had arisen with the Decree.

Employers were an important part of the solution to the difficulties complained of by the unions. The independence of employers both from the State and from the unions was essential to

avoid confusion of the interests represented and to ensure true representational voices. The BCIE wanted an Act on employers' organizations to set out clearly their functions and role and this might be a first step in reinforcing the social partners. Another aspect which should be given some attention was the issue of enterprise directors as trade union members. In the current context and in the light of the allegations and the information received, there was a danger of management interference in trade union functioning. It might therefore be necessary to develop separate structures for managers and directors. Structures that were distinct from trade unions would guarantee the social interests of managers and eliminate the potential of management interference in internal matters of the trade unions. This was all the more opportune, as the traditional trade unions also now appeared to favour this option.

With a clearer delineation of the employers' organizations and a reinforcement of the independence of the social partners, the National Council on Social and Labour Issues could function in a more complete fashion. Given that the unions and the employers' organizations had expressed some frustration about the limitations of the National Council, that body may need to be further reinforced so as to become a fully operational forum for social dialogue with the potential of resolving issues of importance for the social partners. The greatest task ahead is to create an atmosphere in which the social partners are able to have confidence in the structures of social dialogue so that all outstanding issues may be resolved among the parties concerned, fully respecting the rights and autonomy of each of them. The closeness of the views of the trade unions and employers on the Decree was a positive element, and it was encouraging to note that the traditional and new trade unions wished to continue close cooperation.

Finally, while the issue of the independence of the judiciary generally reaches beyond the sphere of the complaint, the mission could not but conclude that the parties to the complaint had absolutely no confidence in the possibility of redressing matters through legal action. This lack of confidence explained the hesitation on the part of the unions to raise matters before the courts. The serious doubts raised by the UN Special Rapporteur concerning the impartiality of the judiciary increases the general impression that court decisions are likely to be unfavourable to the trade unions. Measures aimed at reinforcing the independence of the judiciary in Belarus would be an important and necessary element to restoring the confidence of the trade unions in the overall framework of social partnership.

This last point brings the mission to its final conclusion concerning the overall environment in respect of trade union rights in Belarus. The divergencies existing between the position of the trade unions and that of the Government are quite deep and not likely to be solved by amending the law or even withdrawing the current Instructions. The trade unions felt generally that obstacles which might eventually be eliminated today would crop up tomorrow under a new guise. While the Government engaged in long and detailed discussions with the mission on complex legal issues, the necessary political will to engage in a real confidence-building process was not fully apparent to the mission. This political will is essential to a meaningful strengthening of the institutional framework for social dialogue and a review of the legal and administrative framework covering trade unions and employers' organizations which may lead to true social partnership in the future.

The members of the mission wish to express their appreciation to the Government of Belarus for its preparedness to openly discuss the often complex issues involved in the case and the cooperation extended to the mission. It further thanks the FPB, the CDTU, the FTU, the BCIE, the BUEE and all other individuals met by the mission who have provided a great deal of information essential to a full understanding of the context in which the complaint was presented.

(Signed) Kari Tapiola,

Karen Curtis.

Annex II

The list of persons met by the ILO mission (18-21 October 2000)

Meetings at the Council of Ministers

1. Mr. V. Yermoshin, Prime Minister of the Republic of Belarus
2. Mr. A. Kobyakov, First Deputy Prime Minister of the Republic of Belarus
3. Mr. A. Mikhnevich, Deputy Minister of Foreign Affairs of the Republic of Belarus
4. Mr. V. Stepanenko, Head of the Department of Economy of the Council of Ministers
5. Mr. I. Krasutsky, First Deputy of the Department of Economy of the Council of Ministers
6. Mr. M. Krapivnitsky, Senior Specialist of the Department of Economy of the Council of Ministers, Secretary of the National Council on Labour and Social Issues

Meeting at the Presidential Administration of the Republic of Belarus

1. Mr. V. Zametalin, First Deputy Head of the Presidential Administration of the Republic of Belarus
2. Mr. V. Geisik, Department of Foreign Policy of the Presidential Administration
3. Mr. A. Petrazh, Deputy Minister of Justice of the Republic of Belarus

Meeting with officials from the Ministry of Justice

1. Mr. G. Vorontsov, Minister of Justice of the Republic of Belarus
2. Mr. M. Sukhinin, Head of the Department of Public Organizations
3. Ms. E. Kazakova, Deputy Head of the Department of Public Organizations
4. Mr. V. Kachanov, Minister of Justice Assistant
5. Mr. A. Alyeshin, Head of the Department for International Cooperation of the Ministry of Justice of the Republic of Belarus
6. Mr. I. Starovoitov, Deputy Head of the Department for International Cooperation of the Ministry of Labour of the Republic of Belarus

Meetings with the Ministry of Labour officials of the Republic of Belarus

1. Mr. V. Pavlov, First Deputy Minister of Labour of the Republic of Belarus
2. Ms. E. Kolos, Deputy Minister of Labour of the Republic of Belarus
3. Ms. I. Chistyakova, Head of the Legal Department of the Ministry of Labour of the Republic of Belarus

4. Mr. E. Kasperovich, Head of the Department of Complex Analysis of Social Labour Problems of the Ministry of Labour of the Republic of Belarus

5. Mr. A. Kopot, Head of the Department of International Cooperation of the Ministry of Labour of the Republic of Belarus

Meeting at the Ministry of Foreign Affairs of the Republic of Belarus

1. Mr. S. Martynov, First Deputy Minister of Foreign Affairs of Belarus

2. Mr. A. Mozhukhov, Head of the Department of Multilateral Economic Organizations

3. Ms. T. Khoroshun, First Secretary of the Ministry of Foreign Affairs of the Republic of Belarus

Meeting at the Byelorussian Union of Entrepreneurs and Employers named after Prof. M. Kouniavski

1. Ms. T. Bykova, President

2. Mr. G. Badei, Vice-President

3. Ms. O. Bekasova, Executive Director

4. Ms. N. Naumovich, Director on Legal Issues

Meeting at the Byelorussian Confederation of Industrialists and Entrepreneurs

1. Mr. N. Streltsov, Executive Director

2. Mr. V. Sevrukevich, Director on Legal Issues

3. Mr. E. Kisel, Director on Social Issues

Meeting with officials from the Federation of Trade Unions of Belarus (FPB)

1. Mr. V. Gontcharik, Chairman

2. Mr. O. Podolinsky, Head of the International Department

3. Ms. V. Polevikova, Head of the Information-Analytical Centre

4. Mr. A. Bukhvostov, Chairman of the Belarus Automobile and Agricultural Machinery Workers' Trade Union

5. Mr. A. Yaroshuk, Chairman of the Belarus Agricultural Sector Workers' Union

6. Mr. G. Fedynich, Chairman of the Belarus Radio and Electronics Workers' Union

7. Mr. A. Starikevich, Editor-in-Chief of the Belarusian Newspaper "Belarusky Chas" (Belarusian Time)

Meeting with the Congress of Democratic Trade Unions (CDTU) and the Free Trade Unions of Belarus (FTUB)

1. Mr. V. Makarchuk, Vice-President of the CDTU

2. Mr. V. Zakharchenko, staff member of the Council of Representatives of the CDTU

3. Mr. V. Kozel, staff member of the Council of Representatives of the CDTU

4. Mr. V. Troshchiy, staff member of the Council of Representatives of the CDTU

5. Mr. D. Plis, Press Secretary of the CDTU

6. Mr. N. Kanakh, Representative of the FTU, staff member of the Council of Representatives of the CDTU

Meeting at the United Nations Office in Belarus

Mr. N. Buhne, UN Resident Coordinator/UNDP Resident Representative in Belarus

Meeting with OSCE representatives

Mr. H.-G. Wieck, Head of the OSCE Advisory and Monitoring Group in Belarus

Meeting with the Helsinki Committee on Human Rights

Ms. T. Protko, Representative

CASE NO. 2053

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

Complaint against the Government of the Republic of Bosnia and Herzegovina presented by the Associated Workers' Trade Union of Bosnia and Herzegovina (URS/FbiH)

Allegations: Refusal of the authorities to register a trade union

219. The present complaint was presented in a communication dated 25 August 1999 from the Associated Workers' Trade Union of the Republic of Bosnia and Herzegovina (URS/FBiH).

220. The Government submitted its reply in a communication dated 24 August 2000.

221. The Republic of Bosnia and Herzegovina has ratified both 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

222. In its communication of 25 August 1999, the complainant organization submits that it was created, its leadership elected, its by-laws and programme adopted, all in accordance with the applicable Statute (Act 6/95 on the Association of Citizens). Having completed all the required documentation and obtained all the authorizations, which took a long time, the URS/FBiH filed an application for registration with the Ministry of Justice on 2 July 1998,

which replied on 4 July 1998 with a request to amend some technical aspects of the by-laws, and in particular to change the name of the union.

223. The complainant did bring some of the required changes to its by-laws in due time, except the name. They were then informed by the authorities that if the URS/FBiH did not change their name their application would be rejected, which is in fact what happened sometime later.

224. The complainant organization submits that the Ministry of Justice has had enough time to appreciate the difference between them and the existing trade union controlled by nationalistic parties and filed an appeal with the Supreme Court on this issue. The judgement had not been received at the time that the complaint was lodged.

225. According to the URS/FBiH, the Ministry of Justice abuses its power and manipulates the law, through its interpretation of what organization has the right to be registered. The main and real reason for the rejection of the registration request is that the position of the existing trade unions, which are totally under the control of the Government and nationalistic parties, would be jeopardized by the creation of a new and democratic workers' organization.

B. The Government's reply

226. In its communication of 24 August 2000, the Government indicates that the registration request of the Associated Workers' Trade Union was rejected on account of their failure to comply with the timeframe prescribed by law for entry into the Register of the Ministry of Justice. Attached to the Government's communication are a letter dated 5 November 1999 from the Ministry of Justice, and the judgement of the Supreme Court, dated 22 March 2000.

227. The letter of the Ministry of Justice confirms that the registration request of URS/FBiH was rejected since section 27(8) of the Law on Civil Associations provides that such requests must be submitted within 15 days from the date on which a constituent assembly is held. In this case, the constituent assembly was held on 16 May 1998 and the registration request was submitted on 23 June 1998, i.e. outside the prescribed delays. The Ministry of Justice further argues that sections 3(2) and 3(12) of the same Act provide for the establishment of two different types of associations: those directly founded by individuals, and those founded by already existing associations. The name submitted in the present case could be misleading as it implied that it was a trade union of already registered workers' associations. For this reason, the complainant was invited to change its name, to make it clear that it was an association of individuals rather than a union of associations, which it failed to do within the 30 days prescribed by law. The request was therefore rejected.

228. The complainant appealed to the Supreme Court, which confirmed the rejection decision. The Court specifically mentioned in its decision that it would not enter into a discussion as to whether or not the reasons for the decision of the Ministry of Justice were "correct and legitimate", but based itself strictly on the complainant's failure to file the request within the legally prescribed timeframe.

C. The Committee's conclusions

229. *The Committee notes that this case concerns the refusal by the Ministry of Justice to register a trade union, firstly because of a failure to comply with the timeframe prescribed by law, and secondly on account of the name chosen by its founding members, which the competent authorities considered misleading. The Committee also notes that the*

complainant appealed to the Supreme Court, which confirmed the rejection decision, based on the first motive only.

230. *While observing that, strictly speaking, the complainant might have slightly overstepped the legally prescribed timeframe for submitting its registration request, i.e. 23 days, the Committee cannot but note that said timeframe between a constituent assembly and the filing of the registration request is extremely short, as is the case for the allowed period for modifying a name deemed to be inappropriate or misleading. The Committee further notes that there do not seem to exist other substantive reasons why the organization could not be registered.*

231. *The Committee recalls that while the founders of an organization are not freed from "the duty of observing formalities which may be prescribed by law … such requirements should not be such as to be equivalent in practice to previous authorization, or as to constitute such an obstacle to the establishment of an organization that they amount in practice to outright prohibition" [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 207]. The Committee also recalls that the "formalities prescribed by law for the establishment of a union should not be applied in such a way as to delay or prevent the establishment of occupational organizations [****Digest****, ibid., para. 249].*

232. *The Committee emphasizes 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.*

233. *The Committee notes that an unreasonable period has now elapsed since the initial filing of the registration request, i.e. June 1998, and considers that such a registration rejection, on narrow and technical grounds, of an otherwise bona fide organization is not conducive to the establishment of sound industrial relations. The Committee therefore requests the Government to initiate discussions with the complainant as soon as possible with a view to finalizing rapidly the registration process of the complainant organization, and to keep it informed of developments in this respect. The Committee also requests the Government to bring the legislation into conformity with Convention No. 87. The Committee brings the legislative aspects of this case to the attention of the Committee of Experts on the Application of Conventions and Recommendations.*

The Committee's recommendations

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

(a) The Committee requests the Government to initiate discussions with the complainant as soon as possible with a view to finalizing rapidly the registration process of the complainant organization, and to keep it informed of developments in this respect.

(b) The Committee requests the Government to bring the legislation concerning the registration of trade unions into conformity with Convention No. 87.

(c) The Committee brings the legislative aspects of this case to the attention of the Committee of Experts on the Application of Conventions and Recommendations.

CASE NO. 2083

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

Complaint against the Government of Canada (New Brunswick) presented by
— the Canadian Labour Congress (CLC)
— the Canadian Union of Public Employees (CUPE) and
— the International Confederation of Free Trade Unions (ICFTU)

Allegations: Violation of the right to bargain collectively of certain public sector employees

235. This complaint was presented in a communication dated 17 April 2000 from the Canadian Labour Congress (CLC) and the Canadian Union of Public Employees (CUPE), supported by the International Confederation of Free Trade Unions (ICFTU) in a communication of 27 April 2000.

236. The Government provided its observations in a communication dated 10 January 2001.

237. Canada has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). It has not ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Labour Relations (Public Service) Convention, 1978 (No. 151) nor the Collective Bargaining Convention, 1981 (No. 154).

A. The complainants' allegations

238. In their communication of 17 April 2000, the complainant organizations submit that the Public Service Labour Relations Act, R.S.N.B. 1973, Ch. P-25 (the "PSLRA") violates the ILO Conventions on freedom of association in that it excludes certain workers from the definition of "employee" under the Act, namely those persons "not ordinarily required to work more than one-third of the normal period for persons doing similar work" (section 1 (C.1)) and those "employed on a casual or temporary basis unless the person has been so employed for a continuous period of six months or more" (section 1(e)).

239. The combined effect of these provisions is that casual workers are excluded either because the non-continuous nature of their employment (even if it extends beyond six months), because their employment (even where continuous) is for less than one-third of the normal working time of persons doing similar work, or yet because their continuous employment is cut off before six months (e.g. seasonal workers). While the exact number of workers in this situation is not known, the current estimate is that there are over 6,000 casuals working for the provincial government, without employee status. Because they are excluded from the coverage of the PSLRA, they cannot avail themselves of the right to join unions of their own choosing or to bargain collectively, as is otherwise open to "employees" under section 25 of the Act.

240. The complainants add that casual workers often do not attain employee status after working six months. In fact, many casuals have worked for many years without the right to unionize and to be covered by a collective agreement. These casuals work side-by-side with those who have attained employee status (including some part-time workers who have acquired employee status) but are not covered by collective agreements and have very different terms and conditions of employment. The complainants refer to a series of court

cases which demonstrate how the legislation makes it extremely difficult for casuals to obtain employee status under the PSLRA. Throughout this jurisprudence, the courts have made it clear that the statutory definition of "employee" would have to be amended, for casuals and other workers in similar situations, to enjoy the rights and protections of the PSLRA and collective agreements, which led for instance a court to conclude: "Therein lies an anomaly … under the terms of the Act, the employer can prevent an employee hired as a casual from obtaining "employee" status under the Act by interrupting any regular or defined basis of employment before a six-month period has elapsed. I believe this is the way the employer perceives the law to be and from my reading of the law, I think this is correct. A response as to whether such a situation is appropriate lies with the legislature, not with the courts" (Stewart et al. (1985), 70 N.B.R. 93, Justice Creaghan, p. 99).

241. Employees not covered by the PSLRA or other statute regulating collective bargaining are governed by the common law, as applied in the Canadian context. As a result, without statutory protections, such workers are vulnerable to penalties (including dismissal) and to legal action being taken against them for various acts of combination (including the torts of directly and indirectly inducing breach of contract, and conspiracy to do so); the employer is under no obligation to bargain with them over terms and conditions of employment. In short, such workers are denied the ability to organize and bargain collectively, protection from reprisals for engaging in protected union activity, and to enter into enforceable collective agreements.

242. Article 2 of Convention No. 87 provides that all workers "without distinction whatsoever" should have the right to organize, which the Committee on Freedom of Association has considered to mean that this freedom should be guaranteed without discrimination of any kind. Not only are casual workers in the public service treated differently from "employees", they are also discriminated against when compared with the situation prevailing in the private sector where, under the Industrial Relations Act (R.S.N.B. 1973, C. 1-4, "IRA") no such distinction exists. To illustrate this discriminatory situation, casual hospital workers in the public sector do not enjoy the protection of the PSLRA, whereas casual nursing home workers in the private sector are covered by the IRA. The same discriminatory results obtain when comparing, for instance, provincial transportation workers and municipal workers.

243. In its communication of 17 April 2001, the CUPE gives concrete examples of the application of this double standard, as regards:

– length of employment: some casual workers have been working for the Government for many years, with hiring dates of anywhere between 1975 and 1999;

– working hours: in Region 4 (Edmunston) the average working hours of 119 casuals in the hospital sector was 18.87 hours a week in 1998; in Region 6 (Chaleur) the average working hours of 144 casuals was 15.95 hours during the last six months of 1998; in Region 2 (Saint John) the average working hours of 312 casuals was 19.74 hours during the last three months of 1998; in the George Dumont Hospital (Moncton) casuals worked 125,452 hours in 1998 which, translated in full-time positions, means 64 jobs;

– wages and benefits: in the hospital sector, the differential of the compensation package is $3.96 an hour, or 37.25 per cent, for two persons doing exactly the same work; at the New Brunswick Liquor Corporation, casual workers get paid $4.50 less than full-time employees and receive no benefits;

– pensions: casual workers are not eligible to the pension plan available to the vast majority of government employees (including part-time and seasonal employees);

– discipline: casuals can be dismissed and disciplined without any protection, e.g. recourse to grievance arbitration.

244. The complainants submit that the PSLRA contravenes Conventions Nos. 87, 98, 151 and 154 and that it should be amended to bring it into line with ILO standards.

B. The Government's observations

245. In its communication of 10 January 2001, the government of New Brunswick states that the regime governing the public sector is determined in four Acts, including the PSLRA which is closely modelled on federal legislation and distinguishes between regular and temporary employees.

246. The Government stresses that civil servants are not "employed", but "appointed" as officials, under a competitive process designed to foster impartiality and neutrality, and selected on the basis of merit. Casual workers are engaged for limited periods and are not subject to these processes.

247. The PSLRA provides that those engaged in work less than one-third of the normal period for persons doing similar work and those engaged on a casual or temporary basis for less than six months are not deemed to be employed in the public service. Significantly, these persons are not required to perform work when called upon to do so and can refuse such work without becoming ineligible for future engagement. They are asked to work, and agree to do so, in order to meet time-limited requirements arising, for instance, by reason of sickness of regular employees, sudden and temporary need for staff, and other like contingencies. Since the circumstances of these temporary employees are quite different from those of regular public service employees, particularly in view of the fact that they are not obliged to work when asked to do so, they are not deemed to be employees for purposes of collective bargaining.

248. The Government points out that the legislative definition of "employee" and the exclusion of these two categories of workers have been upheld in a variety of court cases, including in proceedings before the Supreme Court of Canada in the early 1980s.

249. The Government states that while the PSLRA does not violate Convention No. 87 as it does not restrict in any way the freedom of casual employees to join unions of their choosing, the Act does contain provisions which establish that bargaining agents can represent "employees" (thereby excluding casuals). According to the Government, the terms under which casual employees are engaged in the public service are so fundamentally different from those of regular employees that this warrants the definitional distinction in the Act.

C. The Committee's conclusions

250. *The Committee notes that this case concerns the exclusion of casual workers from the definition of "employee" in the Public Service Labour Relations Act of New Brunswick, which entails a number a consequences for said workers as regards, for instance, status, tenure, pay and benefits, pensions and disciplinary regime, and raises two issues in respect of freedom of association: the right of casual workers to organize and their right to bargain collectively.*

251. *As regards the first issue, the Committee notes that the Government declares, in direct contradiction with the complainants' allegations, that the PSLRA does not restrict in any way the freedom of casual employees to join unions of their choosing, without*

substantiating that statement in any way, e.g. by providing examples of such workers being members of trade unions. The Committee seriously questions this assertion, in view of the interplay of the various PSLRA definitions where the term "employee" appears in article 1, and which have the effect of excluding casual workers from the right to join organizations of employees, e.g.:

- *"bargaining agent" means an employee organization;*
- *"bargaining unit" means a group of two or more employees;*
- *"employee" means a person employed in the public service, other than:*
  - *(c.1) a person not ordinarily required to work more than one-third of the normal period for persons doing similar work;*
  - *(e) a person employed on a casual or temporary basis unless the person has been so employed for a continuous period of six months or more;*
- *"employee organization" means an organization of employees the purposes of which include the regulation of relations between the employer and its employees for the purpose of this Act.*

252. *Given these statutory definitions, at the very least, casual workers could not join public service employee organizations because they are not "employees" within the meaning of the PSLRA. On the basis of available evidence, the Committee can therefore only conclude that casual workers cannot join organizations of their own choosing, and enjoy the various related rights.*

253. *The Committee recalls that all workers, without distinction whatsoever, whether they are employed on a permanent basis, for a fixed term, or as contract employees, should have the right to establish and join organizations of their own choosing [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 236]. The Committee further notes the uncontradicted evidence that casual workers are being treated differently depending on whether they work in the private or the public sector, in that the former enjoy the protection of the IRA whereas the latter are not covered by the PSLRA or any other statute. The Committee recalls in this respect that the denial of the right of workers in the public sector to set up trade unions where this right is enjoyed by workers in the private sector involves discrimination [see **Digest**, op. cit., para. 216]. It requests the Government to take appropriate measures in the near future to ensure that casual and other workers, currently excluded from the definition of employees in the PSLRA, be granted the right to establish and join organizations of their own choosing, in conformity with principles of freedom of association, and to keep it informed of developments in this respect.*

254. *Concerning the second issue, the Committee notes that the Government does not challenge the complainants' allegation that casual workers in the public service do not enjoy collective bargaining rights, but rather argues that their terms of employment are so fundamentally different from those of regular employees that this justifies the existing distinction in the PSLRA. The Committee recalls in this regard that all public service workers other than those engaged in the administration of the State should enjoy collective bargaining rights [see **Digest**, op. cit., para. 793] and that, according to the principles of freedom of association, staff having the status of contract employee should enjoy this right [see **Digest**, op. cit., para. 802]. It requests the Government to take appropriate measures in the near future to ensure that casual and other workers, currently excluded from the definition of employees in the PSLRA, be granted the right to bargain collectively, in*

conformity with principles of freedom of association, and to keep it informed of developments in this respect.

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

The Committee's recommendations

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

(a) The Committee requests the Government to take appropriate measures in the near future to ensure that casual and other workers, currently excluded from the definition of employees in the Public Service Labour Relations Act, be granted the right to establish and join organizations of their own choosing, and to bargain collectively, in conformity with principles of freedom of association, and to keep it informed of developments in this respect.

(b) The Committee draws the legislative aspects of this case to the attention of the Committee of Experts on the Application of Conventions and Recommendations.

CASE NO. 1787

INTERIM REPORT

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

Allegations: Murder and other acts of violence against trade union officials and members and anti-union dismissals

257. The Committee last examined this case at its May 2000 meeting [see 322nd Report, paras. 5-37]. The International Confederation of Free Trade Unions (ICFTU) sent new allegations in communications dated 7 and 16 August, 29 September, 4 December 2000, 25 January and 17 February 2001. The Single Confederation of Workers of Colombia (CUT) sent new allegations in a communication dated 5 July 2000. By way of a communication dated 16 December 2000, the World Federation of Trade Union (WFTU) has sent new allegations. The Trade Union Association of Civil Servants of the Ministry of

Defence, Armed Forces, National Police and Related Bodies (ASODEFENSA) transmitted new allegations in a communication dated 23 February 2001. The World Confederation of Labour (WCL) presented a complaint in a communication dated 9 February 2001. The Government sent its observations in communications dated 30 August and 23 September 2000 and 1 February 2001.

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

A. Previous examination of the case

259. At its May 2000 meeting, the Committee made the following recommendations on the allegations that were still pending which, for the most part, referred to acts of violence against trade union members and various acts directed against trade unions, including acts of anti-union discrimination [see 322nd Report, para. 37]:

– the Committee deeply deplores the numerous murders and violent acts against unionists mentioned in this report and observes that the Government and the union centrals and confederations provide differing figures of the number of victims. The Committee requests the Government to take appropriate steps, possibly by convening a working group of independent representatives accepted by both parties, to clarify the enormous divergences in the figures given for trade union officials and members murdered over the past ten years and to keep it informed of its findings;

– regarding the participation of public officials (especially officials of the armed forces) in the creation of self-defence or paramilitary groups and the passivity, connivance or collaboration of such officials by deed or omission vis-à-vis those groups and the violation of human rights in general that this entails, the Committee requests the Government to order an urgent and global inquiry into these practices at the institutional level, with a view to imposing appropriate sanctions. The Committee further requests the Government to take radical and systematic steps to disband the self-defence groups wherever they operate and to neutralize and punish all their leaders, members and financial backers, especially in the case of the United Self-Defence Units of Colombia whose disbanding shows no sign of having made any real progress. The Committee asks the Government to keep it informed of developments;

– regarding the protection of trade union officials, the Committee requests the Government to take steps to increase the budgetary allocation that it has earmarked for a programme of protection of trade union officials and, in consultation with the trade union organizations, to adopt additional measures to protect the life of trade union officials who have been threatened;

– regarding the matter of impunity, the Committee, noting with concern that, as far as the material and moral perpetrators of the murders of trade union officials and members are concerned, the outcome of the procedures in terms of convictions is virtually nil and that only in exceptional cases are the facts clarified, the culprits identified and the full rigour of the law applied, requests the Government to make a substantial effort to combat the extremely serious and intolerable situation of impunity, which is one of the main reasons for the violence, and to keep it informed of developments;

– regarding the alleged acts of violence against trade union officials and members (murders, disappearances, physical aggression, kidnappings and death threats) listed in the annex to this report, which the Government states are being investigated and on which it will inform the Committee of developments, the Committee, while expressing its concern and deeply regretting all these incidents, requests the Government to keep it informed of the findings of all the inquiries currently in progress (a copy of the annex follows).

Annex

1. Murders, attempted murders, physical aggression, disappearances and detentions

Murders

(1) Antonio Moreno Asprilla (12 August 1995); (2) Manuel Ballesta Alvarez (13 August 1995); (3) Francisco Mosquera Córdoba (5 February 1996); (4) Carlos Antonio Arroyo (5 February 1996); (5) Francisco Antonio Usuga (23 February 1996); (6) Pedro Luis Bermúdez Jaramillo (6 June 1995); (7) Armando Humanes Petro (23 May 1996); (8) William Gustavo Jaimes Torres (28 August 1995); (9) Jaime Eliécer Ojeda (23 May 1994); (10) Alfonso Noguera Cano (4 November 1994); (11) Alvaro Hoyos Pabón (12 December 1995); (12) Néstor Eduardo Galíndo Rodríguez (3 July 1997); (13) Erieleth Barón Daza (3 May 1997); (14) Jhon Freddy Arboleda Aguirre (3 July 1997); (15) William Alonso Suárez Gil (3 July 1997); (16) Eladio de Jesús Chaverra Rodríguez (3 July 1997); (17) Luis Carlos Muñoz Z. (3 July 1997); (18) Nazareno de Jesús Rivera García (3 December 1997); (19) Héctor de Jesús Gómez C. (22 March 1997); (20) Gilberto Casas Arboleda (11 February 1997); (21) Norberto Casas Arboleda (11 February 1997); (22) Alcides de Jesús Palacios Casas (11 February 1997); (23) Argiro de Jesús Betancur Espinosa (11 February 1997); (24) José Isidoro Leyton M. (22 March 1997); (25) Eduardo Enrique Ramos Montiel (14 July 1997); (26) Libardo Cuéllar Navia (23 July 1997); (27) Wenceslao Varela Torrecilla (19 July 1997); (28) Abraham Figueroa Bolaños (25 July 1997); (29) Edgar Camacho Bolaños (25 July 1997); (30) Félix Antonio Avilés A. (1 December 1997); (31) Juan Camacho Herrera (25 April 1997); (32) Luis Orlando Camacho Galvis (20 July 1997); (33) Hernando Cuadros Mendoza (1994); (34) Freddy Francisco Fuentes Paternina (18 July 1997); (35) Víctor Julio Garzón H. (7 March 1997); (36) Isidro Segundo Gil Gil (3 December 1996); (37) José Silvio Gómez (1 April 1996); (38) Enoc Mendoza Riasco (4 July 1997); (39) Luis Orlando Quiceno López (16 July 1997); (40) Arnold Enrique Sánchez Maza (13 July 1997); (41) Camilo Eliécer Suárez Ariza (21 July 1997); (42) Mauricio Tapias Llerena (21 July 1997); (43) Atilio José Vásquez Suárez (28 July 1997); (44) Odulfo Zambrano López (27 October 1997); (45) Alvaro José Taborda Alvarez (8 January 1997); (46) Elkin Clavijo (30 November 1997); (47) Alfonso Niño (30 November 1997); (48) Luis Emilio Puerta Orrego (22 November 1997); (49) Fabio Humberto Burbano Córdoba (12 January 1998); (50) Osfanol Torres Cárdenas (31 January 1996); (51) Fernando Triana (31 January 1998); (52) Francisco Hurtado Cabezas (12 February 1998); (53) Misael Díaz Urzola (26 May 1998); (54) Sabas Domingo Socadegui Paredes (6 May 1997); (55) Jesús Arley Escobar Posada (18 July 1997); (56) José Raúl Giraldo Hernández (25 November 1997); (57) Bernardo Orrego Orrego (6 March 1997); (58) José Eduardo Umaña Mendoza (18 April 1998); (59) José Vicente Rincón (7 January 1998); (60) Jorge Boada Palencia (18 April 1998); (61) Jorge Duarte Chávez (9 May 1998); (62) Carlos Rodríguez Márquez (10 May 1998); (63) Arcángel Rubio Ramírez Giraldo (8 January 1998); (64) Orfa Lígia Mejia (7 October 1998); (65) Macario Herrera Villota (25 October 1998); (66) Víctor Eloy Mieles Ospino; (67) Rosa Ramírez (22 July 1999); (68) Oscar Artunduaga Nuñez (1998); (69) Jesús Orlando Arévalo (14 January 1999); (70) Moisés Canedo Estrada (20 January 1999); (71) Gladys Pulido Monroy (18 December 1998); (72) Oscar David Blandón; (73) Oswaldo Rojas Sánchez (11 February 1999); (74) Julio Alfonso

Poveda (17 February 1999); (75) Pedro Alejandrino Melchor Tapasco (6 April 1999); (76) Gildardo Tapasco (6 April 1999); (77) Manuel Salvador Avila (22 April 1999); (78) Esaú Moreno Martínez (5 April 1999); (79) Ernesto Emilio Fernández F. (20 November 1995); (80) Libardo Antonio Acevedo (7 July 1996); (81) Magaly Peñaranda Arévalo (27 July 1997); (82) David Quintero Uribe (7 August 1997); (83) Aurelio de J. Arbeláez (4 March 1997); (84) José Guillermo Asprilla T. (23 July 1997); (85) Carlos Arturo Moreno Lopez (7 July 1995); (86) Luis Abel León Villa (21 July 1997); (87) Manuel Francisco Giraldo (22 March 1995); (88) Luis David Alvarado (22 March 1996); (89) Eduardo Enrique Ramos M. (14 July 1997); (90) Marcos Pérez González (10 October 1998; (91) Jorge Luis Ortega G. (20 October 1998); (92) Hortensia Alfaro Banderas (24 October 1998); (93) Jairo Cruz (26 October 1998); (94) Luis Peroza (12 February 1999); (95) Numael Vergel Ortiz (12 February 1999); (96) Gilberto Tovar Escudero (15 February 1999); (97) Albeiro de Jesús Arce V. (19 March 1999); (98) Ricaurte Pérez Rengifo (25 February 1999); (99) Antonio Cerón Olarte.

Attempted murders

(1) Virgilio Ochoa (16 October 1998); (2) Eugeniano Sánchez (16 October 1998); (3) Benito Rueda Villamizar (16 October 1998); (4) Gilberto Carreño; (5) César Blanco Moreno (28 August 1995); (6) Fernando Morales (1999), (7) Alberto Pardo (1999) and (8) Esaú Moreno (1999).

Physical aggression

(1) Public enterprises – Cartagena (29 June 1999); (2) César Castaño (6 January 1997); (3) Luis Cruz (6 January 1997); (4) Janeth Leguizamón – ANDAT (6 January 1997); (5) Mario Vergara and (6) Heberto López, N.P.; (7) TELECOM workers (13 October 1998); (8) Protest march – Plaza de Bolívar (20 October 1998).

Disappearances

(1) Jairo Navarro (6 June 1995); (2) Rami Vaca (27 October 1997); (3) Misael Pinzón Granados (7 December 1997); (4) Justiniano Herrera Escobar (30 January 1999); (5) Rodrigo Rodríguez Sierra (16 February 1995); (6) Ramón Alberto Osorio Beltrán (13 May 1997).

Detentions

(1) José Ignacio Reyes (8 October 1998); (2) Orlando Rivero (16 October 1998; (3) Sandra Parra (16 October 1998); (4) 201 persons during the national strike (31 August 1999); (5) Horacio Quintero (31 May 1999 and (6) Oswaldo Blanco Ayala (31 May 1999). (The union leaders were detained, received death threats and were released later.)

2. Threats

(1) Yesid Camacho Jiménez, official of ANTHOC Tolima, two escorts; (2) Luz Amparo Cahavarria, official of CUT Antioquía, two escorts; (3) Jesús Ruiz, official of CUT Antioquía, two escorts; (4) Over Dorado, official of CUT Antioquía, two escorts; (5) Carlos Posada, official of CUT Antioquía, one escort; (6) Nicolás Castro Olaya, official of CUT Atlántico, one escort; (7) Islena Rey Rodríguez, official of CUT Meta, two escorts; (8) Pedro Barón Gutiérrez, official of CUT Tolima, one escort; (9) Carlos Arbey González Quintero, official of CUT Valle, two escorts; (10) Alexander López, President of SINTRAEMCALI, two escorts; (11) Nelson Amaya Guevara, official of CUT Valle, two escorts; SINTRA, municipality of Cartago (Valle), two escorts and one vehicle. (12) The following organizations currently have a safety perimeter and protection:

National CUT – Single Workers' Confederation, Santafé de Bogotá; National CTC – Workers' Confederation of Colombia, Santafé de Bogotá; National CGTD – General Democratic Workers' Confederation, Santafé de Bogotá; National FECODE – National Teachers' Federation, Santafé de Bogotá; ASONAL JUDICIAL – National Association of Public Servants and Employers of the Judiciary, Cúcuta; ASINORT (affiliated to FECODE-CUT) – Teachers' Trade Union Association of North Santander, Cúcuta; CUT – Single Workers' Confederation, Cúcuta Section; ANTHOC – National Association of Hospital Workers, Ibagué; ANTHOC – National Association of Hospital Workers, Ocaña; SINTRAELECOL – Electrical Workers' Trade Union of Colombia, Pasto; FENSUAGRO – National Agricultural Workers' Single Trade Union Federation, Santafé de Bogotá; SINTRATELEFONOS – Telephone Company Workers' Trade Union, Santafé de Bogotá; SINALTRAINAL – National Food Industry Workers' Trade Union, Santafé de Bogotá; (13) Martha Cecilia Cadavid; (14) Carlos Hugo Jaramillo; (15) José Luis Jaramillo Galeano; (16) Rangel Ramos Zapata; (17) Jorge Eliécer Marín Trujillo; (18) Víctor Ramírez.

– regarding allegations of death threats to: (1) the members of the executive committee of the Workers' Union of the Titan Corporation, Yumbo municipality; (2) the members of the executive committee of the Association of Agriculturalists of Southern Bolívar; (3) Oscar Arturo Orozco, Hernán de Jesús Ortiz; (4) Wilson García Quiceno; (5) Henry Ocampo; (6) Sergio Díaz; (7) Fernando Cardona; (8) Aguirre Restrepo Oscar; (9) Arango Alvaro Alberto; (10) Barrio Castaño Horacio; (11) Franco Jorge Humberto; (12) Giraldo Héctor de Jesús; (13) Gutiérrez Jairo Humberto; (14) Restrepo Luis Norberto; and (15) Jorge Eliécer Marín Trujillo, the Committee urges the Government to take measures to protect trade unionists and unions and emphasizes that all these threats must be reported to the Procurator-General of the Nation. The Committee also requests the Government to keep it informed of the results of the investigations into the disappearances of Alexander Cardona and Mario Jiménez;

– noting the Government's statement that information on the forced entry onto the premises of the executive subcommittee of the CUT-Atlántico and the assault of a trade union member have been submitted to the Procurator's Office for investigation, the Committee requests the Government to keep it informed;

– the Committee requests the Government to keep it informed of the results of the administrative investigation into the possible violation of the collective agreement at Brinks enterprise;

– regarding the court cases pending sentence with regard to three dismissals at the TEXTILIA Ltd. company brought by Germán Bulla and Darío Ramírez, the Committee hopes that the judicial authorities will hand down sentences in the near future and requests the Government to keep it informed of the outcome of those cases; and

– the Committee requests the Government to send observations on all the new allegations recently presented by the CIOSL, CUT, CTC, CGTD, USO and ASODEFENSA. The allegations are as follows:

Murders

(1) César Herrera, treasurer of SINTRAINAGRO and former executive officer of the CUT; (2) Jesús Orlando Crespo García, member of the departmental board of CUT-Valle and president of the Workers' Trade Union of the municipality of Bugalagran de Valle del Cauca, murdered on 31 January 2000; (3) Guillermo Molina Trujillo, official of the Public Service Employers' and

Workers' Trade Union, murdered on 1 March 2000 in Yarumal (north of Medellín); (4) José Joaquín Ballestas García, president of the La Vereda Communal Action Board, murdered on 24 March 2000 in Ciénaga de Barbacoas (municipality of Ciénaga de Chucurí and Puerto Beccio); (5) José Atanacio Fernández Quiñonez, member of the Workers' Trade Union of the Department of Antioquía, murdered on 29 March 2000 in the municipality of San Rafael in the eastern part of the department of Antioquía; (6) Hernando Stevenis Vanegas, murdered on 24 March 2000 in La Rompida, municipality of Yondó, by a paramilitary unit that set up a base from 6.30 a.m. to 3 p.m. barely ten minutes away from the Inland Waterways Base of Barrancabermejo; (7) Julio César Jiménez, murdered on 16 March 2000 in San Tropel, municipality of Yondó, by a paramilitary unit; (8) Aldemar Roa Córdoba, murdered on 26 March 2000 in San Rafael, municipality of Yondó, by a paramilitary unit; (9) Jhon Jairo Duarte, whose body was found floating in the Magdalena river on 28 March 2000; (10) Próspero Lagares, murdered on 30 March 2000 in the vicinity of the La Ganadera ranch, municipality of Yondó, by 30 paramilitary members of the AUC; (11) Edison Bueno, murdered on 30 March 2000 in the vicinity of the La Ganadera ranch, municipality of Yondó, by 30 paramilitary members of the AUC; (12) Diomedes Playonero Ortiz, member of the executive board of the Rural Workers' Association of Valle del Río Cimitarra (ACV), murdered on 31 March 2000 in the Playonero family's El Porvenir ranch by a paramilitary unit coming from the drug and cattle ranches of Puerto Berrío. The AVC states that: (1) in a radio broadcast on 4 April the paramilitary commander "Julián" said that he was in the city as part of a plan to take over Barrancabermejo, and (2) there is a state paramilitary plan to wipe out the rural workers, inhabitants and organizations of Magdalena Medio; (13) Margarita María Pulgarín Trujillo, a member of ASONAL, murdered on 3 April 2000 in Medellín; (14) Julio César Bethancurt, member of the Workers' Trade Union of the municipality of Yurubo, murdered on 3 April 2000; (15) Islem de Jesús Quintero, member and General Secretary of the ATT, murdered on 5 April 2000 in Pereira, department of Risaralda; (16) César Wilson Cortez, member of the Electrical Workers' Trade Union of Colombia (SINTRAELECOL), murdered on 2 April 2000 in the municipality of Trinidad, department of Casanare; (17) Rómulo Gamboa, member of the Electrical Workers' Trade Union of Colombia (SINTRAELECOL), murdered on 8 April 2000 in the municipality of Trinidad, department of Casanare; (18) Alejandro Avarez Isaza, unionist, murdered on 7 April 2000 in Argelia, Antioquía; (19) Oscar Darío Zapata, delegate of the SINALTRADIHITEXCO executive board, murdered on 8 April 2000 in Girardota, Antioquía; (20) Alberto Alvarez Macea, unionist, murdered on 8 April 2000, in Montería, capital of Córdoba; (21) James Perez Chima, unionist, murdered on 10 April 2000; (22) Milton Cañas, worker at ECOPETROL and member of the Petroleum Industry Workers' Trade Union, murdered on 27 April 2000 in Barrancabermeja; (23) Humberto Guerrero Porras, worker at ECOPETROL and member of the Petroleum Industry Workers' Trade Union, murdered on 27 April 2000 in Barrancabermeja; (24) Jimmy Acevedo, worker at the Nare Cement Quarry and member of the trade union SUTIMAC, murdered on 27 April 2000; (25) Aníbal Bemberte, worker at the Nare Cement Quarry and member of the trade union SUTIMAC, murdered on 27 April 2000; (26) Carmen Demilia Rivas, president of the National Association of Hospital and Clinic Workers, Cartago Section, of the Valle del Cavaz, on 17 May 2000 at the Corazón de Jesus Hospital.

Death threats

(1) Aníbal Meneses, president of the National Trade Union of Workers of the Spinning and Textiles Industry of Colombia (SINALTRAHIHITEXCO) and of the national executive board, threatened by the Industrial Front of the National Liberation Army; (2) José Ricardo Toro Delgado, president of the National Association of Workers in Hospitals and Clinics (ANTHOC), threatened on 14 March 2000; (3) the assistant-director of the Departmental Union of Health Workers of Cesar (SISDEC) threatened in the municipality of Aguachica. (4) In a lengthy communication, ASODEFENSA alleges that its president, María Clara

Baquero Sarmiento, and two of its officials and members have again received death threats and that, despite a request to the Government, they have not been granted protection. Moreover, ASODEFENSA alleges numerous acts of anti-union discrimination (transfers, refusal to grant time off for union activities) and interference by the authorities.

Assault on demonstrators and detentions

(1) On 31 March 2000 anti-riot police broke into the premises of the Operations Centre of the Empresa de Acueducto de Bogotá to prevent workers belonging to the Workers' Trade Union of the Empresa de Acueducto from demonstrating. In the process the police manhandled the president of the trade union, Julio Beltrán, and the current president of the trade union, Abel Duarte, and arrested 11 workers;

(2) On 1 May 2000 in Medellin, the metropolitan police of the Valley of Aburrá advanced upon and arbitrarily detained 67 people participating in a commemoration march for International Labour Day. For their release, 24 of the detainees were obliged to sign a document acknowledging their responsibility for violent acts. To date, eight people are still detained, among them the trade union leader of the Departmental Association of Educators of Antioquía (ADIDA), Alberto Agueldo Rua;

(3) The Confederation of Workers of Colombia (CUT) alleges that union members and officials of the SINTRABRINKS organization have been arrested and tortured, and that one of the officials of the organization, Juanito Cabrera, has been murdered. It also alleges acts of intimidation by the BRINKS de Colombia SA company in order to induce the workers to resign from the CTC, as well as non-compliance with the collective agreement in force.

(4) The Petroleum Industry Workers' Trade Union (USO) alleges the temporary detention of the national Vice-President of the USO, Gabriel Alvis, as well as the initiation of a penal investigation against 11 USO officials.

B. New allegations

260. The International Confederation of Free Trade Unions (ICFTU) (communications dated 7 and 16 August, 29 September, 4 December 2000 and 25 January 2001), the Single Confederation of Workers of Colombia (CUT) (communication dated 5 July 2000), the World Federation of Trade Unions (WFTU) (communication dated 16 December 2000) and the World Confederation of Labour (WCL) (communication dated 9 February 2001) allege the following new acts of violence:

Murders

(1) Germán Valderrama, member of the Workers' Union of Caquetá, murdered on 15 January 2000 in Florencia-Caquetá;

(2) Danilo Francisco Maestre Montero, murdered on 3 February 2000 in the rural district of Valledupar (Atanquez);

(3) Mareluis Esther Solano Romero, murdered on 12 February 2000 in Cesar administrative district;

(4) Iván Francisco Hoyos, official of SINTRAELECOL-BOLIVAR, murdered on 15 March 2000 in Cartagena;

(5) Luis Arcadio Ríos Muñoz, murdered on 2 April 2000 in the municipality of San Carlos (Antioquía);

(6) Jesús María Cuella, member of the Teachers' Association of Caquetá (AICA-FECODE), murdered on 13 April 2000 in Florencia (Caquetá);

(7) Gerardo Raigoza, member of SER-FECODE, murdered on 19 April 2000 in Pereira (Risaralda);

(8) Jesús Ramiro Zapata, member of the Teachers' Union of Medellín (ADIDA-FECODE), murdered on 3 May 2000;

(9) Omar Darío Rodríguez Zuleta, member of the Food Workers' Union SINALTRAINAL-Bugalagrande Section, murdered on 21 May 2000;

(10) Nelson Romero Romero, official of the Teachers' Trade Union (ADEM-FECODE), murdered on 1 June 2000;

(11) Abel María Sánchez Salazar, member of the Caquetá Teachers' Trade Union, murdered on 2 June 2000 in Florencia;

(12) Gildardo Uribe, official of SINTRAOFAN-Vegachi executive subcommittee, murdered on 12 June 2000 in the municipality of Vegzalú (Antioquía);

(13) Edgar Marino Pereira Galvis, official of the CUT-Meta executive subcommittee, murdered on 25 June 2000 in the COFREM housing development;

(14) Luis Rodrigo Restrepo Gómez, president of the executive subcommittee of the Antioquía Teachers' Institutes Association, murdered on 2 August 2000 in the municipality of Ciudad Bolívar;

(15) Carmen Emilio Sánchez Coronel, official delegate of the North Santander Teachers' Trade Union;

(16) Luis Rodrigo Restrepo Gómez, president of the executive subcommittee of the Teaching Staff of Ciudad Bolívar, murdered on 2 August 2000;

(17) Arelis Castillo Colorado, murdered on 28 July 2000 in the municipality of Caucasia;

(18) Darío de Jesús Agudelo Bohórquez, member of the ADIDA trade union, murdered on 6 March 2000;

(19) Mauricio Vargas Pabón, member of the CGTD, murdered on 27 January 2000;

(20) Fabio Santos Gaviria, member of APUN, murdered on 25 February 2000;

(21) Leominel Campo Nuñez, member of SINTRAINAGRO, murdered on 23 February 2000;

(22) Franklin Moreno Torres, member of SINTRAINAGRO, murdered on 23 February 2000;

(23) Guillermo Adolfo Parra López, member of ADIDA, murdered on 24 January 2000;

(24) Anival Zuluaga, member of SINTRALANDERS, murdered on 28 February 2000;

(25) Justiniano García, member of SINTRAEMCALI, murdered on 11 March 2000;

(26) Juan José Neira, member of the Manizales Teachers' Association, murdered on 9 March 2000;

(27) Melva Muñoz López, member of Manizales Teachers' Association, murdered on 9 March 2000;

(28) Iván Franco, member of SINTRAELECOL, murdered on 19 March 2000;

(29) Alexander Mauricio Marín Salazar, member of ADEM, murdered on 12 April 2000;

(30) José Antonio Yandu, member of the Ventero Ambulan Association, murdered on 10 April 2000;

(31) Gonzalo Serna, member of the Ventero Ambulan Association, murdered on 10 April 2000;

(32) Bayron de Jesús Velásquez Durango, member of the Ventero Ambulan Association, murdered on 10 April 2000;

(33) Esneda Monsalve, member of ADIDA, murdered on 27 April 2000;

(34) Gloria Nubia Uran Lezcano, member of ADIDA, murdered on 2 May 2000;

(35) Juan Castulo Jiménez Gutiérrez, member of ADIDA, murdered on 26 April 2000;

(36) Carmen Emilia Rivas, member of ANTHOC, murdered on 17 May 2000;

(37) Javier Carbono Maldonado, member of SINTRAELECOL, murdered in July 2000;

(38) Javier Suárez, member of NACC, murdered on 5 January 2000;

(39) Jesús Antonio Posada Marín, member of ADIDA, murdered on 11 May 2000;

(40) Gustavo Enrique Gómez Gómez, member of ADIDA, murdered on 9 May 2000;

(41) Pedro Amado Manjarres, member of ASODEGUUA, murdered on 29 May 2000;

(42) José Arístides Velásquez Hernández, member of SINTRAMUNICIPIO, murdered on 12 June 2000;

(43) Jaime Enrique Barrera, member of ADIDA, murdered on 11 June 2000;

(44) Jorge Andrés Ríos Zapata, member of ADIDA, murdered on 5 January 2000;

(45) Francisco Espadín Medina, member of SINTRAINAGRO, murdered on 7 September 2000;

(46) Miguel Algene Barreto Racine, member of ADES, murdered on 2 August 2000;

(47) Cruz Orlando Benitez Hernández, member of ADIDA, murdered on 7 August 2000;

(48) Francy Uran Molina, member of ADIDA, murdered of 27 August 2000;

(49) Aristarco Arzalluz Zuñiga, member of SINTRAINAGRO, murdered on 30 August 2000;

(50) Alejandro Vélez Jaramillo, member of ASONAL JUDICIAL, murdered on 30 August 2000;

(51) Bernardo Olachica Rojas Gil, member of SES, murdered on 2 September 2000;

(52) Vicente Romana, member of ADIDA, murdered on 5 August 2000;

(53) Lázaro Gil Alvarez, member of ADIDA, murdered on 29 September 2000;

(54) Argemiro Albor Torregroza, member of the Galapa Farmers' Trade Union, murdered on 5 September 2000;

(55) Efraín Becerra, member of SINTRAUNICOL, murdered on 11 September 2000;

(56) Hugo Guarin Cortes, member of SINTRAUNICOL, murdered on 11 September 2000;

(57) Luis Alfonso Páez Molina, member of SINTRAINAGRO, murdered on 12 August 2000;

(58) Sergio Uribe Zuluaga, member of ADIDA, murdered on 25 August 2000;

(59) Bernardo Vergara Vergara, member of ADIDA, murdered on 9 October 2000;

(60) Candelario Zambrano, member of SINTRAINAGRO P.W., murdered on 15 September 2000;

(61) Jairo Herrera, member of SINTRAINAGRO P.W., murdered on 15 September 2000;

(62) Hector Acuña, member of UNIMOTOR, murdered on 16 June 2000;

(63) Julían de J. Durán, member of SINTRAISS, murdered in January 2000;

(64) Eliecer Corredor, member of SINTRAISS, murdered in January 2000;

(65) Miguel Angel Mercado, member of SINTRAISS, murdered in January 2000;

(66) Diego Fernando Gómez, member of SINTRAISS, murdered on 13 July 2000;

(67) Elizabeth Cañas, member of SINTRAISS, murdered in January 2000;

(68) Alejandro Tarazona, member of SINTRAAD, murdered on 26 September 2000;

(69) Víctor Alfonso Vélez Sánchez, member of EDUMAG, murdered on 28 March 2000;

(70) Alfredo Castro Haydar, member of the University Teachers' Association, Atlan, murdered on 10 May 2000;

(71) Edgar Cifuentes, member of ADE, murdered on 4 November 2000;

(72) Juan Bautista Banquet, member of SINTRAINAGRO, murdered on 17 October 2000;

(73) Edison Ariel, member of SINTRAINAGRO, murdered on 17 October 2000;

(74) Omar de Jesús Noguera, member of SINTRAEMCALI, murdered on 26 September 2000;

(75) Jesús Orlando García, member of the Mun Bugala Trade Union, murdered on 2 March 2000;

(76) Víctor Alfonso Vélez Sánchez, member of the Córdoba Teachers' Trade Union Association, murdered in January 2000;

(77) Darío de Jesús Borja, member of ADIDA, murdered on 1 April 2000;

(78) Esneda de las Mercedes Holguín, member of ADIDA, murdered on 27 April 2000;

(79) Bacillides Quiroga, member of SINTRAMUNICIPIO BUGA, murdered on 2 August 2000;

(80) Rubén Darío Guerrero Cuentas, member of SINTRADIAN, murdered on 20 August 2000;

(81) Henry Ordóñez, member of the Meta Teachers' Trade Union Association, murdered on 20 August 2000;

(82) Leonardo Betancourt Méndez, member of the Risaral Teachers' Trade Union Association, murdered on 22 August 2000;

(83) Luis Mesa, member of ASPU, murdered on 26 August 2000;

(84) Hernando Cuartos Agudelo, member of SINALTRAINAL, murdered on 1 September 2000;

(85) Rosalba Calderón Chávez, member of ANTHOC, murdered on 3 October 2000;

(86) Reinaldo Acosta Celemín, member of the Civil Servants' Association, murdered on 3 October 2000;

(87) Aldono Tello Barragán, vice-chairman of the Union Lotenos de Magdalena, murdered on 17 January 2001 in the city of Santa Marta;

(88) Miguel Antonio Medine Bohorguez, member of SINTRENAC, murdered on 17 January 2001 near Altagracia, District of Risenalda;

(89) José Luis Guelte, President of the Ciénaga Section of SINTRAINAGRO, murdered on 13 December 1999 in the Province of Magdalena;

(90) Juan Carlos Alvis Pinzón, relative of the Deputy Secretary-General of the General Confederation of Democratic Workers (CGTD), murdered on 25 July 2000 in Aipa;

(91) Clovis Florez, President of Agrocosta – Córdoba Section, murdered on 15 September 2000, in Montería, Córdoba.

Attempted murders

(1) Wilson Borja Diaz, President of the Workers' Federation serving the State (FENALTRASE) on 14 December 2000; he was shot by a hired gun. He is still in hospital in a critical state.

(2) Gustavo Alejandro Castro Londoño, member of the CUT executive committee for the region of Meta; he was attacked on 15 January 2001 in the city of Villavicencio. He is still hospitalized.

(3) Ricardo Navarro Bruges, President of the Workers' Union of the University of Santa Marta (SINTRAUNICOL). He was attacked on 12 January 2001 in the city of Santa Marta.

(4) Ezequiel Antonio Palma, former member of the workers' union of the municipality of Yumbo; a bomb exploded in front of his house on 11 January 2001 in the village of Yumbo, district of Valle del Cavez.

(5) Cesar Andrés Ortíz, coordinator of the youth workers of the CGTD, was the victim of a shot in the back on 26 December 2000.

Disappearances

(1) Alexander Cardona, executive committee member of USO;

(2) Ismael Ortega, treasurer of Sintraproaceites San Alberto (Cesar);

(3) Walter Arturo Velásquez Posada, Nueva Floresta School, municipality of El Castillo in the education district of El Ariari, Meta administrative district;

(4) Gilberto Agudelo, president of the National Trade Union of University Workers of Colombia (SINTRAUNICOL);

(5) Nefatalí Romero Lombana, from Aguazúl (Casanare) and Luis Hernán Ramírez, from Chámeza (Casanare), members of SIMAC-FECODE;

(6) Roberto Cañarte M., member of SINTRAMUNICIPIO Bugalagrande, from the Paila Arriba (Valle) rural district;

(7) Germán Medina Gaviria, member of SINTRAEMCALI, on 14 January 2001 in the district of El Porvenir, city of Cali.

Death threats

(1) Trade union officials from Cali, Buenaventura, Yumbo, Cartago, Bugalagrande, Tuluá, Sevilla and the executive committee of the CUT-Valle executive subcommittee were threatened with death by the paramilitary group "Bloque Calima".

(2) The entire executive board of the executive subcommittee of CUT-Antioquía were threatened, among them Jesús Ruiz, Amparo Chavarría and Carlos Posada.

(3) Diego Osorio, president of the CUT-Risaralda executive subcommittee was forced to leave the country because of death threats.

(4) Gloria Inés Ramírez, currently president of FECODE and without the protection necessary to guarantee her trade union activities, is receiving death threats.

(5) In June 2000, Héctor Castro, member of the executive committee of the CUT-Valle executive subcommittee had to leave the country with his family because of death threats.

(6) The trade union officials of Segovia and Remedios (Antioquía) are receiving death threats and do not benefit from measures or guarantees to protect their trade union activities.

(7) Executive board members of SINTRAINAGRO and SINTRAPALMAS in Puerto Wilches, administrative district of Santander, have been threatened by leading paramilitaries of the Workers' Union of Officials and Public Employees of Puerto Wilches (USTROPWL). Moreover, union officials of USTROPWL, SINTRAINAGRO and SINTRAPALMAS have been forced to resign because of threats.

(8) The entire National Executive Committee of the USO in Barrancabermeja (Santander) have received death threats and have been declared part of a military objective by the paramilitary.

(9) Paramilitaries have threatened Pablo Vargas, former treasurer of SINTRAINAGRO (Puerto Wilches) and Nicanor Arciniegas Niño, former president of USTROPWL (Puerto Wilches).

(10) Following the murder of five workers, including Alvaro Pimiento, secretary-general of the trade union, the entire union (70 people) had to refuse work in the municipality of Sabana de Torres.

(11) Three members of the Santander Teachers' Trade Union (SES-FECODE), in the municipality of Sabana de Torres, were threatened.

(12) All members of the executive committee of the Workers' Trade Union of Sabana de Torres executive subcommittee were threatened by paramilitary groups. Some 177 members of ANTHOC in Antioquía, Valle, Boyacá, Cundinamarca, North Santander, Guaviare, Caquetá and Tolima have been threatened and displaced. All the members of the executive committee of the CUT-Atlántico executive subcommittee have been threatened. In the same administrative district, José Tinoco, information secretary for SINTRAINDELEC and Jorge Arévalo, secretary for solidarity for SUTIMAC, and all the members of SINTRAIMAGRA have received death threats.

(13) Carlos Jiménez and Rigoberto Bustamante, workers from Boyacá Electricity, Oscar Arturo Orozco and José Rodrigo Acevedo Pérez, workers at the Caldas Hydroelectric Power Plant and president of SINTRAELECOL-Caldas section and national executive committee member and secretary for human rights respectively, and Isabel López, worker for Arauca Electricity, all belonging to SINTRAELECOL, have been threatened. At the Antioquía Energy Company, those threatened include Nicolás Aritizabal, Juan Manuel Giraldo, Nelson Torres, Josué Sánchez, Luis Oscar Toro, José Albertino Quinchía, Cecilia Segura de M., Wilmer Calderón, Víctor Bergara, Luis Enrique Gómez, Omar Sepúlveda, and Walter Jaramillo, Rubén Castro, worker from Electrocosta and president of SINTRAELECOL-Bolivar and Carlos Abello, worker from CODENSA and president of SINTRAELECOL-Bogota, Alex Iván Ortíz, worker at the Cauca Electricity Power Board and national president, Benigno Roncón Martínez and Jesús Anaya Castillo, workers from Corelca.

(14) The following members of the National Union of Bank Employees (UNEB) have been threatened at the national level: Bogotá (18); Medellín (8); Apartadó (1); Cartagena (2); Pasto (1); Fusagasugá (1); Cali (4) and Barranquilla (4). There are also a number of criminal cases before the courts against trade union officials for carrying out their trade union activities.

(15) Luis Elogio Hernández Atehortúa, member of SINTRAOFAN-Vegachí executive subcommittee was forced to move to another city owing to threats against his life, and Sinforiano Paéz and Antonio Cañaveral were threatened.

(16) Juan de la Rosa Grimaldos, President of the trade union organization ASEINPEC, was threatened in May 2000 during a dispute with the authorities of the National Penitentiary Institute.

C. The Government's reply

261. In its communications of 30 August and 23 September 2000 and 1 February 2001, the Government states that in order to clarify the divergences with regard to the number of murders of trade union officials and members, the Inter-institutional Commission for Promotion and Protection of Workers' Human Rights set up a subcommission consisting of representatives of the Ministry of Labour and Social Security, the Office of the Public Prosecutor, the Attorney-General of the Nation, the United Nations High Commission of Human Rights, the People's Advocate, the Secretary-General of the Episcopal Conference, the Single Confederation of Workers of Colombia and the Vice-President of the Republic. The Government adds that on 31 January 2001, the subcommission presented the results of its work, consisting of the verification of 842 cases during the period of 1991-2000; they also agreed to continue their work and to meet with the Public Prosecutor and the People's Advocate in order to expedite criminal proceedings.

262. The State has made successful advances against the illegal armed groups that are largely responsible for the violation of human rights of the Colombian people. Between January 1998 and December 1999, according to official reports from the military, the national police, the Technical Investigative Unit of the Attorney-General of the Nation and the Security Administrative Department, the following results have been achieved:

Members of the "self-defence" groups – captured	484
Members of the "self-defence" – combat casualties	7

n.b.. These data do not include proceedings filed with the Attorney-General's Office.

Official reports from the military give the following information on guerrilla groups:

Operation	1998	1999	2000
Guerrilla fighters – captured	2 001	786	137*
Guerrilla fighters – combat casualties	739	1 019	155*

* n.b.. Data for the first two months of 2000.

263. Concerning the state proceedings against agents of the State accused of violating human rights, the Government explains that the State has taken steps against some of its own workers who have exceeded their brief and ignored their duties, thereby violating human rights. The outcome of the investigation of the Procurator-General of the Nation is as follows:

Civil servants involved

Organization	Number of people involved		
	1997	1998	1999
Those who have been charged	136		
Those who have been sentenced			
National police	59	66	42
National army	27	77	15
Security Administrative Department	19	25	20
National Penitentiary Institute	2		
Navy	4		
Other organizations		7	1
Total number of people sentenced	111	175	78

Classification of the main decisions (sentences and conclusion of proceedings)

Activity	1997	1998	1999	Total
Torture	41	61	44	146
Disappearances	6	12	13	31
Multiple murders	2	5	4	11
Violation of international humanitarian law	0	0	2	2
Genocide	0	0	0	0
Total	51	83	64	198

In conclusion, as can be seen from the information provided the State has been carrying out disciplinary action against those responsible for violating human rights.

264. With regard to protection of trade union organizations and officials, the Government declares that the Security Administrative Department is currently paying the salaries of the bodyguards protecting trade union officials. In order to guarantee protection for other trade union officials and trade union premises, negotiations with regard to financial resources are in progress with the Treasury. For the year 2000, an additional allotment of 600 million pesos has been made to the protection programme and all the necessary measures have been taken to increase the budget and to ensure the continuation of this programme. According to information provided by the Ministry of the Interior's Human Rights Office, the protection programme has allocated the following resources to the safety and protection of trade union officials:

Programme subsidies to trade union leaders January 1999 to 30 April 2000

Initiative	Trade unions	
	Amount	Number
Domestic travel	20 801 175.00	81
Travel allowance	26 206 106.20	125
Protection (shielding) of offices	1 799 949 835.80	49
Total	1 846 957 117.00	206

265. The Government indicates that during the year 2000, the Committee on Risk Regulation and Assessment investigated and adopted security measures to protect, among others, a large number of trade union leaders and organizations (51 cases). More specifically, the Government indicates that the measures taken included: escorts, bodyguards, vehicles, cellular phones, travel documents for foreign countries, self-defence courses, shielding of trade union premises, etc.

266. Regarding the new allegations presented by the ICFTU and the trade union centrals of Colombia [see 322nd Report of the Committee, para. 37], the Ministry provides the following information:

Murders

- César Herrera, trade union official of SINTRAINAGRO, murdered on 13 December 1999. According to information provided by the president and other executive committee members of this trade union, his murder is attributed to the FARC. The trade union itself had assigned him duties in the municipality of Apartadó, far from his home and work, but motivated by the wish to see his family he ignored the security measures and exposed himself to risk by returning to the municipality of Ciénaga, where he was assassinated. It should be added that following the request for protection which was presented by the trade union, the coordinator of the human rights assessment group of the Ministry of Labour and Social Security, in a letter dated 15 September 1999 to Guillermo Rivera, President of SINTRAINAGRO, stated the following:

> The Committee on Risk Regulation and Assessment, coordinated by the Ministry of the Interior, yesterday received information on the implementation of protection measures for SINTRAINAGRO and its officials. The relevant risk assessment was carried out on 24 May 1999. The Committee has postponed a decision on adopting protection measures until such time as a specific request for protection is made through Jesús González or Domingo Tovar of the executive of the CUT, to which the trade union belongs. This corresponds to suggestion made by them in their capacity as trade union representatives on the Committee.

Therefore, it was the responsibility of the trade union delegates on the Committee on Risk Regulation and Assessment to present the cases that SINTRAINAGRO requested for assessment and approval. In effect, between October and December 1999 the Committee was presented with protection requests for a number of trade union officials belonging to the SINTRAINAGRO-Puerto Wilches section. The other sections did not present any requests and the trade union representatives on the Committee presented no protection requests referring specifically to the trade union leader César Herrera. Investigation into this crime is taking place under file No. 708.

On 28 January 2000, the Attorney-General's Office assigned the investigation to the Human Rights Unit under Decision No. 0078. Evidence is currently being collected.

- Jesús Orlando Crespo García, President of the Workers' Trade Union of the Municipality of Bugalagrande and member of the departmental committee of CUT-Valle, murdered on 31 January 2000. According to public communiqué No. 083 dated 2 February 2000, the director of the department of human rights of CUT states the following:

> This crime took place when our official was returning from an area where there were farmers displaced by the terror caused by the paramilitaries (93 murders between August 1999 and January 2000 including massacres, selective murder of farmers, human rights defenders, and lawyers for the displaced). Even with a figure of 93 murders, the national, departmental, and municipal governments are doing nothing to disband this paramilitary group "Bloque Calima".

Having carried out the relevant investigations, no request for protection for this trade union leader or for his trade union organization was found. The area from which the trade union leader was returning is, according to the aforementioned communiqué, an area of paramilitary terrorist activity. This case was filed as No. 186 with the Specialist Unit of the Attorney-General's Office that was created for this purpose. This unit ordered the SIJIN (Judicial Police) of Tuluá to carry out an investigative mission to gather evidence and, to date, the declaration made by Jorge Humberto Crespo has been received, among others.

- Guillermo Molina Trujillo (Yarumal). File No. 3637. On 24 March 2000 the official report was sent to the Specialist Unit in Medellín, which is currently collecting evidence.

- José Joaquín Balestas Quiñónez, Hernando Stevenis Vanegas, Julio César Jiménez, Aldemar Roa Córdoba, Jhon Jairo Duarte, Próspero Lagares Edison Bueno. Although these farmers have no trade union link, the Government has requested information on progress in the investigations from the Attorney-General's Office. This is being carried out in order to establish whether these acts of violence that are part of the complaint to the ILO are related to any political, state, or enterprise infringement of the exercise of freedom of association.

- José Atanasio Fernández Quiñónez (Antioquía). File No. 1302. The San Rafael Specialist Unit in charge of the investigation and on 24 April 2000 an order was issued to identify those responsible.

- Diomedes Playonero Ortíz (San Gil). The Vélez Prosecutor's Office initiated the hearing of the investigation. On 1 June 2000 proceedings were transferred to the Vélez Section Unit of the Prosecutor's Office. Evidence is currently being collected.

- Julio César Betancurt (Yumbo). File No. 116491. This case was assigned to investigator No. 157 of the Yumbo Section Unit of the Prosecutor's Office. The police version of the occurrence has been heard but no link between the deceased and trade union meetings has been established.

- Islem de Jesús Quintero (Pereira). File No. 66142464. The investigation was assigned to Prosecutor's Office *(unidad de vida)*. On 12 April 2000 the preliminary investigation began, telephone tapping was ordered, and an action group with DAS investigators was formed. Evidence is currently being collected.

- César Wilson Cortes (Casanare). File No. 354 of the Paz de Ariporo Section Unit of the Prosecutor's Office (administrative district of Casanare). Worker for the Colombia Electricity Company. The Prosecutor's Office in charge of the hearing authorized the technical investigation body (Prosecutor's Office) and the local DAS to collect evidence.

- Rómulo Gamboa (Casanare). File No. 354 of the Paz de Ariporo Section Unit of the Prosecutor's Office (Casanare). Worker for the Colombia Electricity Company. The Prosecutor's Office in charge of the hearing authorized the CTI-Prosecutor's Office and the local DAS to collect evidence. According to evidence submitted by the executive board for human rights of the national police, the trade union members César Wilson Cortes Cáceres and Rómulo Gamboa, machine operators at the Electricity Company, were murdered on 8 April in the municipality of Trinidad, administrative district of Casanare, by the 28th front of FARC which mistook them for members of the self-defence groups. José Heli Pérez and Julio Vicente Camacho were wounded in the same attack and the rebels "apologised for the aforementioned confusion". Both those murdered and those wounded were registered members of SINTRAELECOL.

- Oscar Darío Zapata (Antioquía). File No. 2536. The Girardota Section Unit of the Prosecutor's Office is carrying out the investigation and evidence is currently being collected.

- James Pérez Chima (Montería). File No. 9246. The investigation began officially with the Specialist Unit of the Prosecutor's Office presenting the case on 11 April 2000 and sworn declarations from four people were taken on 12, 24 and 26 April. A judicial inspection of the victim's workplace also took place and documents were collected as evidence. It seems that the examination of the declarations showed that the deceased had no trade union link and that possible motives for the crime might stem from situations linked to political activities in the past and the violence that reigns in some of the country's universities, among others the University of Córdoba, through threats from the self-defence groups and the presence of left-wing political organizations.

- Milton Cañas (Barrancabermeja). File No. 19104. The Prosecutor's Office 4 of Barrancabermeja called for investigation of the case and ordered evidence to be collected in order to identify those responsible.

- Humberto Guerrero Porras (Barrancabermeja). File No. 19103. The Prosecutor's Office 9 has received various witnesses' accounts and ordered the CTI to identify those responsible. The investigation is in the preliminary stages and evidence is being collected.

- Jimmy Acevedo (La Betulia). It is assumed that this relates to Jimmy Alexander Hincapié Acevedo. File No. 809 with the Puerto Nare Section Unit of the Procurator's Office. Evidence is being collected to see whether this case should be sent to the Medellín Specialist Unit of the Prosecutor's Office. According to information submitted by Nare Cement Company, this person did not and never has worked for the company.

- Anibal Bemberte (or Pemberti) (La Betulia). File No. 809 with the Puerto Nare Section Unit of the Prosecutor's Office. Evidence is being collected to see whether this case should be sent to the Medellín Specialist Unit of the Prosecutor's Office. According to information submitted by the Nare Cement Company, this person did not and never has worked for the company.

- Carmen Emilia Rivas (Cartago). File No. 1658. With Prosecutor No. 36 of the Cartago Section Unit of the Prosecutor's Office (Valle). On 19 May 2000 a preliminary investigation began and an order was issued to collect evidence and send an investigative mission to the Cartago CTI.

Assault on demonstrators and detentions

- Faced with the blockade of the premises of the Operations Centre of the Empresa de Acueducto de Bogotá by workers belonging to the trade union organization of the company, the police intervened to guarantee public access and this gave rise to a confrontation and the detention of workers for a number of hours. As soon as company representatives and trade union leaders, among them the president of the trade union, Julio Beltrán, sat down to discuss those issues which gave rise to the trade union action, normality was re-established. The Human Rights Office of the Ministry of Labour and Social Security informed the Human Rights Unit of the national police of the situation for the purpose of the relevant investigation.

- Regarding assault on demonstrators on 1 May 2000 in Medellín, Brigadier-General Luis Alfredo Rodríguez Pérez, commanding officer of the Medellín metropolitan police, submitted a report that can be summarized as follows: In Medellín, on 1 May, the workers' centrals organized a security council in the Mayor's office which was attended by the presidents of the workers' centrals, the Mayoress, the Secretary of the Government and the commanding officer of the metropolitan police. The presidents of the trade unions undertook to ensure that there would be no public clashes during the march and the police undertook to provide security every two or three blocks along the route of the march. The commanding officer of the police expressly requested the involvement of the provincial and the regional Procurators' Offices who appointed representatives. Of the 68 people arrested, ten were brought before the Judicial Police Section Unit of the Prosecutor's Office and three minors were brought before the Juvenile Court Division of this section. When they were searched, pamphlets relating to the ELN guerrilla group were found. The remaining detainees were brought before the permanent municipal examiner No. 3. Subsequently, it was confirmed by the Procurator's Office and the workers' organizations that all those detained had been released. The procurators in question can testify to the precautions taken by the police in the aforementioned situation to control the disturbances that occurred in accordance with the standards laid down in the National Police Code and Decision No. 326 of 5 May 1999 issued by the Medellín Mayoral Office. A human rights' representative of the National Trade Union School was present and witnessed the treatment of the detainees, which followed current guidelines.

267. The Government states that with regard to the alleged acts of violence against trade union officials and members referred to in the annex to the case in the 322nd Report, result of the ongoing inquiries will be sent to the Committee of Freedom of Association in the near future.

268. Regarding the trade union dispute between Brinks de Colombia SA and the trade union organization of that company, the Government indicates that the Ministry of Labour and Social Security, in Decision No. 3023 of 28 December 1999, ordered that a compulsory arbitration tribunal be set up, and this commenced work in the year 2000. The judges have still not presented a ruling which will put an end to this labour dispute.

269. As soon as the judgements are handed down by the judicial authorities for the proceedings concerning dismissals in the Textilia Ltda. company, initiated by Germán Bulla and Darío

Ramírez, the Government will communicate these to the Committee on Freedom of Association.

270. Regarding the alleged murders of the Colombian trade union members, which took place between November 1999 and June 2000, the Government provides the following information.

- Gladys Florez García. The investigation is being carried out by the military court of the first instance, which is located on the premises of Infantry Battalion No. 14 "Antonio Ricaurte", signed: Major Carlos Mario Jaramillo Vargas, commander of the Santander Gaula Rural Group. The Attorney-General of the Nation states that the investigation into the murder of Gladys Florez García has been filed under No. 18192 (Prosecutor's Office 9a) Bucaramanga Section. It seems that it can be inferred that this case had no direct link with trade unionism.

- Rodrigo Remolina Gutiérrez and Eduardo Remolina Gutiérrez. These people have no trade union link. According to information provided by the Prosecutor-General's Office: "The situation took place in Floridablanca where Rodrigo and Eduardo Remolina Gutiérrez were also abducted. They were conducted to the Yarima military base. Eduardo Remolina fled and is presumed alive. Rodrigo Remolina has disappeared."

- Guillermo Adolfo Parra López (Antioquía). File No. 1268 at the Santa Bárbara Prosecutor's Office. On 1 February 2000 the proceedings were turned over to the Medellín Specialist Unit of the Prosecutor's Office. The investigation is currently in the process of collecting evidence.

- Mauricio Vargas Pabón (Bogotá). File No. 41998. Originally, proceedings were opened by the Santafé de Bogotá 38th Section Prosecutor's Office. Subsequently, the file was reassigned by the National Prosecutor's Office under Decision No. 309 to the Specialist Unit of the Prosecutor's Office, Terrorism Unit.

- Danilo Mestre Montero (Valledupar). File No. 122175-433. The investigation began on 3 February 2000 and the CTI received an investigation order to begin collecting evidence. The investigation is being carried out by a section prosecutor *(unidad de vida)* from the Valledupar Prosecutor's Office and evidence is being collected.

- Leominel Campo Núñez (Apartadó). File No. 6387. On 25 February 2000 the prosecutor for the hearing issued investigation orders to the judicial police to begin collecting evidence.

- Franklin Moreno Torres (Valledupar). File No. 6386. On 6 March 2000 the CTI received an investigation order to begin collecting evidence.

- Darío de Jesús Agudelo Bohórquez (Chigorodó). Preliminary investigations have been under way since 13 March 2000. These are being carried out by the Specialist Unit of the Prosecutor's Office of Medellín. Orders for an investigative mission to collect evidence were issued.

- Melva Muñoz López (Manizales). File No. 34975. The Manizales Prosecutor's Office, Unit 14 *(unidad de vida)* initiated the hearing of the investigation. The proceedings are in the preliminary stages without, to date, the culprit being identified.

- Justiniano García (Cali). File No. 360435. Investigation is being carried out by the Section Unit No. 39 *(unidad de vida)* of the Prosecutor's Office. Investigation orders have been issued to the judicial police and sworn declarations have been taken from

the family of the victim. There has been no link established between the deceased and trade union activities. This person worked in the Cali municipal enterprises, a state entity that six years ago granted him a pension. He did not belong to any union.

- Iván Franco Hoyos (Bolívar). File No. 48531. The Specialist Unit of the Prosecutor's Office 5 is in charge of the hearing of this investigation and has issued investigation orders to SIJIN, DAS and CTI.

- Esneda Monsalve (La Betulia). File No. 809. Investigation is being carried out by the Puerto Nare Section Unit of the Prosecutor's Office. Evidence is being examined to see if this case should be sent to the Medellín Specialist Unit of the Prosecutor's Office.

- Castulo Jiménez (La Unión). File No. 2438. Investigation is being carried out by the Ceja Section Unit of the Prosecutor's Office which has issued an investigation order to the SIJIN to collect evidence.

- Jesús Ramiro Zapata Hoyos (Antioquía). File No. 782. Under Decision No. 443 of 5 May 2000 this file was moved from the Segovia Section Unit of the Prosecutor's Office to the National Human Rights Unit. The investigation is in the preliminary stages.

- Nelson Arturo Romero Romero (Villavicencio). File No. 22343. The hearing was begun by Section Unit 10 of the Prosecutor's Office, an investigative mission was ordered to find the identity of witnesses to the murder and sworn declarations have been taken from the wife and son of the deceased. Evidence is currently being collected.

D. The Committee's conclusions

271. *The Committee observes that the allegations pending in the present case relate mainly to acts of violence (murders, disappearances, kidnappings, physical aggression, death threats and detentions) against trade union officials and members from 1995 until recently, as well as raids of trade union premises and anti-union dismissals.*

Acts of violence against trade union officials and members

272. *Firstly, the Committee expresses its most grave concern at the new allegations of violence reported by the complainant organizations relating mainly to murders, attempted murders and disappearances of, and death threats directed at, trade union officials and members. The Committee regrets that although it observed in its previous report that during the 1998-99 period there had been a reduction in the number of trade union officials and members who had been murdered, since the direct contacts mission in February 2000 until October 2000, more than 100 murders had been reported and, so far, two murders, four attempted murders and a disappearance have been reported for 2001. Specifically, the 1998 figures provided to the direct contacts mission for the number of murders of trade union officials and members was 91 according to the National Trade Union School and 27 according to the Government. In 1999, the figures were 69 according to the National Trade Union School and 21 according to the Government. According to the allegations for the year 2000 the number of murders was more than 100.*

273. *The Committee deeply deplores this resurgence of violence against trade union officials and members stated by the complainants and once again recalls that "freedom of association can only be exercised in conditions in which fundamental human rights, and in*

particular those relating to human life and personal safety, are fully respected and guaranteed" and that "the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and it is for governments to ensure that this principle is respected" [see ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, paras. 46-47]. The Committee urges the Government in the strongest terms to take immediate steps to initiate inquiries in order to clarify these instances of violence and to promptly and fully punish those responsible.*

274. *The Committee deeply regrets that, once again, it must observe that in most of the cases of murders, murder attempts or disappearances of trade union officials and members, those responsible have not been arrested and punished and, according to the most recent replies from the Government, this tendency, as in previous years, continues unchanged. In this respect, the Committee cannot accept the existing degree of impunity and once again recalls that "the absence of judgements 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. 55]. In these circumstances, the Committee urges the Government to make vigorous efforts against the serious and intolerable situations of impunity and to keep it informed of developments.*

275. *As regards the Committee's recommendation to convene a working group of independent representatives accepted by both parties to clarify the enormous divergences in the figures given for trade union officials and members murdered over the past ten years, the Committee notes that the Government states the following: (1) that a subcommission has been set up within the Inter-institutional Commission for the Promotion and Protection of Workers' Human Rights, which is part of the Ministry of Labour; (2) that this subcommission presented its findings on 31 January 2001 concerning the verification of 842 cases for the period of 1991-2000; and (3) the subcommission continues its work and will institute criminal proceedings. The Committee requests the Government to keep it informed of the continuation of the work of this subcommission and to forward a list of the 842 people murdered.*

276. *The Committee recalls that it had requested the Government to order an urgent and global inquiry at the institutional level into the participation of public officials (especially officials of the armed forces) in the creation of self-defence or paramilitary groups and the passivity, connivance or collaboration of such officials by deed or omission vis-à-vis these groups and the violation of human rights in general that this entails. In this respect, the Committee notes the following information from the Government: (1) steps are being taken against public officials who exceed their duties and ignore their obligations and thereby violate human rights; and (2) 198 officials have been brought to trial and convicted in 1997, 1998 and 1999. The Committee requests the Government to provide information concerning the table which it sent setting out the number of civil servants who have violated human rights given that the parts "those who have been charged" and "those who have been sentenced" do not contain any numbers for 1998 and 1999 (contrary to the information communicated for 1997). The Committee also requests the Government to communicate the statistics concerning the civil servants charged with human rights violations for 2000. The Committee requests the Government to keep it informed of all new inquiries, and in particular of the sanctions that are imposed on public officials who have taken part in some way in acts of violence against trade union officials and members, and insists once again on the need to carry out global inquiries into the conduct of public officials.*

277. *As regards the adoption of radical and systematic steps to disband the self-defence groups wherever they operate and to neutralize and punish all their leaders, members and*

financial backers, the Committee notes the Government's statement that between January 1998 and December 1999, 484 members of self-defence groups were captured and 72 members were casualties of the fighting. In this respect, the Committee observes that the figures provided are similar to those obtained by the direct contacts mission that visited the country in February 2000, and deeply regrets that the Government has not provided information on the steps taken against these self-defence groups during the year 2000. In these circumstances, the Committee urges the Government to continue its efforts in the fight against these groups and to keep it informed of the results. The Committee insists that in the near future results will be achieved in disbanding the paramilitary groups and that those responsible will be punished.

Allegations concerning acts of violence that are being investigated

278. *Regarding the allegations of acts of violence against trade union officials and members (murders, physical aggression, detentions and death threats) that the Government had announced that it was investigating (see Annex I), the Committee observes that the Government has provided no new information. In this respect, the Committee deeply regrets that despite the time elapsed, the proceedings have not been concluded, neither have those responsible for the situation in question been arrested and/or convicted. In these circumstances, the Committee requests the Government to keep it informed of the progress and of the outcome of the inquiries currently under way.*

Allegations concerning violent acts that were pending from the June 2000 meeting and new allegations

279. *Regarding the murders of trade union officials and members, the Committee notes the Government's statement that judicial inquiries have begun for the following people: (1) Cesar Herrera; (2) Jesús Orlando Crespo García; (3) Guillermo Molina Trujillo;(4) José Joaquín Ballestas García; (5) José Atanacio Fernández Quiñónez; (6) Hernando Stevenis Vanegas; (7) Julio César Jiménez; (8) Aldemar Roa Córdoba; (9) Jhon Jairo Duarte; (10) Próspero Lagares; (11) Edison Bueno; (12) Diomedes Playonero Ortiz; (13) Margarita María Pulgarín Trujillo; (14) Julio César Bethancurt; (15) Islem de Jésus Quintero; (16) César Wilson Cortes; (17) Rómulo Gamboa; (18) Alejandro Alvarez Isaza; (19) Oscar Darío Zapata; (20) Alberto Alvarez Macea; (21) James Pérez Chima; (22) Milton Cañas; (23) Humberto Guerrero Porras; (24) Jimmy Acevedo; (25) Aníbal Bemberte; (26) Carmen Demilia-Rivas; (27) Guillermo Adolfo Parra López; (28) Mauricio Vargas Pabón; (29) Danilo Mestre Montero; (30) Leominel Campo Nuñez; (31) Franklin Moreno Torres; (32) Darío de Jésus Agudelo Bohorquez; (33) Melva Muñoz Lopez; (34) Justiniano García; (35) Ivan Franco Hoyos; (36) Esneda Monsalva; (37) Juan Castulo Jiménez Gutiérrez; (38) Jesús Ramiro Zapata Hoyos; (39) Nelson Arturo Romero Romero. In this respect, the Committee hopes that the inquiries currently under way will clarify these instances of violence and that those responsible will be promptly and fully punished. The Committee requests the Government to keep it informed of the outcome of these inquiries (the names of these people are to be found in Annex I).*

280. *The Committee deplores that the Government has not sent its observations regarding the considerable number of trade union officials and members who have been murdered or have disappeared, or who have been the victims of an attempted murder (see Annex II). In these circumstances, the Committee urges the Government to send it its observations without delay.*

Physical aggression and detentions

281. *Regarding the outstanding allegations on the raid by anti-riot police on the premises of the Operations Centre of the Empresa de Acueducto de Bogotá to prevent workers belonging to the trade union of the company from demonstrating, and the man-handling of the president of the trade union and detention of 11 workers by the police, the Committee notes the following information provided by the Government: (1) faced with the blockade of the premises of the company by workers belonging to the trade union organization of the company, the police intervened to guarantee public access and this gave rise to a confrontation and the detention of workers for a number of hours; (2) as soon as company representatives and trade union leaders sat down to discuss those issues which gave rise to the trade union action, normality was re-established; and (3) the Human Rights Unit of the National Police were informed of the situation so that the relevant inquiries might be carried out. In these circumstances, the Committee requests the Government to keep it informed of the outcome of the inquiries.*

282. *Regarding the allegations of the assault and arbitrary detention of 67 people participating in a commemoration march for International Labour Day by the metropolitan police of the Valley of Aburrá on 1 May 2000 in Medellín and the subsequent release of 24 of the detainees after their having signed a document acknowledging their responsibility for violent acts, the Committee notes the following information provided by the Government: (1) 68 people were arrested, ten were brought before the Judicial Police Section Unit of the Prosecutor's Office and three minors were brought before the Juvenile Court Division of this section because, when they were searched, pamphlets relating to the ELN guerrilla group were found; (2) the remaining detainees were brought before the permanent municipal examiner No. 3; and (3) all those arrested were eventually released. In this respect, the Committee regrets that the Government has not provided information on the reasons for the alleged assaults and detentions. In these circumstances, the Committee requests the Government to take immediate steps to initiate an inquiry into these allegations and, if the police have exceeded their authority, to take steps to sanction those responsible. The Committee requests the Government to keep it informed of the outcome of the inquiry.*

283. *The Committee regrets that the Government has not sent its observations on the following allegations that had remained outstanding at its June 2000 meeting: (1) the Confederation of Workers of Colombia (CTC) alleges that union members and officials of the SINTRABRINKS organization have been arrested and tortured, and that one of the officials of the organization, Juanito Cabrera, has been murdered. It also alleges acts of intimidation by the BRINKS de Colombia company in order to induce the workers to resign from the CTC, as well as non-compliance with the collective agreement in force; and (2) the Petroleum Industry Workers' Trade Union (USO) alleges the temporary detention of the national vice-president of the USO, Gabriel Alvis, as well as the initiation of a penal investigation against 11 USO officials. The Committee requests the Government to begin inquiries into these allegations without delay and to inform it of the results.*

Death threats

284. *Regarding the allegations of death threats to trade union officials and members, the Committee notes the following information provided by the Government: (1) for the year 2000, an additional allotment of 600 million pesos has been made to the protection programme and that measures have been taken to increase the budget and ensure the continuation of this programme; and (2) positive steps have been taken with regard to 51 of the alleged cases. The Committee requests the Government to take immediate steps to protect all the trade union officials and members mentioned in the allegations as having been threatened.*

Other allegations

285. *Regarding the allegation that remained pending due to the administrative inquiry into the possible violation of the collective agreement at the BRINKS company, the Committee notes the Government's statement that a decision of December 1999 ordered that a compulsory arbitration tribunal be set up and that the judges have still not presented a ruling on this issue. In this respect, the Committee regrets that the Government has sent no information regarding the administrative inquiry that was begun. However, noting that an arbitration tribunal has been set up to deal with the current conflict at the company, the Committee requests the Government to inform it of the decision that is handed down.*

286. *Regarding the judicial proceedings concerning dismissals in the Textilia Ltda. company, initiated by Germán Bulla and Darío Ramírez, that are awaiting decisions, the Committee notes that the Government states that as soon as the decisions are handed down, these will be sent to the Committee. The Committee requests the Government to keep it informed of the outcome of these proceedings.*

287. *The Committee regrets that the Government has not sent information on the inquiry under way relating to the raid on the premises of the executive subcommittee of the CUT-Atlántico and the assault on a trade union member during this raid; neither has information been sent on whether an inquiry into the raid on the headquarters of FENSUAGRO and surveillance of its president by the armed forces has begun. In this respect, the Committee requests the Government to take steps to initiate inquiries in order to clarify these instances of violence and to promptly and fully punish those responsible. The Committee also requests the Government to take immediate steps to ensure that such situations do not occur again in the future.*

288. *Finally, the Committee requests the Government to communicate its observations concerning the allegations recently transmitted by the complainant ASODEFENSA (communication of 23 February 2001).*

The Committee's recommendations

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

(a) The Committee deeply deplores the resurgence of violence against trade union officials and members stated by the complainants (more than 100 murders in the year 2000 and two murders, four attempted murders and one disappearance so far for 2001), and urges the Government in the strongest terms to take immediate steps to initiate inquiries in order to clarify these instances of violence and to promptly and fully punish those responsible.

(b) The Committee once again deeply regrets that the great majority of cases of murders, attempted murders or disappearances of trade union officials or members have not been brought before the court and that those responsible have not been sanctioned, and that according to the most recent information provided by the Government this tendency, as in previous years, continues unchanged. The Committee urges the Government to make vigorous efforts against the serious and intolerable situation of impunity and to keep it informed of developments.

(c) Regarding the initiation of global inquiries at the institutional level into the participation of public officials (especially officials of the armed forces) in the creation of self-defence or paramilitary groups and the passivity, connivance or collaboration of such officials by deed or omission vis-à-vis these groups and the violation of human rights in general that this entails, the Committee requests the Government to keep it informed of any new inquiries and particularly of the sanctions that are imposed on public officials that have taken part in some way in these acts of violence against trade union officials or members, and emphasizes the need to carry out global inquiries into the conduct of public officials. The Committee also requests the Government to provide information concerning the table which it sent setting out the number of civil servants who have violated human rights given that the parts "those who have been charged" and "those who have been sentenced" do not contain any numbers for 1998 and 1999 (contrary to the information communicated for 1997). The Committee also requests the Government to communicate the statistics concerning the civil servants charged with human rights violations for 2000.

(d) Regarding the adoption of radical and systematic steps to disband the self-defence groups wherever they operate and to neutralize and punish all their leaders, members and financial backers, the Committee urges the Government to continue its efforts to fight against these groups and requests to be kept informed of the results. The Committee insists that in the near future results will be achieved in disbanding the paramilitary groups and that those responsible will be punished.

(e) Regarding the convening of a working group of independent representatives accepted by both parties to clarify the enormous divergences in the figures given for trade union officials and members murdered over the past ten years, the Committee requests the Government to keep it informed of the continuation of the work of the subcommission and to forward a list of the 842 people murdered.

(f) Regarding the allegations of acts of violence against trade union officials and members (murders, physical aggression and disappearances) that the Government has announced that it is investigating (see Annex I), the Committee requests the Government to keep it informed of the progress and of the outcome of the inquiries currently under way.

(g) Deploring that the Government has not sent its observations on the considerable number of trade union officials and members who have been murdered, have received death threats or have disappeared (see Annex II), the Committee urges the Government to send its observations without delay.

(h) Regarding the outstanding allegations on the raid by anti-riot police on the premises of the Operations Centre of the Empresa de Acueducto de Bogotá to prevent workers belonging to the Workers' Trade Union of the Empresa de Acueducto from demonstrating, during which police man-handled the president of the trade union and arrested 11 workers, the Committee requests the Government to keep it informed of the outcome of the inquiries.

(i) Regarding the allegations of the assault and detention of 67 people participating in a commemoration march for International Labour Day by the metropolitan police of the Valley of Aburrá on 1 May 2000 in Medellín and the subsequent release of 24 of the detainees after their having signed a document acknowledging their responsibility for violent acts, the Committee requests the Government to take immediate steps to initiate an inquiry into these allegations and, if the police have exceeded their authority, to take steps to sanction those responsible. The Committee requests the Government to keep it informed of the outcome of the inquiry.

(j) The Committee requests the Government to initiate inquiries into the following allegations and to send it the results without delay: (1) the Confederation of Workers of Colombia (CTC) alleges that union members and officials of the SINTRABRINKS organization have been arrested and tortured, and that one of the officials of the organization, Juanito Cabrera, has been murdered. It also alleges acts of intimidation by the BRINKS de Colombia company in order to induce the workers to resign from the CTC, as well as non-compliance with the collective agreement in force; and (2) the Petroleum Industry Workers' Trade Union (USO) alleges the temporary detention of the national vice-president of the USO, Gabriel Alvis, as well as the initiation of a penal investigation against 11 USO officials.

(k) Regarding the allegations of death threats against trade union officials and members, the Committee requests the Government to take steps to protect all trade union officials and members mentioned in the allegations as having been threatened.

(l) Regarding the administrative inquiry into the possible violation of the collective agreement at the BRINKS company, and noting that an arbitration tribunal has been set up to deal with the dispute at the company, the Committee requests the Government to inform it of the decision that is handed down.

(m) Regarding the judicial proceedings concerning dismissals in the Textilia Ltda. company, initiated by Germán Bulla and Darío Ramírez that are awaiting decisions, the Committee requests the Government to keep it informed of the outcome of these proceedings.

(n) Regarding the inquiry under way relating to the raid on the premises of the executive subcommittee of the CUT-Atlántico and the assault on a trade union member during this raid, and the raid on the headquarters of FENSUAGRO and surveillance of its president by the armed forces, the Committee requests the Government to take immediate steps to initiate inquiries or to conclude those inquiries already under way, in order to clarify these instances of violence and to promptly and fully punish those responsible. The Committee also requests the Government to take steps to ensure that such situations do not occur again in the future.

(o) The Committee requests the Government to communicate its observations concerning the allegations recently transmitted by the complainant ASODEFENSA (communication dated 23 February 2001).

Annex I

Allegations for which the Government has stated that inquiries are being carried out

Murders

(1) Antonio Moreno Asprilla (12 August 1995); (2) Manuel Ballesta Alvarez (13 August 1995); (3) Francisco Mosquera Córdoba (5 February 1996); (4) Carlos Antonio Arroyo (5 February 1996); (5) Francisco Antonio Usuga (23 February 1996); (6) Pedro Luis Bermúdez Jaramillo (6 June 1995); (7) Armando Humanes Petro (23 May 1996); (8) William Gustavo Jaimes Torres (28 August 1995); (9) Jaime Eliécer Ojeda (23 May 1994); (10) Alfonso Noguera Cano (4 November 1994); (11) Alvaro Hoyos Pabón (12 December 1995); (12) Néstor Eduardo Galíndo Rodríguez (3 July 1997); (13) Erieleth Barón Daza (3 May 1997); (14) Jhon Freddy Arboleda Aguirre (3 July 1997); (15) William Alonso Suárez Gil (3 July 1997); (16) Eladio de Jesús Chaverra Rodríguez (3 July 1997); (17) Luis Carlos Muñoz Z. (3 July 1997); (18) Nazareno de Jesús Rivera García (3 December 1997); (19) Héctor de Jesús Gómez C. (22 March 1997); (20) Gilberto Casas Arboleda (11 February 1997); (21) Norberto Casas Arboleda (11 February 1997); (22) Alcides de Jesús Palacios Casas (11 February 1997); (23) Argiro de Jesús Betancur Espinosa (11 February 1997); (24) José Isidoro Leyton M. (22 March 1997); (25) Eduardo Enrique Ramos Montiel (14 July 1997); (26) Libardo Cuéllar Navia (23 July 1997); (27) Wenceslao Varela Torrecilla (19 July 1997); (28) Abraham Figueroa Bolaños (25 July 1997); (29) Edgar Camacho Bolaños (25 July 1997); (30) Félix Antonio Avilés A. (1 December 1997); (31) Juan Camacho Herrera (25 April 1997); (32) Luis Orlando Camacho Galvis (20 July 1997); (33) Hernando Cuadros Mendoza (1994); (34) Freddy Francisco Fuentes Paternina (18 July 1997); (35) Víctor Julio Garzón H. (7 March 1997); (36) Isidro Segundo Gil Gil (3 December 1996); (37) José Silvio Gómez (1 April 1996); (38) Enoc Mendoza Riasco (4 July 1997); (39) Luis Orlando Quiceno López (16 July 1997); (40) Arnold Enrique Sánchez Maza (13 July 1997); (41) Camilo Eliécer Suárez Ariza (21 July 1997); (42) Mauricio Tapias Llerena (21 July 1997); (43) Atilio José Vásquez Suárez (28 July 1997); (44) Odulfo Zambrano López (27 October 1997); (45) Alvaro José Taborda Alvarez (8 January 1997); (46) Elkin Clavijo (30 November 1997); (47) Alfonso Niño (30 November 1997); (48) Luis Emilio Puerta Orrego (22 November 1997); (49) Fabio Humberto Burbano Córdoba (12 January 1998); (50) Osfanol Torres Cárdenas (31 January 1996); (51) Fernando Triana (31 January 1998); (52) Francisco Hurtado Cabezas (12 February 1998); (53) Misael Díaz Urzola (26 May 1998); (54) Sabas Domingo Socadegui Paredes (6 March 1997); (55) Jesús Arley Escobar Posada (18 July 1997); (56) José Raúl Giraldo Hernández (25 November 1997); (57) Bernardo Orrego Orrego (6 March 1997); (58) José Eduardo Umaña Mendoza (18 April 1998); (59) José Vicente Rincón (7 January 1998); (60) Jorge Boada Palencia (18 April 1998); (61) Jorge Duarte Chávez (9 May 1998); (62) Carlos Rodríguez Márquez (10 May 1998); (63) Arcángel Rubio Ramírez Giraldo (8 January 1998); (64) Orfa Lígia Mejia (7 October 1998); (65) Macario Herrera Villota (25 October 1998); (66) Víctor Eloy Mieles Ospino; (67) Rosa Ramírez (22 July 1999); (68) Oscar Artunduaga Nuñez (1998); (69) Jesús Orlando Arévalo (14 January 1999); (70) Moisés Canedo Estrada (20 January 1999); (71) Gladys Pulido Monroy (18 December 1998); (72) Oscar David Blandón; (73) Oswaldo Rojas Sánchez (11 February 1999); (74) Julio Alfonso Poveda (17 February 1999); (75) Pedro Alejandrino Melchor Tapasco (6 April 1999); (76) Gildardo Tapasco (6 April 1999); (77) Manuel Salvador Avila (22 April 1999); (78) Esaú Moreno Martínez (5 April 1999); (79) Ernesto Emilio Fernández F. (20 November 1995); (80) Libardo Antonio Acevedo (7 July 1996); (81) Magaly Peñaranda Arévalo (27 July 1997); (82) David Quintero Uribe (7 August 1997); (83) Aurelio de J. Arbeláez (4 March 1997); (84) José Guillermo Asprilla T. (23 July 1997); (85) Carlos Arturo Moreno Lopez (7 July 1995); (86) Luis Abel León Villa (21 July 1997); (87) Manuel Francisco Giraldo (22 March 1995); (88) Luis David Alvarado (22 March 1996); (89) Eduardo Enrique Ramos M. (14 July 1997); (90) Marcos Pérez González (10 October 1998; (91) Jorge Luis Ortega G. (20 October 1998); (92) Hortensia Alfaro Banderas (24 October 1998); (93) Jairo Cruz (26 October 1998); (94) Luis Peroza (12 February 1999); (95) Numael Vergel Ortiz (12 February 1999); (96) Gilberto Tovar Escudero (15 February 1999); (97) Albeiro de Jesús Arce V. (19 March 1999); (98) Ricaurte Pérez Rengifo (25 February 1999); (99) Antonio Cerón Olarte; (100) César Herrera; (101) Jesús Orlando Crespo García; (102) Guillermo Molina Trujillo; (103) José Joaquín Ballestas García; (104) José Atanacio Fernández Quiñónez; (105) Hernando Stevenis Vanegas; (106) Julio César Jiménez; (107) Aldemar Roa Córdoba; (108) Jhon Jairo Duarte; (109)

Próspero Lagares; (110) Edison Bueno; (111) Diomedes Playonero Ortiz; (112) Julio César Bethancurt; (113) Islem de Jesús Quintero; (114) César Wilson Cortes; (115) Rómulo Gamboa; (116) Oscar Darío Zapata; (117) James Pérez Chima; (118) Milton Cañas; (119) Humberto Guerrero Porras; (120) Jimmy Acevedo; (121) Aníbal Bemberte; (122) Carmen Demilia-Rivas; (123) Guillermo Adolfo Parra López; (124) Mauricio Vargas Pabón; (125) Danilo Mestre Montero; (126) Leominel Campo Nuñez; (127) Franklin Moreno Torres; (128) Darío de Jesús Agudelo Bolosquez; (129) Melva Muñoz López; (130) Justiniano García; (131) Iván Franco Hoyos; (132) Esneda Monsalve; (133) Juan Castulo Jiménez Gutiérrez; (134) Jesús Ramiro Zapata Hoyos; (135) Nelson Arturo Romero Romero.

Murder attempts

(1) Virgilio Ochoa (16 October 1998); (2) Eugeniano Sánchez (16 October 1998); (3) Benito Rueda Villamizar (16 October 1998); (4) Gilberto Carreño; (5) César Blanco Moreno (28 August 1995); (6) Fernando Morales (1999); (7) Alberto Pardo (1999); (8) Esaú Moreno (1999).

Physical aggression

(1) Public enterprises – Cartagena (29 June 1999); (2) César Castaño (6 January 1997); (3) Luis Cruz (6 January 1997); (4) Janeth Leguizamón – ANDAT (6 Jnauary 1997); (5) Mario Vergara; (6) Heberto López, N.P.; (7) TELECOM Workers (13 October 1998); (8) Protext march Plaza de Bolívar (20 October 1998).

Disappearances

(1) Jairo Navarro (6 June 1995); (2) Rami Vaca (27 October 1997); (3) Misael Pinzón Granados (7 December 1997); (4) Justiniano Herrera Escobar (30 January 1999); (5) Rodrigo Rodríguez Sierra (16 February 1995); (6) Ramón Alberto Osorio Beltrán (13 May 1997).

Detentions

(1) José Ignacio Reyes (8 October 1998); (2) Orlando Rivero (16 October 1998); (3) Sandra Parra (16 October 1998); (4) 201 people during the national strike (31 August 1999); (5) Horacio Quintero (31 May 1999); (6) Oswaldo Blanco Ayala (31 May 1999) (the last two trade union members mentioned were detained, threatened with death and then released).

Annex II

Acts of violence against trade union officials or members for which the Government has not sent its observations

Murders

(1) Margarita María Pulgarín Trujillo, murdered on 3 April 2000;

(2) Alejandro Alvarez Igaza, murdered on 7 April 2000;

(3) Alberto Alvarez Macea, murdered on 8 April 2000;

(4) Germán Valderrama, member of the Workers' Union of Caquetá, murdered on 15 January 2000 in Florencia-Caquetá;

(5) Mareluis Esther Solano Romero, murdered on 12 February 2000 in Cesar administrative district;

(6) Luis Arcadio Ríos Muñoz, murdered on 2 April 2000, in the municipality of San Carlos (Antioquia);

(7) Jesús María Cuella, member of the Teachers' Association of Caquetá (AICA-FECODE), murdered on 13 April 2000 in Florencia (Caquetá);

(8) Gerardo Raigoza, member of SER-FECODE, murdered on 19 April 2000 in Pereira (Risaralda);

(9) Omar Darío Rodríguez Zuleta, member of the Food Workers' Union SINALTRAINAL-Bugalagrande Section, murdered on 21 May 2000;

(10) Abel María Sánchez Salazar, member of the Caquetá Teachers' Trade Union, murdered on 2 June 2000 in Florencia;

(11) Gildardo Uribe, official of SINTRAOFAN-Vegachi executive subcommittee, murdered on 12 June 2000 in the municipality of Vegzalú (Antioquia);

(12) Edgar Marino Pereira Galvis, official of the CUT-META executive subcommittee, murdered on 25 June 2000 in the COFREM housing development;

(13) Luis Rodrigo Restrepo Gómez, president of the executive subcommittee of the Antioquia Teachers' Institute Association, murdered on 2 August 2000 in the municipality of Ciudad Bolívar;

(14) Carmen Emilio Sánchez Coronel, official delegate of the North Santander Teachers' Trade Union;

(15) Luis Rodrigo Restrepo Gómez, president of the executive subcommittee of the Teaching Staff of Ciudad Bolívar, murdered on 2 August 2000;

(16) Arelis Castillo Colorado, murdered on 28 July 2000 in the municipality of Caucasia;

(17) Fabio Santos Gaviria, member of APUN, murdered on 25 February 2000;

(18) Anival Zuluaga, member of SINTRALANDERS, murdered on 28 Februray 2000;

(19) Juan José Neira, member of the Manizales Teachers' Association, murdered on 9 March 2000;

(20) Iván Franco, member of SINTRAELECOL, murdered on 19 March 2000;

(21) Alexander Mauricio Marín Salazar, member of ADEM, murdered on 12 April 2000;

(22) José Antonio Yandu, member of the Ventero Ambulan Association, murdered on 10 April 2000;

(23) Gonzalo Serna, member of the Ventero Ambulan Association, murdered on 10 April 2000;

(24) Bayron de Jesús Velásquez Durango, member of the Ventero Ambulan Association, murdered on 10 April 2000;

(25) Gloria Nubia Uran Lezcano, member of ADIDA, murdered on 2 May 2000;

(26) Carmen Emilia Rivas, member of ANTHOC, murdered on 17 May 2000;

(27) Javier Carbono Maldonado, member of SINTRAELECOL, murdered in July 2000;

(28) Javier Suárez, member of NACC, murdered on 5 January 2000;

(29) Jesús Antonio Posada Marín, member of ADIDA, murdered on 11 May 2000;

(30) Gustavo Enrique Gómez Gómez, member of ADIDA, murdered on 9 May 2000;

(31) Pedro Amado Manjarres, member of ASODEGUUA, murdered on 29 May 2000;

(32) José Arístides Velásquez Hernández, member of SINTRAMUNICIPIO, murdered on 12 June 2000;

(33) Jaime Enrique Barrera, member of ADIDA, murdered on 11 June 2000;

(34) Jorge Andrés Ríos Zapata, member of ADIDA, murdered on 5 January 2000;

(35) Francisco Espadín Medina, member of SINTRANAGRO, murdered on 7 September 2000;

(36) Miguel Algene Barreto Racine, member of ADES, murdered on 2 August 2000;

(37) Cruz Orlando Benitez Hernández, member of ADIDA, murdered on 7 August 2000;

(38) Francy Uran Molina, member of ADIDA, murdered on 27 August 2000;

(39) Aristarco Arzalluz Zúñiga, member of SINTRAINAGRO, murdered on 30 August 2000;

(40) Alejandro Vélez Jaramillo, member of ASONAL JUDICIAL, murdered on 30 August 2000;

(41) Bernardo Olachica Rojas Gil, member of SES, murdered on 2 September 2000;

(42) Vicente Romana, member of ADIDA, murdered on 5 August 2000;

(43) Lázaro Gil Alvarez, member of ADIDA, murdered on 29 September 2000;

(44) Argemiro Albor Torregroza, member of the Galapa Farmers' Trade Union, murdered on 5 September 2000;

(45) Efraín Becerra, member of SINTRAUNICOL, murdered on 11 September 2000;

(46) Hugo Guarin Cortes, member of SINTRAUNICOL, murdered on 11 September 2000;

(47) Luis Alfonso Páez Molina, member of SINTRAINAGRO, murdered on 12 August 2000;

(48) Sergio Uribe Zuluaga, member of ADIDA, murdered on 25 August 2000;

(49) Bernardo Vergara Vergara, member of ADIDA, murdered on 9 October 2000;

(50) Candelario Zambrano, member of SINTRAINAGRO P.W., murdered on 15 September 2000;

(51) Jairo Herrera, member of SINTRAINAGRO P.W., murdered on 15 September 2000;

(52) Héctor Acuña, member of UNIMOTOR, murdered on 16 June 2000;

(53) Julián de J. Durán, member of SINTRAISSS, murdered in January 2000;

(54) Eliecer Corredor, member of SINTRAISS, murdered in January 2000;

(55) Miguel Angel Mercado, member of SINTRAISS, murdered in January 2000;

(56) Diego Fernando Gómez, member of SINTRAISS, murdered on 13 July 2000;

(57) Elizabeth Cañas, member of SINTRAISS, murdered in January 2000;

(58) Alejandro Tarazona, member of SINTRAAD, murdered on 26 September 2000;

(59) Víctor Alfonso Vélez Sánchez, member of EDUMAG, murdered on 28 March 2000;

(60) Alfredo Castro Haydar, member of the University Teachers' Association, Atlan, murdered on 10 May 2000;

(61) Edgar Cifuentes, member of ADE, murdered on 4 November 2000;

(62) Juan Bautista Banquet, member of SINTRAINAGRO, murdered on 17 October 2000;

(63) Edison Ariel, member of SINTRAINAGRO, murdered on 17 October 2000;

(64) Omar de Jesús Noguera, member of SINTRAEMCALI, murdered on 26 September 2000;

(65) Jesús Orlando García, member of the Mun Bagala Trade Union, murdered on 2 March 2000;

(66) Víctor Alfonso Vélez Sánchez, member of the Córdoba Teachers' Trade Union Association, murdered in Januray 2000;

(67) Darío de Jesús Borja, member of ADIDA, murdered on 1 April 2000;

(68) Esneda de las Mercedes Holguín, member of ADIDA, murdered on 27 April 2000;

(69) Bacillides Quiroga, member of SINTRAMUNICIPIO BUGA , murdered on 2 August 2000;

(70) Rubén Darío Guerrero Cuentas, member of SINTRADIAN, murdered on 20 August 2000;

(71) Henry Ordóñez, member of the Meta Teachers' Trade Union Association, murdered on 20 August 2000;

(72) Leonardo Betancourt Méndez, member of the Risaral Teachers' Trade Union Association, murdered on 22 August 2000;

(73) Luis Mesa, member of ASPU, murdered on 26 August 2000;

(74) Hernando Cuartos Agudelo, member of SINALTRAINAL, murdered on 1 September 2000;

(75) Rosalba Calderón Chávez, member of ANTHOC, murdered on 3 October 2000;

(76) Reinaldo Acosta Celemín, member of the Civil Servants' Association, murdered on 3 October 2000;

(77) Aldona Tello Barragán, vice president of the Magdalena Lottery Sellers' Trade Union, murdered on 17 January 2001 in the city of Santa Marta;

(78) Miguel Antonio Medina Bohórquez, member of SINTRENAL, murdered on 17 January 2001 in Altagracia, in the administrative district of Riseralde;

(79) José Luis Guelte, President of the Ciénaga Section of SINTRAINAGRO, murdered on 13 December 1999 in the Province of Magdalena;

(80) Juan Carlos Alvis Pinzón, relative of the Deputy Secretary-General of the General Confederation of Democratic Workers (CGTD), murdered on 25 July 2000 in Aipa;

(81) Clovis Florez, President of Agrocosta – Córdoba Section, murdered on 15 September 2000, in Montería, Córdoba.

Murder attempts

(1) Wilson Borja Díaz, president of the State Service Workers' Federation (FENALSTRASE), was intercepted by hired killers on 14 December 2000 and was shot and seriously wounded. He is currently in a weak state and under medical supervision;

(2) Gustavo Alejandro Castro Londoño, official of the executive committee of CUT-Meta Region 1, victim of attempted murder on 15 January 2001 in Villavicencio, and currently in hospital;

(3) Ricardo Navarro Bruges, president of the Workers' Trade Union of the University of Santa Marta (SINTRAUNICOL), victim of attempted murder on 12 January 2001;

(4) Ezequiel Antonio Palma, former official of the Workers' Trade Union of the Municipality of Yumbo, victim of attempted murder on 11 January 2001.

(5) César Andrés Ortíz, trade unionist of the CEDT, victim of attempted murder on 26 December 2000.

Disappearances

(1) Alexander Cardona, executive committee member of USO;

(2) Ismael Ortega, treasurer of SINTRAPROACEITES San Alberto (Cesar);

(3) Walter Arturo Velásquez Posada, Nueva Floresta School, municipality of El Castillo in the education district of El Ariari, Meta administrative district;

(4) Gilberto Agudelo, president of the National Trade Union of University Workers of Colombia (SINTRAUNICOL);

(5) Nefatalí Romero Lombana, from Aquazúl (Casanare) and Luis Hernán Ramírez, from Chámeya (Casanare), members of SIMAC-FECODE;

(6) Roberto Cañarte M., member of SINTRAMUNICIPIO BUGALAGRANDE, from the Paila Arriba (Valle);

(7) Germán Medina Gaviria, member of SINTRAEMCALI, disappeared on 14 January 2001 in the area of El Porvenir, Cali.

CASES NOS. 1948 AND 1955

INTERIM REPORT

Complaints against the Government of Colombia presented by — the Single Confederation of Workers of Colombia (CUT) and — the Trade Union of Workers of the Bogotá Telecommunications Enterprise (SINTRATELEFONOS)

Allegations: Acts of anti-union discrimination

290. The Committee last examined these cases at its meeting in May 2000 [see 322nd Report, paras. 38-52]. The Trade Union of Workers of the Bogotá Telecommunications Enterprise (SINTRATELEFONOS) presented new allegations in a communication dated 15 June 2000.

291. The Government sent its observations in communications dated 30 August 2000 and 4 January 2001.

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

A. Previous examination of the cases

293. In its previous examination of the cases, when it considered allegations of acts of anti-union discrimination, the Committee made the following recommendations [see 322nd Report, para. 52(b), (c), (d) and (e)]:

- the Committee requests the complainants to supply more precise information on whether the trade union officials Mr. Elías Quintana and Mr. Carlos Socha – dismissed according to the complainants – were workers of the ETB enterprise. As regards the allegations of the dismissal of a member of SINTRAELECOL from the Bogotá Power Company (whose name had not been provided by the complainants), the Committee requests the complainants to indicate the name of this member so that the Government may communicate its observations on the allegation;

- regarding the dismissal of 11 members of SINTRATELEFONOS at the ETB enterprise in January and March 1999, the Committee requests the Government to keep it informed of the results of the judicial proceedings filed by a female worker (Ms. Adelina Molina Cárdenas). Furthermore, the Committee requests the Government to carry out a thorough investigation into the grounds for dismissal of the 11 members of SINTRATELEFONOS and more specifically on whether these dismissals constituted acts of anti-union discrimination;

- regarding the trade union members dismissed in November 1997 at the ETB enterprise, the Committee requests the Government to keep it informed of the outcome of the judicial proceedings with respect to the workers in question; and

- the Committee requests the Government to communicate to it its observations on the new allegations presented by the Trade Union of Workers of the Bogotá Telecommunications Enterprise (SINTRATELEFONOS) in connection with this complaint in a communication dated 9 February 2000 (in this communication SINTRATELEFONOS refers to: (1) the judicial proceedings before the Constitutional Court relating to the 23 trade unionists dismissed in November 1997 at the ETB enterprise; and (2) the disciplinary proceedings initiated against the entire union executive committee for 1997-99, during which period SINTRATELEFONOS presented a list of petitions for 2000-01).

B. New allegations by the complainants

294. In its communications of 9 June 2000 and 4 January 2001, the Trade Union of Workers of the Bogotá Telecommunications Enterprise (SINTRATELEFONOS) alleges that:

- the Ministry of Labour refuses to register Mr. Manuel Antonio Rodríguez Cárdenas and Mr. Alberto Gaona Hernández, who were elected by direct vote as union leaders and who were responsible for reporting to the Committee on Freedom of Association the union rights' violations against SINTRATELEFONOS; and

– Ms. Martha Querales and Mr. Jorge Iván Castañeda, members of the trade union SINTRATELEFONOS, were dismissed for reporting corruption among members of the enterprise's management.

C. The Government's reply

295. In its communications of 30 August 2000 and 4 January 2001, the Government states:

– regarding the judicial proceedings begun by Ms. Adelina Molina Cárdenas against the Bogotá Telecommunications Enterprise (SINTRATELEFONOS), the proceedings have moved to the First Circuit Labour Court, have been recorded as case No. 115-2000, and are currently in the early stages. As regards the dismissal of the 11 workers who are members of SINTRATELEFONOS, the regional office of Cundinamarca carried out an administrative investigation in which it concluded that the dismissals occurred for reasons other than membership of a trade union or the carrying out of legitimate trade union activities. The dismissal was based on the workers' failure to meet their obligations and for their poor output, which both the collective labour agreement and the law stipulate as grounds for an employer to terminate a contract of employment, and resulted from changes in the structure of the office of the administrative vice-president and the vice-president for maintenance and networks. The workers had the option to appear before the legal authorities;

– regarding the dismissal of 23 trade union members in November 1997, Decision No. T-418 of 11 April 2000 of the Constitutional Court overturned the ruling of protection which ordered the reinstatement of those workers who had been dismissed by the ETB enterprise, taking into account the following: "in these circumstances, the corporation believes that the labour courts should have jurisdiction in the abovementioned cases of claims for reintegration and non-payment of salaries …". The Government states that the charges and claims brought by those seeking protection are contained in the legal actions of union and common labour jurisdiction before the labour courts. The Government indicates that it will communicate the results of the trade unions' legal proceedings currently before the ordinary courts when these become available (the Government attaches a detailed description of the 23 pending proceedings). The Government adds that some of the new allegations in the communication of 9 February 2000 refer to the decision of the Constitutional Court, which was mentioned in the previous report, and once the decisions of the legal proceedings brought by the trade unions have been handed down by the ordinary labour court it will inform the Committee of the results;

– regarding the non-registration of Mr. Manuel Antonio Rodríguez Cárdenas and Mr. Alberto Gaona Hernández as union leaders of SINTRATELEFONOS, the following administrative Acts were submitted to the Ministry of Labour and Social Welfare: (1) Decision No. 002898 of 19 November 1999 refused registration of the executive committee of SINTRATELEFONOS because the legal prerequisites laid down in Decree No. 1194 of 1994, subsection 2, had not been fulfilled; (2) Decision No. 003123 of 16 December 1999 gave recourse to replacement and revoked fully the resolution refusing registration, and in its place registered the abovementioned workers as president and vice-president of the executive committee of SINTRATELEFONOS; and (3) Decision No. 01183 of 14 June 2000 confirmed the abovementioned decision. The workers are registered on the executive committee of SINTRATELEFONOS.

D. The Committee's conclusions

296. *The Committee observes that, when it examined this case at its June 2000 meeting, it had requested the Government to take action or to provide information on a number of allegations. Specifically, the Committee asked the Government: (i) with regard to the dismissal of trade union members of SINTRATELEFONOS in January and March 1997, to provide information on the outcome of the judicial proceedings begun by Ms. Adelina Molina Cárdenas, and to investigate thoroughly the background to the dismissal of 11 trade union members of SINTRATELEFONOS and, more specifically, whether this was based on acts of anti-union discrimination; (ii) to keep it informed of the results of the judicial proceedings relating to the 23 trade union members who were dismissed in November 1997 from the ETB enterprise; and (iii) to communicate its observations on the allegations presented in the communication dated 9 February 2000 relating to a disciplinary process that had been started against the entire union executive committee for 1997-99, during which period SINTRATELEFONOS presented a list of petitions for 2000-01. Furthermore, the Committee notes that SINTRATELEFONOS presented new allegations relating to: (1) the refusal of the Ministry of Labour to register Mr. Manuel Antonio Rodríguez Cárdenas and Mr. Alberto Gaona Hernández as union leaders; and (2) the dismissal of Ms. Martha Querales and Mr. Jorge Iván Castañeda, members of SINTRATELEFONOS, for having reported corruption among members of the enterprise's management.*

297. *Regarding the dismissal of 11 members of SINTRATELEFONOS at the ETB enterprise in January and March 1999, among whom was Ms. Adelina Molina Cárdenas, the Committee notes the Government's statement that: (1) the judicial proceedings started by Ms. Adelina Molina Cárdenas relating to her dismissal are in the early stages; and (2) relating to the 11 dismissals in general, an administrative investigation was undertaken which concluded that these dismissals were on grounds other than membership of a trade union organization or the performance of legitimate trade union activities and were based on the workers' failure to meet their obligations and their poor output, which both the collective labour agreement and the law stipulate as grounds for an employer to terminate a contract of employment, and that workers could appear before the legal authorities. In these circumstances, the Committee hopes that the judicial proceedings begun by Ms. Adelina Molina Cárdenas, dismissed in March 1999, will be resolved in the near future and requests that it be informed of the results.*

298. *Regarding the judicial proceedings of the 23 trade union members dismissed from the ETB enterprise in November 1997, the Committee notes the Government's statement that the Constitutional Court overturned the ruling of protection which ordered the reinstatement of the dismissed workers and that union and labour claims were still before the ordinary courts. In this respect, the Committee expresses the firm hope that the legal authorities will come to a decision over these dismissals as soon as possible and asks the Government to ensure that the workers are reinstated if the new rulings order this to take place. The Committee requests the Government to keep it informed of the result of the judicial proceedings in question.*

299. *Regarding the allegations of the refusal of the Ministry of Labour to register Mr. Manuel Antonio Rodríguez Cárdenas and Mr. Alberto Gaona Hernández as leaders of the trade union organization of SINTRATELEFONOS, the Committee notes with interest the Government's statement that according to the administrative decision of 14 June 2000 the workers in question were registered as members of the executive committee of SINTRATELEFONOS.*

300. *Regarding the new allegations presented by SINTRATELEFONOS in connection with: (1) the disciplinary proceedings that had been started against the entire union executive*

committee of SINTRATELEFONOS for 1997-99, during which period a list of petitions for 2000-01 was presented ; and (2) the dismissal of Ms. Martha Querales and Mr. Jorge Iván Castañeda, members of SINTRATELEFONOS, for having reported corruption among members of the ETB enterprise management, the Committee regrets that the Government has not provided full information on these allegations and requests it to transmit its observations without delay.

301. *Finally, the Committee notes that the complainant organizations have not supplied the more precise information requested on: (i) whether union officers Mr. Elías Quintana and Mr. Carlos Socha – dismissed according to the complainants – were employees of the ETB enterprise; (ii) the name of the member of SINTRAELECOL who was allegedly dismissed by the Bogotá Power Company. In these circumstances, the Committee requests the complainant to communicate the information requested.*

The Committee's recommendations

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

(a) The Committee hopes that the judicial proceedings begun by Ms. Adelina Molina Cárdenas, dismissed in March 1999, will be concluded in the near future and requests the Government to keep it informed of the result.

(b) Regarding the judicial proceedings relating to the 23 trade union members dismissed in 1997 from the ETB enterprise, the Committee urges the legal authorities to come to a decision as soon as possible and requests the Government to ensure that the decision is complied with if it orders the reintegration of the workers. The Committee requests the Government to keep it informed of the result of the judicial proceedings.

(c) The Committee requests the Government to send, without delay, its observations on the following allegations: (1) the disciplinary proceedings that were begun against the entire union executive committee of SINTRATELEFONOS for 1997-99, during which period a list of petitions for 2000-01 was presented; and (2) the dismissal of Ms. Martha Querales and Mr. Jorge Iván Castañeda, members of SINTRATELEFONOS, for reporting corruption among members of the management of the ETB enterprise.

(d) The Committee requests the complainants to supply more precise information on whether the trade union officials Mr. Elías Quintana and Mr. Carlos Socha – dismissed according to the complainants – were workers of the ETB enterprise. As regards the allegations of the dismissal of a member of SINTRAELECOL from the Bogotá Power Company (whose name had not been provided by the complainants), the Committee requests the complainants to indicate the name of this member so that the Government may communicate its observations on the allegation.

CASE NO. 1962

INTERIM REPORT

Complaint against the Government of Colombia presented by
— the Single Confederation of Workers of Colombia (CUT)
— the General Confederation of Democratic Workers (CGTD)
— the Public Works Trade Union (SINTRAMINOBRAS) and
— the National Union of State Employees of Colombia (UTRADEC)

Allegations: Dismissals connected with restructuring, in breach of a collective agreement; dismissals in violation of trade union immunity

303. The Committee examined this case at its May 2000 meeting [see 322nd Report, paras. 53-68]. The National Union of State Employees of Colombia (UTRADEC) sent new allegations in communications dated 15 May and 28 December 2000. Other organizations sent communications relating to allegations already submitted.

304. The Government sent its observations in communications dated 30 August 2000 and 4 January 2001.

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

A. Previous examination of the case

306. In its previous examination of the case at its May 2000 meeting, the Committee formulated the following conclusions and recommendations concerning the allegations still pending [see 322nd Report, para. 68]:

(a) The Committee requests the Government to take the steps within its scope with regard to the competent authorities of the Municipality of Neiva to ensure that they pay compensation to all of the workers dismissed in violation of the collective agreement.

(b) The Committee requests the Government to confirm that it has reinstated the five trade union leaders of HIMAT (now INAT) and that they have been paid the compensation corresponding to the period during which they were dismissed.

(c) Finally, the Committee requests the Government to send detailed observations on the recent new allegations presented by the complainant organizations, the National Union of State Employees of Colombia (UTRADEC) and the Single Confederation of Workers of Colombia (CUT) – Huila Section. (Specifically, the National Union of State Employees of Colombia alleges that: (1) members of the executive committee of the trade union organization SINTRADESAI were dismissed; (2) Ms. Pamela Newball, leader of the Public Works Trade Union of the Municipality of Cúcuta was dismissed; and (3) the Government refused to negotiate the claims of public servants. The Single Confederation of Workers of Colombia (CUT) – Subdirective Huila Section – alleges that the Government has not taken steps to satisfy the recommendations of the Committee relating to the workers from the Municipality of Neiva and that

Mr. Fermín Vargas Buenaventura, a lawyer who defends trade union rights, is the victim of political persecution and attempts to prevent him from exercising his profession.)

B. New allegations

307. In its communication dated 15 May 2000, the National Union of State Employees of Colombia (UTRADEC) alleges that two trade union (Ms. Gladys Correa Ojeda, President and Ms. Marlen Ortiz) leaders from SINTRAINPROMEN of the Colombian Institute of Family Welfare and ten trade union leaders (Alfonso Moreno Velez, Rigo Edilio Torres Yustre, Alvaro Moreno Moreno, Leomarin Roa Morales, Sabiniano Sosa, Zacarias Urrea Gutiérrez, Rafael David Figuera, Emiro Vasquez Baos, Roberto Alexi Rojas, Carlos Geovany Eulegelo) from SINTREMAR in the Municipality of Arauca were dismissed. The complainant organization includes the names and duties of the trade union leaders who were dismissed. In its communication of 28 December 2000, the UTRADEC alleges that Mr. Juan Bautista Oyola Palomá, president of the Public Services Trade Union of the Tunjuelito Hospital, was detained for 11 days, charged with corruption and falsification. He has been released on bail, but suspended from his duties.

C. The Government's reply

308. In its communications dated 30 August 2000 and 4 January 2001, the Government indicates that the judicial security of Colombia would be damaged if the decisions of its judges were not respected. In view of the above and of the universally recognized three-way division of powers as well as the elections by popular vote, the Government cannot compel the Municipality of Neiva, whose mayor was elected by popular vote, to disregard judicial decisions and order the reinstatement and/or payment of compensation that was not claimed. However, it has communicated twice with the Mayor's Office of Neiva requesting detailed and specific information on the cancellation of compensation to workers dismissed by that municipality.

309. As regards the five trade union leaders of INAT who were dismissed during the course of restructuring and who did not succeed in their proceedings before the Ordinary Labour Court, the Government states that on 15 October 1997 these five trade union leaders sought the right of protection in an action for protection of one's constitutional rights (*tutela* proceedings) on 1 December 1999 so that their fundamental rights to due process, equality before the law, the right to work and free access to the administration of justice were protected. They were granted *tutela* and the corresponding procedural steps were ordered to recommence in order to obtain their eventual reintegration. This *tutela* had been favourable in the court of first instance for the workers. Since then, this *tutela* of the court of first instance has been challenged by the Superior Court of Neiva, which ordered the case reopened, and this challenge was successful in the Superior Council of the Judiciary. The Government adds that the workers' situation has reverted to what it was initially or, in other words, those who were dismissed remain so until this most recent decision is reversed by the Constitutional Court. Nevertheless, the Government states that it is continuing to negotiate with INAT and those workers who have been dismissed in order to find a solution to the situation.

310. Regarding the new, and most recent, allegations, the Government states that the Ministry of Labour and Social Security is progressing with the relevant observations and that these will be presented shortly.

D. The Committee's conclusions

311. *The Committee observes that, when it last examined this case at its May 2000 meeting, it requested the Government to: (1) take steps to ensure that the authorities of the Municipality of Neiva compensate all those workers dismissed in violation of the collective agreement; (2) confirm that the five trade union leaders of INAT who were dismissed had been reintegrated and paid full compensation; and (3) send its observations on the allegations that were recently presented (the dismissal of members of the executive committee of SINTRADESAI; the dismissal of Ms. Pamela Newball, leader of the Public Works Trade Union of the Municipality of Cúcuta; the refusal of the Government to negotiate with public servants over their claims; the non-compliance with the Committee's recommendations relating to the workers of the Municipality of Neiva; and the political persecution of Mr. Fermín Vargas Buenaventura, a lawyer, for defending the rights of trade unions). The Committee also observes that the National Union of State Employees of Colombia (UTRADEC) presented new allegations relating to the dismissal of two trade union leaders of SINTRAINPROMEN for the Colombian Institute of Family Welfare (Gladys Correa Ojeda, Marlen Ortiz), and ten trade union leaders from SINTREMAR in the Municipality of Arauca (Alfonso Moreno Velez, Rigo Edilio Torres Yustre, Alvaro Moreno Moreno, Leomarin Roa Morales, Sabiniano Sosa, Zacarias Urrea Gutiérrez, Rafael David Figuera, Emiro Vasquez Baos, Roberto Alexi Rojas, Carlos Geovany Eulegelo).*

312. *Regarding the Committee's request that the Government take steps to ensure that the competent authorities of the Municipality of Neiva, pay compensation to all of the workers dismissed in violation of the collective agreement, the Committee notes the allegations of the Single Confederation of Workers of Colombia (CUT) – Huila Section – that steps have not been taken to follow the Committee's recommendations and the Government's statement that it cannot compel the mayor of the Municipality of Neiva, elected by popular vote, to reinstate workers or pay compensation to workers that was not claimed, however, it has requested the Mayor's Office of Neiva to provide a detailed and specific report on the cancellation of compensation due to those workers who were dismissed. With respect to the Government's statement asserting its limited competence over the Mayor of Neiva concerning the payment of the compensation in question, the Committee stresses that such an argument cannot be used to undermine the principles of freedom of association and that any necessary legislative amendments should be made to ensure these principles are respected. In these circumstances, the Committee reiterates its previous recommendation and requests the Government to take the necessary measures with regard to the competent authorities of the Municipality of Neiva to ensure that they pay compensation to all of the workers dismissed in violation of the collective agreement.*

313. *Regarding the request to the Government to confirm that it had reinstated the five trade union officers of INAT and that they were paid the compensation corresponding to the period during which they were dismissed, the Committee notes the Government's statement that: (1) although the legal authorities of the first instance ordered the reinstatement of the workers, the Superior Court of Neiva challenged that decision and those who were dismissed continue as such until the decision is revised by the Constitutional Court; and (2) there is an ongoing process of negotiation with INAT and the workers who were dismissed in order to find a solution. In these circumstances, the Committee hopes that within the framework of the dialogue which has begun the parties will arrive at an agreement in the near future that is satisfactory to both and requests the Government to keep it informed of developments. Furthermore, the Committee requests the Government to inform it of the final result of the appeal before the Constitutional Court relating to the dismissal of the five trade union leaders.*

314. *Regarding the allegations relating to: (1) the dismissal of members of the executive committee of SINTRADESAI; (2) the dismissal of Ms. Pamela Newball, leader of the Public Works Trade Union of the Municipality of Cúcuta; (3) the refusal of the Government to negotiate claims by civil servants; (4) the political persecution of Mr. Fermín Vargas Buenaventura, a lawyer, for the defence of trade union rights; and (5) the dismissal of two trade union leaders of SINTRAINPROMEN of the Colombian Institute of Family Welfare and ten trade union leaders of SINTREMAR of the Municipality of Arauca, the Committee regrets that the Government has confined itself to indicating that, as these are recent allegations, the Ministry of Labour and Social Security is endeavouring to make progress on the relevant observations which will be submitted shortly. In these circumstances, the Committee urges the Government to send its observations on these allegations without delay.*

315. *Finally, as regards the allegations concerning the 11-day detention of Mr. Juan Bautista Oyola Palomá, president of the Public Services Trade Union of the Tunjuelito Hospital, the proceedings launched against him and his suspension from duties, the Committee notes that these allegations were filed recently and requests the Government to provide its observations in this respect.*

The Committee's recommendations

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

(a) The Committee repeats its previous recommendation and requests the Government to take the necessary measures with regard to the competent authorities of the Municipality of Neiva to ensure that they pay compensation to all of the workers dismissed in violation of the collective agreement.

(b) Regarding the dismissal of the five trade union leaders of INAT, the Committee hopes that, within the framework of the dialogue which has begun, the parties will arrive at an agreement in the near future that is satisfactory to both and requests the Government to keep it informed of developments. Furthermore, the Committee requests the Government to inform it of the result of the appeal before the Constitutional Court relating to the dismissal of the five trade union leaders.

(c) The Committee urges the Government to send its observations relating to the following allegations without delay: (1) the dismissal of members of the executive committee of SINTRADESAI; (2) the dismissal of Ms. Pamela Newball, leader of the Public Works Trade Union of the Municipality of Cúcuta; (3) the refusal of the Government to negotiate the claims of public servants; (4) the political persecution of Mr. Fermín Vargas Buenaventura, a lawyer, for the defence of trade union rights; and (5) the dismissal of two trade union leaders of SINTRAINPROMEN of the Colombian Insitute of Family Welfare (Gladys Correa Ojeda, Marlen Ortiz), and ten trade union leaders of SINTREMAR of the Municipality of Arauca (Alfonso Moreno Velez, Rigo Edilio Torres Yustre, Alvaro Moreno Moreno, Leomarin Roa Morales, Sabiniano Sosa, Zacarias Urrea Gutiérrez, Rafael David Figuera, Emiro Vasquez Baos, Roberto Alexi Rojas, Carlos Geovany Eulegelo).

(d) The Committee requests the Government to provide its observations concerning the 11-day detention of Mr. Juan Bautista Oyola Palomá, president of the Public Services Trade Union of the Tunjuelito Hospital, the proceedings launched against him and his suspension from duties.

CASE NO. 1973

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

Complaint against the Government of Colombia presented by the Association of Managers and Technical Staff of the Colombian Petroleum Industry (ADECO)

Allegations: Favourable treatment of a particular trade union organization; violation of the right to collective bargaining

317. The Committee examined this case most recently at its May 2000 meeting [see 322nd Report, paras. 83-93]. The Government sent its observations in communications dated 30 August 2000 and 4 January 2001.

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

A. Previous examination of the case

319. The Committee observes that during the last examination of this case in May 2000 it noted that the Special Labour Inspection, Monitoring and Control Unit of the Ministry of Labour had conducted an administrative inquiry that concluded that the enterprise ECOPETROL did not violate the right of association with regard to the double deduction of union dues (one lot of dues corresponding to trade union membership and the other to the financing of the trade union organization signatory to the collective agreement), but nevertheless fined it an amount representing 20 monthly minimum wages for illegal deduction of salary, and that an appeal was lodged against this decision [see 322nd Report, para. 90]. In addition, the Committee noted that the complainant organization had submitted further allegations.

320. On this basis, the Committee formulated the following recommendations [see 322nd Report, para. 93, subparas. (a) and (b)]:

– The Committee requests the Government to keep it informed of the outcome of the appeal lodged against the decision which followed the administrative investigation carried out by the Ministry of Labour.

– The Committee requests the Government to send its observations concerning the new allegations presented by ADECO. (ADECO explained that the enterprise ECOPETROL has a special pay scheme for managerial staff established under Agreement No. 01 of 1977 which contains conditions of employment and remuneration higher than those established by way of collective agreement. According to ADECO, this Agreement encourages staff in managerial or technical posts or in positions of trust not to belong to a trade union as it applies on condition of either not joining or

of leaving either of the two first-level trade union organizations present in the enterprise. ADECO indicates that the provisions of the agreement should be applied to all workers in the enterprise, given that national legislation prohibits the unilateral regulation of non-unionized workers if it exceeds the conditions provided in a collective agreement concluded with unionized workers. ADECO asked the enterprise ECOPETROL to ensure that Agreement No. 01 was either brought into line with or incorporated into the prevailing Agreement, but the enterprise refused to comply.)

B. The Government's reply

321. In its communications of 30 August 2000 and 4 January 2001, the Government states that an application for reconsideration and a remedy of appeal were lodged against Ruling No. 00373 of 10 February. The first was resolved by way of Ruling No. 00503 of 18 April 2000 which confirms each and every part of the administrative decision appealed against. The remedy of appeal was resolved through Ruling No. 1292 of 20 June 2000 which revoked the second article of Ruling No. 00373 of February 2000 which had fined the enterprise ECOPETROL the sum of 20 monthly minimum wages for illegal deduction of salary, considering that at the time of the collective bargaining between the enterprise ECOPETROL and USO the latter held the position of workers' representative, including for the members of ADECO, and had precedence under the collective agreement for all intents and purposes (for example, to receive the dues deducted from workers covered by the collective agreement, including the ADECO members). Ruling No. 1292 of 20 June 2000 indicates the exhaustion of government channels and the legal basis for administrative jurisdiction.

322. With regard to the allegations submitted by ADECO on 27 March 2000, the Government states that the Special Labour Inspection, Monitoring and Control Unit of the Ministry of Labour asked the Territorial Directorate of Cundinamarca to officially begin the administrative labour inquiry.

C. The Committee's conclusions

323. *The Committee observes that, when it examined this case at its May 2000 meeting, it requested the Government to keep it informed of the outcome of the appeal lodged against Administrative Ruling No. 00373 of 10 February 2000 according to which the enterprise ECOPETROL was fined the sum of 20 monthly minimum wages for illegal deduction of salary following an investigation carried out into allegations concerning the double deduction of trade union dues from ADECO members. In this respect the Committee notes the Government's statement that: (1) Ruling No. 1292 of 20 June 2000 revoked article 2 of Ruling No. 00373 which had imposed the fine of 20 monthly minimum wages on the enterprise ECOPETROL for illegal deduction of salary as it considered that USO had precedence under the collective agreement for all intents and purposes (including the receipt of dues deducted on the basis of the collective agreement from workers in the enterprise not affiliated to USO); and (2) administrative channels were declared to be exhausted, with the possibility remaining for ADECO to apply for a judicial review. In these circumstances, recalling that during the previous examination of the case it was found that ADECO had signed a new collective agreement for 1999-2000 [see 322nd Report, para. 91], and that as a result the double deduction stopped being applied automatically, the Committee will not pursue its examination of this allegation.*

324. *The Committee also observes that the Government had been asked to send its observations concerning new allegations presented by ADECO on 27 March 2000 relating to the application of an agreement – that contains conditions of employment and remuneration higher than those agreed to by way of collective agreement – to managerial or technical*

staff and to staff in positions of trust on condition that they do not join or that they leave either of the two first-level trade union organizations present in the enterprise ECOPETROL. In this respect, while it notes the Government's statement that the Territorial Directorate of Cundinamarca has been asked to begin an administrative labour inquiry into this allegation, the Committee emphasizes that the principles of collective bargaining must be respected taking into account the provisions of Article 4 of Convention No. 98 relating to the full development and utilization of machinery for voluntary negotiation with workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements. The Committee stresses that direct negotiation with the workers must not undermine the position of the trade unions, nor should it weaken the impact of the contents of the concluded collective agreements. In these circumstances, the Committee requests the Government to take measures to ensure that the inquiry proposed on this question is begun immediately and to keep it informed of the outcome.

The Committee's recommendation

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

As regards the application of an agreement – that contains conditions of employment and remuneration higher than those agreed to through collective agreement – to managerial or technical staff and to staff employed in positions of trust on condition that they do not join or that they leave either of the two first-level trade union organizations present in the enterprise ECOPETROL, the Committee requests the Government to take measures to ensure that the inquiry proposed is begun immediately and to keep it informed of the outcome.

CASE NO. 2015

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

Complaint against the Government of Colombia presented by the Association of Public Servants employed by the Health Service of the Armed Forces and National Police (ASEMIL)

Allegations: Non-compliance with a collective agreement; challenges to trade union statutes; assault against trade unionists; dismissal of trade union officials; illegal deductions for days of strike action; refusal to negotiate; refusal to grant time off for trade union activities; anti-union harassment

326. The Committee last examined this case at its May 2000 meeting [see 322nd Report, paras. 94-106].

327. The Government sent its observations in communications dated 30 August 2000 and 4 January 2001.

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

A. Previous examination of the case

329. In its previous examination of the case with regard to the allegations of non-compliance with a collective agreement, challenges to trade union statutes, assault against trade unionists, dismissal of trade union officials, illegal deductions for days of strike action, and refusal to negotiate, the Committee made the following recommendations [see 322nd Report, para. 106]:

– The Committee urges the Government to take the necessary steps to ensure compliance with the May 1997 collective agreement between the Ministry of Defence and ASEMIL. The Committee also requests the Government to keep it informed of the result of the investigation made by the Attorney-General of the Nation.

– The Committee deeply regrets that, despite the dispatch of a direct contacts mission to Colombia, the Government has not communicated its observations on the following allegations that were still pending from its previous examination of the case: (1) the workplaces in the Naval Hospital of Cartagena and the Central Military Hospital of Bogotá were taken over by the military during the national protest movement of 20 and 21 May 1998; (2) posters alluding to the protest movement were destroyed in the Central Military Hospital of Bogotá and trade unionists were assaulted, leaving 42 of them wounded (the complainant gives the names of six of those wounded, with details as to their injuries and the resulting degree of incapacitation); and (3) more than a month's pay was docked from over 60 union members in the Naval Hospital of Cartagena and a week's wages from 200 members in the Central Military Hospital of Bogotá, even though the strike was only for two days. The Committee calls on the Government to send its observations on these allegations as a matter of urgency.

– The Committee requests the Government to send its observations on the new allegations recently submitted by the complainant (refusal to grant time off for trade union activities, anti-union harassment, increasing the working day in violation of an agreement, and assignment of civilian employees to armed conflict zones).

B. The Government's reply

330. In its communications dated 30 August 2000 and 4 January 2001, the Government states that it has petitioned on a number of occasions the Attorney-General of the Nation in order to speed up the investigation relating to compliance with the collective agreement between the Ministry of Defence and ASEMIL in 1997, and is currently awaiting a reply on this matter. The Government adds that it in any event organized a conciliation hearing for 17 March 2000 through the Regional Management of Bolívar with the trade union organization ASEMIL and the Ministry of Defence wherein the parties, of common accord, came to the following understanding: "to avoid further difficulties it is agreed to respect, in its entirety, the final report of the Follow-up Committee on the agreement of 6 May 1997". Furthermore, in order to resolve any conflicts, the Ministry of Labour and Social Security is promoting negotiations with the parties and has requested the trade union to begin this.

331. As regards the military taking over workplaces during the national protest movement of 20 and 21 May 1998, the Government states that given the surrounding circumstances during those days and given that these are essential public services, i.e. a hospital in a country where armed internal conflict is taking place, the military's response was proportional to the situation. The Government adds that this matter is being investigated by the competent authorities.

332. Regarding the destruction of posters alluding to the protest movement and assault on trade unionists, the Government states that the trade union lodged a complaint before the Attorney-General of the Nation. The Attorney-General has begun "preliminary inquiries in order to establish whether there were disciplinary irregularities" and has informed the Procurator-General's Office.

333. Finally, regarding the new allegations, the Government states that, with a view to obtaining a negotiated settlement, it called the parties to a meeting to further the discussions on pending issues, but that the complainant organizations did not attend the meeting. The Government adds that it will pursue its efforts within the dialogue and concertation fora, but that measures have been taken to launch an inquiry on this subject.

C. The Committee's conclusions

334. *The Committee observes that, following its examination of this case at its May 2000 meeting, the following allegations were still pending: (1) the Ministry of Defence has not implemented an agreement signed with ASEMIL on 6 May 1997, which contained provisions regarding stability of employment, non-resort to reprisals, wages, etc.; (2) the workplaces in the Naval Hospital of Cartagena and the Central Military Hospital of Bogotá were taken over by the military during the national protest action of 20 and 21 May 1998; (3) posters alluding to the protest movement were destroyed in the Central Military Hospital of Bogotá and trade unionists were assaulted, leaving 42 of them wounded (the complainant gives the names of six of those wounded, with details as to their injuries and the resulting degree of incapacitation). The complainant also presented new allegations relating to the refusal to grant time off for trade union activities, anti-union harassment, an increase in the working day in violation of an agreement, and the assignment of civilian employers to armed conflict zones.*

335. *Regarding the non-compliance of the Ministry of Defence with a collective agreement signed on May 1997 with the trade union ASEMIL and the investigation that has been started by the Attorney-General of the Nation, the Committee notes with interest that the Government set up a conciliation hearing on 17 May 2000 between ASEMIL and the Ministry of Defence wherein the parties came to an agreement to "respect in its entirety … the agreement of 6 May 1997".*

336. *Regarding the taking over by the military of the workplaces in the Naval Hospital of Cartagena and the Central Military Hospital of Bogotá during the national protest action of 20 and 21 May 1998, the Committee notes the Government's statement that: (1) given the situation on 20 and 21 May 1998, and given that these are essential public services, i.e. a hospital in an area of internal armed conflict, the military's response was proportional to the situation; and (2) an investigation is being carried out by the competent authorities. The Committee regrets that more than two years following this situation the investigation has still not been completed. The Committee, therefore, requests the Government to take steps to ensure that the investigation is concluded promptly and, if the taking over of the workplaces by the military was not justified, that those responsible are punished. The Committee requests the Government to keep it informed in this regard.*

337. *Regarding the alleged destruction of posters alluding to the protest movement in the Central Military Hospital of Bogotá and the assault of trade unionists during the national protest action of 20 and 21 May 1998, which left 42 trade unionists wounded (six of whom were incapacitated), the Committee notes the Government's statement that the trade union brought a complaint before the Attorney-General of the Nation and that preliminary investigations to establish whether there had been irregularities in discipline have been started, and that the Office of the Procurator-General has been informed. The Committee regrets that so much time has passed since these acts of violence occurred (more than two years) and that the investigation still has not been concluded. In these circumstances, the Committee requests the Government to take steps to ensure that the Attorney-General of the Nation, or the Procurator-General of the Nation, as the case may be, concludes this investigation promptly and hopes that this will clarify what happened, elucidate who was responsible and punish those who are to blame. The Committee requests the Government to keep it informed in this regard.*

338. *Finally, regarding the allegations that were presented during a direct contacts mission to Colombia in February 2000 relating to the refusal to grant time off for trade union activities, anti-union harassment, an increase in the working day in violation of an agreement, and the assignment of civilian employees to armed conflict zones, the Committee notes that the Government: (1) called the parties to a meeting with a view to obtaining a negotiated settlement but that the complainant did not attend; (2) will pursue its efforts within dialogue and concertation fora; and (3) has taken measures to launch an administrative inquiry on this subject. The Committee hopes that the planned administrative inquiry will be concluded in the near future, and requests the Government to keep it informed of its outcome.*

The Committee's recommendations

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

(a) Regarding the taking over of workplaces in the Naval Hospital of Cartagena and the Central Military Hospital of Bogotá by the military during the national protest action of 20 and 21 May 1998, the Committee requests the Government to take steps to ensure that the investigation is concluded promptly, and, if the taking over of the workplaces by the military was not justified, that those responsible are punished. The Committee requests the Government to keep it informed in this regard.

(b) Regarding the allegation of the destruction of posters alluding to the protest movement in the Central Military Hospital of Bogotá and the assault of trade unionists during the national protest action of 20 and 21 May 1998, leaving 42 of them wounded (six of whom were incapacitated), the Committee requests the Government to take steps to ensure that the Attorney-General of the Nation, or the Procurator-General of the Nation, as the case may be, concludes the investigation promptly and hopes that this will clarify what happened, elucidate who was responsible and punish those who are to blame. The Committee requests the Government to keep it informed in this regard.

(c) Regarding the allegations of refusal to grant time off for trade union activities, anti-union harassment, an increase in the working day in violation of an agreement, and the assignment of civilian employees to

armed conflict zones, the Committee hopes that the administrative inquiry which is supposed to be held will be concluded in the near future, and requests the Government to keep it informed of its outcome.

CASE NO. 2046

INTERIM REPORT

Complaint against the Government of Colombia presented by
— the Colombian Union of Beverage Industry Workers (SINALTRAINBEC)
— the Union of Pilsen Workers (SINTRAPILSEN)
— the Union of Metal Industry Workers APOLO
— the Single Central Organization of Workers (CUT – Antioquia section)
— the Union of Noel Workers (SINTRANOEL)
— the Union of Workers of the National Coffee Growers Federation (SINTRAFEC)
— the National Union of Bavaria SA Workers (SINALTRABAVARIA) and
— the National Union of Caja Agraria Workers (SINTRACREDITARIO)

Allegations: Acts of discrimination and anti-union practices

340. The Committee examined this case most recently at its May 2000 meeting [see 322nd Report, paras. 107-143]. The National Union of Bavaria SA Workers (SINALTRABAVARIA) submitted further allegations in a communication dated 4 May 2000. The Union of Workers of the National Coffee Growers Federation (SINTRAFEC) submitted further allegations in a communication dated 16 August 2000. The National Union of Caja Agraria Workers (SINTRACREDITARIO) provided complementary information on its complaint in a communication dated 31 January 2001.

341. The Government sent its observations in two communications dated 30 August 2000 and 4 January 2001.

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

A. Previous examination of the case

343. In its previous examination of the case concerning allegations of acts of discrimination and anti-union practices in various enterprises, the Committee formulated the following recommendations [see 322nd Report, para. 143(a), (b), (c) and (d)]:

– As regards the allegations concerning the enterprise Industrias Alimenticias Noel SA, the Committee asks the Government: (1) (…); (2) to keep the Committee informed of present and future judicial and administrative decisions in respect of the enterprise's refusal to recognize SINTRANOEL's modified statutes, converting it to an industrial union, SINALTRAPROAL; and (3) with regard to Noel Biscuit Company's failure to deduct union dues, to inform the Committee about the results of the forthcoming inquiry.

– As regards the complaints that the National Federation of Colombian Coffee Growers has failed to deduct union dues from SINTRAFEC

members since 1984, to deduct dues owed by all workers by agreement and to deduct special dues, the Committee, observing that according to the Government the union has asked for the complaint to be suspended on the grounds that talks are being held with the enterprise with a view to solving the problems, requests the Government to keep it informed of developments in the situation.

– As regards the complaints of SINALTRABAVARIA, the Committee (…) asks the Government to communicate its observations, on the basis of the forthcoming inquiry, on the dismissals and sanctions inflicted on workers for having participated in a strike at the Bavaria enterprise on 31 August 1999.

– As regards the allegations concerning the Caja de Crédito Agrario (the takeover of Caja Agraria offices by the forces of law and order, the massive dismissal of 8,000 workers in violation of the collective agreement and the repression of demonstrators), the Committee underscores the complexity of the case and requests the Government to inform it of the results of the administrative inquiries and of present and forthcoming decisions concerning the allegations, and which involve violations of trade union rights or of the collective agreement. The Committee also asks the Government to inform it of its observations on the recent new allegations of 7 February 2000 (dismissal of 1,397 trade union officials, refusal to negotiate a list of claims in the new institution established following the liquidation of the Caja Agraria called the Banco Agrario de Colombia and refusal to register the executive committee of SINTRACREDITARIO) presented by SINTRACREDITARIO.

B. New allegations and complementary information

344. In its communication of 4 May 2000, the National Union of Bavaria SA Workers (SINALTRABAVARIA) alleges that: (1) the Cundinamarca Labour Division refused to register the executive committees of SINALTRABAVARIA of the union sections Colenvases, Bogotá, Calle 22 (Litoral), Dirección y Ventas and Maltería de Bogotá; (2) the Bavaria company is violating the collective agreement by applying sanctions without the presence of the trade union, by awarding promotions according to their own criteria and by refusing to pay the deducted union dues to unionized workers; and (3) the Bavaria company is facilitating and promoting the establishment of another trade union organization.

345. In its communication of 16 August 2000, the Union of Workers of the National Coffee Growers Federation of Colombia (SINTRAFEC) alleges that it has been refused the right of registration in the industrial union SINTRAINDUSCAFE. Finally, in a communication dated 31 January 2001, the National Union of Caja Agraria Workers (SINTRACREDITARIO) provided complementary information on its complaint.

C. The Government's reply

346. In its communications of 30 August 2000 and 4 January 2001, the Government states, with regard to the allegations submitted by the Union of Noel Workers (SINTRANOEL) concerning the refusal to modify SINTRANOEL's statutes converting it to an industrial union, that it was informed in a timely manner that resolution No. 002408 of 12 October 1999 ruled on the request for reconsideration, revoking resolution No. 1541 of 2 July 1999 which registered the amended statutes. This resolution is based on the fact that the workers present at the assembly on 23 May 1999 were not at that time affiliated to the SINTRANOEL. Any change in the union's nature would have to be decided by the members of the SINTRANOEL, workers from the Noel Biscuit Company only becoming

eligible for membership following the approval of the amended statutes. The parties have been duly informed of this ruling, with the administrative act having been made effective. Despite the above, the Territorial Directorate of Antioquia was asked for information about the possible initiation of legal action in this respect in the ordinary courts. As regards the allegations concerning the Noel Biscuit Company's failure to deduct union dues, the Territorial Directorate of Labour of Antioquia was asked, in an official communication of 16 August 2000, to provide information on the status of the investigation and on the decisions made in this respect. The Territorial Directorate of Antioquia mentions that it asked the president of SINTRANOEL to appear and that he explained the workers of this trade union were affiliated to Noel Food Industries (Industrias Alimenticias Noel SA) and not to Noel Biscuit Company. The enterprise Noel Biscuit Company and the trade union SINTRANOEL mentioned that the workers of this trade union do not belong to this enterprise and confirmed in writing during the hearing that they never promoted administrative measures against the Noel Biscuit Company. Consequently, the end of the investigation has been ordered.

347. Concerning the allegations submitted by the Union of Workers of the National Coffee Growers Federation (SINTRAFEC) relative to the failure to deduct union dues from the salary of SINTRAFEC members, the Government indicates that the trade union SINTRAFEC declared that it did not ask for the complaint to be suspended but asked for the implementation of the necessary procedures to ensure the respect of the concerned rights. The Government indicates that it has asked the Territorial Director of Cundinamarca to start an investigation and to carry it through to a successful conclusion.

348. With regard to the allegations submitted by the National Union of Bavaria SA Workers (SINALTRABAVARIA), the Government notes that on the matter of the dismissals and sanctions arising from participation in the work stoppage of 31 August 1999, an investigation into which has officially begun, the Territorial Directorate of Labour and Social Security of Cundinamarca is conducting an administrative inquiry, which is currently at the documentary stage. Furthermore, the Government indicates by way of a resolution dated 12 September 2000 that all the section subcommittees of SINALTRABAVARIA have been registered.

349. Concerning the allegations submitted by the National Union of Caja Agraria Workers (SINTRACREDITARIO), the Government states that the Territorial Directorate of Labour and Social Security of Cundinamarca is pursuing two administrative inquiries into the acts which are the subject of the complaint. As part of one of these inquiries, on 8 February 2000 the allegations were transmitted to the legal representative of the Agrarian, Industrial and Mining Savings and Loans Fund. On 28 February 2000, the Caja Agraria sent a reply to the allegations made. Concerning the second inquiry started further to the allegation concerning the Caja de Crédito Agrario's refusal to negotiate a list of claims, the Government mentions that it did not take administrative measures against the company since review and appeal proceeding may be initiated against this decision. As regards the pending legal actions, according to a communication from the complainant trade union organization, the following remain: 500 requests for judicial protection for reinstatement in relation to the right to associate, trade union immunity, pregnant women and terminally ill individuals, a criminal suit which is currently before the Public Prosecutor's Office and investigations before the Attorney-General and the Comptroller-General of the Nation, against various public officials of the Caja Agraria.

D. The Committee's conclusions

350. *The Committee observes that when it examined this case relating to acts of discrimination and anti-union practices at its May 2000 meeting it requested the Government to take certain measures and to provide information accordingly.*

The enterprise Industrias Alimenticias Noel SA

351. *As for the enterprise's challenge to the modification of the statutes of the Union of Noel Workers (SINTRANOEL) for its conversion to an industrial union (SINALTRAPROAL), the Committee notes the Government's statement that: (1) by way of a resolution dated 12 October 1999 the resolution registering the amended statutes was revoked as the workers who decided on the amendment were not affiliated to the SINTRANOEL; and (2) the Territorial Directorate of Antioquia was asked to provide information on the possible initiation of legal action in that respect. In these circumstances, the Committee requests the Government to keep it informed about any judicial action which is initiated with regard to the amendment of the statutes of SINTRANOEL to change it into an industrial union.*

352. *As regards the failure to deduct trade union dues at the Noel Biscuit Company, the Committee notes the Government's indication. It indicates that within the context of the investigation that was carried on, the trade union SINTRANOEL and the enterprise Noel Biscuit Company mentioned that the workers affiliated to SINTRANOEL do not work in this enterprise and that no administrative measures against this enterprise were promoted. Consequently, the end of the investigation has been ordered. Therefore, the Committee will not continue the examination of this allegation.*

National Federation of Colombian Coffee Growers

353. *Concerning the failure to deduct union dues from the members of the Union of Workers of the National Coffee Growers Federation (SINTRAFEC), the Committee notes the Government's statement that the plaintiff organization mentioned that it did not ask for the investigation to be suspended (during its last meeting, the Committee took note of the Government's declaration to the effect that the union has asked for the complaint to be suspended) and that, at present, a new investigation is carried on in this respect. The Committee requests the Government to take the necessary measures to ensure that the investigation ends in the near future and to keep it informed about the results.*

354. *Concerning the allegation as to the refusal by the trade union organization SINTRAFEC to join the industrial union SINTRAINDUSCAFE, the Committee regrets that the Government has not sent its observations on the matter. The Committee requests the Government to take measures to find out whether SINTRAFEC has complied with the corresponding legal requirements and if it has done so to register its affiliation to the industrial union SINTRAINDUSCAFE.*

The enterprise Bavaria SA

355. *With regard to the allegation concerning the dismissals and sanctions inflicted on workers affiliated to the National Union of Bavaria SA Workers (SINALTRABAVARIA) for their participation in a work stoppage on 31 August 1999, the Committee notes the Government's indication that the inquiry being conducted by the Territorial Directorate of Labour and Social Security of Cundinamarca in respect of these allegations is at the documentary stage. In this respect, the Committee deeply regrets that one year and seven months after the alleged incidents occurred the inquiry has still not been completed. The Committee requests the Government to take steps to ensure the inquiry is rapidly concluded and to send its observations in this respect.*

356. *Concerning the alleged refusal by the Cundinamarca Labour Division to register the executive committees of SINALTRABAVARIA of the union sections Colenvases, Bogotá, Calle 22 (Litoral), Dirección y Ventas and Maltería de Bogotá, the Committee takes good note of the Government's statement that, by way of an administrative resolution dated 12 September 2000, all the section subcommittees have been registered. Therefore, the*

Committee will not continue the examination of this allegation. In these circumstances, the Committee requests the Government to keep it informed of the administrative decisions taken.

357. *With regard to the allegations that (1) the enterprise is violating the collective agreement by applying sanctions without the presence of the trade union, by awarding promotions according to their own criteria and by refusing to pay the deducted trade union dues, and (2) the enterprise is facilitating and promoting the establishment of another trade union organization, the Committee regrets that the Government has not sent its observations in this connection and asks it to do so without delay.*

Caja de Crédito Agrario

358. *Concerning the numerous allegations submitted by the National Union of Caja Agraria Workers (SINTRACREDITARIO) concerning the Caja de Crédito Agrario (takeover of the offices by the forces of law and order, massive dismissal of 8,000 workers – including 1,397 trade union officials – in violation of the collective agreement, the refusal to negotiate a list of claims in the new institution Banco Agrario de Colombia which was established following the liquidation of the Caja de Crédito Agrario and the refusal to register the executive committee of SINTRACREDITARIO), the Committee notes the Government's declaration that: (1) the Territorial Directorate of Labour and Social Security of Cundinamarca is carrying out an inquiry into these allegations; (2) an administrative inquiry took place concerning the allegation relative to the Caja de Crédito Agrario's refusal to negotiate a list of claims. No administrative measure has been taken against the enterprise within the context of this inquiry since it is possible at this stage to file revision and appeal proceedings; (3) 500 legal actions for reinstatement are pending; and (4) criminal complaints have been submitted to the Public Prosecutor's Office, the Office of the Attorney-General of the Nation and the Office of the Comptroller-General of the Nation against various public officials of the Caja Agraria. In these circumstances, the Committee repeats its earlier recommendations and therefore requests the Government to: (i) keep it informed of the final result of the administrative inquiry under way; (ii) keep it informed of any recourse taken against the administrative decision concerning the inquiry on the Caja de Crédito Agrario's refusal to negotiate a list of claims; and (iii) keep it informed about the result of the legal actions and the criminal charges. Also, bearing in mind the extremely high number of workers and trade union officials affected by the liquidation of the Caja de Crédito Agrario and the establishment of a new banking institution called the Banco Agrario de Colombia, the Committee requests the Government to ensure as a matter of priority the recruitment of the highest possible number of workers and trade union officials who lost their jobs. Finally, the Committee requests the Government to provide its observations concerning the complementary information submitted by SINTRACREDITARIO in its communication of 31 January 2001.*

The Committee's recommendations

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

(a) The Committee requests the Government to keep it informed about all legal actions brought in respect of the amendment of the statutes of the Union of Noel Workers (SINTRANOEL) to change it into an industrial union.

(b) Concerning the failure to deduct union dues from the members of the Union of Workers of the National Coffee Growers Federation (SINTRAFEC), the Committee requests the Government to ensure that, if the parties agree

under the new collective agreement to deduct the trade union dues, these deductions do indeed become effective.

(c) The Committee requests the Government to take measures to find out whether the organization SINTRAFEC has complied with the corresponding legal requirements and if this is found to be the case to register its affiliation to the industrial union SINTRAINDUSCAFE.

(d) As regards the allegation concerning the dismissals and sanctions inflicted on workers affiliated to the National Union of Bavaria SA Workers (SINALTRABAVARIA) for having participated in a work stoppage at the enterprise on 31 August 1999, the Committee deeply regrets that more than one year and seven months since the alleged incidents the inquiry has still not been completed and asks the Government to take steps to ensure that the inquiry is rapidly concluded and to send its observations in this respect.

(e) The Committee requests the Government to immediately send its observations concerning the allegations that: (1) the enterprise Bavaria SA is violating the collective agreement by applying sanctions without the presence of the trade union, by awarding promotions according to their own criteria and by refusing to pay the deducted trade union dues; and (2) the enterprise Bavaria SA is facilitating and promoting the establishment of another trade union organization.

(f) As regards the allegations concerning the Caja de Crédito Agrario (takeover of the offices by the forces of law and order, massive dismissal of 8,000 workers – including 1,397 trade union officials – in violation of the collective agreement, the refusal to negotiate a list of claims in the new institution Banco Agrario de Colombia which was established following the liquidation of the Caja de Crédito Agrario and the refusal to register the executive committee of SINTRACREDITARIO), the Committee requests the Government to: (i) keep it informed of the final result of the administrative inquiry under way; (ii) keep it informed of any recourse taken against the administrative decision concerning the inquiry on the Caja de Crédito Agrario's refusal to negotiate a list of claims; and (iii) keep it informed about the result of the legal actions and the criminal charges. Also, bearing in mind the extremely high number of workers and trade union officials affected by the liquidation of the Caja de Crédito Agrario and the establishment of another banking institution called the Banco Agrario de Colombia, the Committee asks the Government to ensure as a matter of priority the recruitment of the highest possible number of workers and trade union officials who have lost their jobs. Finally, the Committee requests the Government to provide its observations concerning the complementary information submitted by the SINTRACREDITARIO in its communication of 31 January 2001.

CASE NO. 2051

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

Complaint against the Government of Colombia presented by
— the EVERFIT-INDULANA Clothing Workers' Trade Union of Colombia (SINTRA EVERFIT-INDULANA) (currently SINTRATEXTIL)
— the National Textile and Clothing Industry Trade Union (SINTRATEXCO) and
— the General Confederation of Democratic Workers (CGTD)

Allegations: Creation of cooperatives to the detriment of trade unions; dismissal of workers who do not accept new employment in the cooperatives

360. The Committee last examined this case at its meeting in May 2000 [see 322nd Report, paras. 144-153]. The Clothing Workers' Trade Union of Colombia, EVERFIT-INDULANA (SINTRATEXTIL) and the National Textile and Clothing Industry Trade Union (SINTRATEXCO) forwarded information in a communication dated 12 October 2000. The Government sent its observations in communications dated 30 August 2000 and 4 January 2001.

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

A. Previous examination of the case

362. The Committee notes that the complainants allege that in 1996 Confecciones Colombia Ltda. began to operate associative labour cooperatives with workers from other textile companies. This led to a process of "delabourization", with the members of the cooperatives appearing as the owners rather than as workers bound by an employment contract, and specifically, that: (1) the cooperatives are a sham, since they are managed by the employers and since the workers work in the same place, with the same bosses and the same machinery as those still with Confecciones Colombia Ltda; (2) in 1997 the company's fixed-term workers were offered contracts with the cooperatives (with a 15 per cent cut in wages and the loss of their acquired rights under the collective agreement), and those who did not accept were dismissed; (3) in February 1999 the enterprise ordered a mass dismissal of cooperative workers; and (4) the creation of the associative labour cooperatives in Confecciones Colombia Ltda. has had disastrous consequences for the workers and their unions. In its reply, the Government stated that the allegations were being investigated.

363. At its meeting in June 2000, the Committee made the following recommendations [see 322nd Report, para. 153]:

– The Committee requests the Government to ensure that the investigation it has initiated is thorough and covers all of the allegations made by the complainants, including those relating to: (1) the offer of employment in the cooperatives for the fixed-term workers of Confecciones Colombia Ltda.

under threat of dismissal; and (2) the mass dismissals in February 1999. It also requests the Government to transmit the results thereof.

– The Committee requests the complainants and the Government to inform it whether workers in the cooperatives have the right to join trade unions.

B. The complainants' additional information

364. In a communication dated 12 October 2000 the EVERFIT-INDULANA Clothing Workers' Trade Union of Colombia (SINTRA EVERFIT-INDULANA) (currently SINTRATEXTIL) and the National Textile and Clothing Industry Trade Union (SINTRATEXCO) stated, regarding the Committee's request on the right of workers in the cooperatives to join trade unions, that a cooperative is economic in character with a social vision that seeks to bypass intermediaries in order to reduce the costs of products and services; associative labour cooperatives bypass the intermediary, which in this case is the owner, to make more profit at the expense of the workers, given that there is no labour recruitment and they are governed by the rules on cooperatives of the framework act for cooperatives. In this context, trade unions are eliminated because, presumably, there is no legal labour link; and cooperative principles and the very concept of cooperatives are destroyed because the same employers, with the same bosses and supervisors, with the same systems and methods of production and the same machinery continued, but in associative labour cooperatives. This is a clever way of destroying trade unions, as the legal labour link disappears; it is also a way of destroying the cooperative movement as the number of cooperatives is nothing more than a sham of the real situation, within which the same employers continue to operate.

365. The complainants also state that associative labour cooperatives, particularly service cooperatives that operate as labour intermediaries, have had devastating effects on trade unions, not only because they exclude unskilled workers in enterprises, but also because of the barriers to trade unionism, that these associative labour cooperatives impose because of the inherent nature of cooperatives and what they represent.

C. The Government's reply

366. In its communications dated 30 August 2000 and 4 January 2001, the Government states that the Ministry of Labour and Social Security ordered an administrative inquiry specifically into the alleged violation of the collective agreement by the offer of employment in cooperatives made by Confecciones Colombia Ltda. to workers and that those who did not accept were dismissed. This investigation is taking place in the Regional Department of Antioquia and is in the initial stages. The Government adds that, as regards the offer of employment in cooperatives made by the company and the massive dismissals, the Territorial Directorate will proceed as soon as possible to the necessary checks, in order to ascertain the number of workers in the company in 1997, 1998 and 1999, as well as the number of associates in the cooperatives within the Confecciones Colombia company during the same years. In addition, these figures will be compared in order to ascertain the number of unionized employees who became associates in the cooperatives, and the exact number of persons who used to work for the company and became affiliates of the associative labour cooperatives.

367. The Government states that article 39 of the National Constitution guarantees the right of association to all workers and employers, with the exception of those in the civil service. This is repeated in article 353 of the Labour Code. Consequently, the right of association is guaranteed both constitutionally and legally to workers in cooperatives.

D. The Committee's conclusions

368. *The Committee observes that when it examined this case at its June 2000 meeting concerning the operation of associative labour cooperatives in textile companies resulting in serious prejudice to workers and their organizations in these enterprises in this sector, it noted that the Government was proposing to initiate an investigation into the allegations and it requested that this be thorough and cover all the allegations made by the complainants, including those related to the offer of employment in the cooperatives for the fixed-term workers of Confecciones Colombia Ltda. under threat of dismissal and the mass dismissals in February 1999.*

369. *The Committee notes the Government's statement that the Minister of Labour and Social Security ordered an administrative investigation for the alleged violation of the collective agreement by offering employment in cooperatives to workers of Confecciones Colombia Ltda. Under threat of dismissal and that this investigation is in the initial stages. The Committee regrets that the investigation has not yet been concluded. The Committee also reminds the Government that it had requested that the investigation should cover not only the situation to which the Government refers but also the entire range of allegations presented by the complainants. The Committee, therefore, urges the Government to take steps to ensure that the investigation is concluded rapidly and that it also covers the following allegations: (1) the cooperatives are a sham since they are managed by the employers and since the workers work in the same place, with the same bosses and with the same machinery as those still with Confecciones Colombia Ltda.; (2) in February 1999 the company ordered a mass dismissal of cooperative workers; and (3) the creation of the associative labour cooperatives in Confecciones Colombia Ltda. has had disastrous consequences for the workers and their trade unions (according to the complainants, in 1996 the two trade unions together had 440 members out of a total of 1,750 workers, while at the time of the complaint the company had 300 workers, of whom 168 were covered by the collective agreement and 134 were members of the complainant organizations, the rest of the company consists of 1,000 workers in the cooperatives). The Committee requests the Government to keep it informed of the results of the investigation.*

370. *Finally, the Committee recalls that it had asked the complainants and the Government to inform it whether workers in the cooperatives have the right to join trade unions. In this respect, the Committee notes the Government's statement that by virtue of article 39 of the National Constitution and article 353 of the Labour Code all workers (with the exception of those in the civil service) are guaranteed the right of association and, consequently, this right is guaranteed to workers in the cooperatives; the complainants indicate that there is no labour link in the associative labour cooperatives (members of these are partners) but when these cooperatives act as labour intermediaries for the enterprises they are acting as a means of destroying trade unions. The Committee requests the Government to ensure that associative labour cooperatives are not used to obscure the reality of the enterprise and to undermine genuine labour relations with the aim of prejudicing trade unions or their members.*

The Committee's recommendations

371. ***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 ensure that the administrative investigation under way covers not only the allegation that employment in the cooperatives was offered to fixed-term workers of Confecciones Colombia Ltda. under threat of dismissal, but also the other allegations, and

that steps are taken to conclude this investigation rapidly. The Committee requests the Government to keep it informed of the results of the investigation.

(b) The Committee requests the Government to ensure that associative labour cooperatives are not used to obscure the reality of the enterprise and to undermine genuine labour relations with the aim of prejudicing trade unions or their members.

CASE NO. 1865

INTERIM REPORT

Complaints against the Government of the Republic of Korea presented by — the Korean Confederation of Trade Unions (KCTU) — the Korean Automobile Workers' Federation (KAWF) — the International Confederation of Free Trade Unions (ICFTU) and — the Korean Metal Workers' Federation (KMWF)

Allegations: Arrest and detention of trade union leaders and members; government refusal to register newly established organizations; adoption of labour law amendments contrary to freedom of association

372. The Committee already examined the substance of this case at its May 1996, March and June 1997, March and November 1998, and March 2000 meetings, when it presented an interim report to the Governing Body [304th Report, paras. 221-254; 306th Report, paras. 295-346; 307th Report, paras. 177-236; 309th Report, paras. 120-160; 311th Report, paras. 293-339, 320th Report, paras. 456-530, approved by the Governing Body at its 266th, 268th, 269th, 271st, 273rd and 277th Sessions (June 1996, March and June 1997, March and November 1998, March 2000)].

373. The Government provided its observations in communications dated 19 October 2000 and 22 February 2001. The Korean Confederation of Trade Unions (KCTU) provided additional information in a communication of February 2001.

374. The Republic of Korea 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

375. During its previous examination of this case, the Committee had noted that the case addressed allegations both of a legislative and factual nature. With regard to the allegations of a legislative nature, the Committee recalled the developments concerning the workings of the second Tripartite Commission, established in June 1998 to deal with a series of reforms on labour-related issues, including those relating to freedom of association. The Committee noted that, due to the withdrawal of the Korea Employers' Federation (KEF), the Federation of Korean Trade Unions (FKTU) and the Korean Confederation of Trade Unions (KCTU) from the second Tripartite Commission, the latter ceased to function, but

that a third Tripartite Commission with more or less the same composition as the first and second Commissions was launched in September 1999. This third Tripartite Commission is mandated to deal with a series of issues, including those raised by the Committee during its previous examinations of this case. The Committee noted however that the FKTU withdrew from the third Tripartite Commission in November 1999, and called on all parties to act in good faith and expressed its hope for continued tripartite dialogue on all the issues it had raised. The Committee also noted with interest that a number of measures had been adopted by the Government which constituted progress towards acceptance of a certain number of its recommendations and encouraged the Government to continue taking such measures with a view to complying with the Committee's remaining recommendations.

376. Regarding the allegations of a factual nature, the Committee had urged the Government to take the appropriate measures so that the persons detained or on trial, or for whom arrest warrants had been issued as a result of their trade union activities, be released or the charges brought against them dropped or the arrest warrants withdrawn. The Committee had urged the Government to take the necessary measures to ensure that two public servants, who were dismissed for exercising activities linked to their right to organize, were reinstated in their jobs. Finally, the Committee examined new allegations submitted by the Korean Metal Workers' Federation (KMWF) concerning: violent police intervention to break peaceful strikes; large-scale arrests of strikers; the detention and imprisonment of key trade union leaders and workers who have gone on strike; laws that allow employers to dismiss workers unfairly and to ignore Central Labour Court rulings for reinstatement.

377. At its March 2000 session, in the light of the Committee's interim conclusions, the Governing Body approved the following recommendations:

(a) The Committee calls on all parties to act in good faith and expresses its hope for continued dialogue in a tripartite manner on all issues raised by it.

(b) As regards the legislative aspects of this case, the Committee requests the Government:

(i) to extend the right of association, recognized as of 1 January 1999, for certain categories of public servants, to all those categories of public servants who should enjoy this right in accordance with freedom of association principles;

(ii) to take steps to recognize, as soon as possible, the right to establish and join trade union organizations for the abovementioned public servants;

(iii) to speed up the process of legalizing trade union pluralism at the enterprise level and to this end promote the implementation of a stable collective bargaining system and to provide the text of the draft bill submitted to the National Assembly;

(iv) to repeal the requirement, contained in section 40 of the TULRAA, to notify to the Ministry of Labour the identity of third parties in collective bargaining and industrial disputes as well as the penalties contained in section 89(1) of the TULRAA for violation of the prohibition on persons not notified to the Ministry of Labour from intervening in collective bargaining or industrial disputes;

(v) to amend the list of essential public services contained in section 71 of the Trade Union and Labour Relations Adjustment Act (TULRAA) so

that the right to strike is prohibited only in essential services in the strict sense of the term;

(vi) considering that the prohibition of the payment of full-time union officials by employers is a matter which should not be the subject of legislative interference, to repeal section 24(2) of the TULRAA and to provide the text of the draft bill submitted to the National Assembly;

(vii) to repeal the provisions concerning the denial of the right of dismissed and unemployed workers to keep their union membership and the ineligibility of non-members of trade unions to stand for office (sections 2(4)(d) and 23(1) of the TULRAA);

(viii) to keep the Committee informed of the outcome of the deliberations within the Tripartite Commission or the National Assembly on the above issues, which the Committee firmly hopes will be examined and resolved quickly in a manner that is compatible with freedom of association principles;

(ix) to provide information on measures taken to give effect to the above recommendations and to keep the Committee informed thereon.

(c) As regards the allegations of a factual nature:

(i) the Committee notes with regret that despite its firm insistence on the dropping of all remaining charges pending against Mr. Kwon Young-kil, former President of the KCTU, the latter is still being tried on these charges. It expresses the firm hope that he will not be convicted on these charges and requests the Government to keep it informed of the outcome of the trial;

(ii) the Committee requests the Government to indicate whether the 70 KCTU leaders and activists were released unconditionally;

(iii) the Committee urges the Government to take the necessary measures to ensure that the public servant, Lee Seung-chan, is immediately reinstated in his job. It requests the Government to keep it informed of any progress made in this regard.

(d) As regards the KMWF's new allegations contained in communications dated 10 December 1998 and 22 January 1999:

(i) noting that the Government has recently adopted a four-step plan, part of which aims to minimize the arrest and detention of unionists, the Committee requests the Government to ensure that its new plan minimizing the arrest and detention of unionists is effectively implemented and police intervention in labour disputes is strictly limited, so that in future trade unionists are no longer arrested or detained for legitimate trade union activities;

(ii) the Committee calls on all parties to exercise restraint in pursuing activities linked to labour disputes;

(iii) recalling that workers should have the right to carry out strikes on economic and social issues as well as protest and sympathy strikes the Committee requests the Government to provide information on what exactly constitutes "obstruction of business", a charge for which the majority of unionists listed in the annex were arrested and detained;

(iv) the Committee requests the Government to take the necessary measures to enable the 182 members of the Sammi Specialty Steel Workers' Union and the six members of the Dong-hae union to secure reinstatement in their posts in the Changwon Specialty Steel Company and the OMRON company respectively. It further requests the Government to keep it informed of the outcome of the court proceedings in these two cases.

B. The Government's reply

378. In its communications of 19 October 2000 and 22 February 2001, the Government states that several legislative aspects included in the ILO recommendations were discussed in the third Tripartite Commission, which continued its discussions in the second half of year 2000.

Developments concerning the Tripartite Commission
(320th Report, paragraph 530(b)(viii))

379. After the FKTU's withdrawal (5 November 1999), participants in the third Tripartite Commission met regularly, drafted legislation proposals on the issues of the payment of wages to full-time union officials by employers and a single collective bargaining channel at the enterprise level. The FKTU decided to participate in the discussions concerning working hours reduction and the payment of wages to full-time union officials. It attended the sixth general meeting of the Commission on 30 March 2000, which normalized the operation of the Commission.

380. The Commission formed a Special Committee on Working Hours Reduction, mandated to provide by 2000 a legislative proposal on the reduction of working hours. The Special Committee completed overall discussions on specific outstanding points through weekly meetings. Hearings to gather opinions from labour and management organizations were scheduled in late September 2000 and a revision proposal on the working hours system was expected to be ready by October 2000. In addition, exchanges of views are under way at each of the subcommittees on measures concerning: human rights protection for migrant workers; protection for atypical workers; public sector restructuring; and tax system revision.

381. Meanwhile, the Subcommittee on Labour Relations selected the following issues as major tasks for 2000: the payment of wages to full-time union officials; collective bargaining under trade union pluralism; and adjustment in the scope of essential public services. Permission for dismissed workers to join trade unions at non-enterprise level is considered as a priority issue. The discussions concerning the payment of wages to full-time union officials and collective bargaining under a system of trade union pluralism are actively progressing; and other issues will be dealt with soon.

382. Between 1 September 2000 and 1 February 2001, the Commission and its subcommittees held meetings as follows:

Items	Tripartite Commission	Standing Committee	Special Committee on Public Sector Restructuring	Special Committee on Unfair Labour Practices	Special Committee on Financial Sector Restructuring	Special Committee on Working Hour Reduction	Subcommittee on Labour Relations	Subcommittee on Economic and Social Affairs
No. of meetings held	5	8	6	1	8	8	9	8

The Commission reached agreements through active dialogues between social partners on 13 points, including basic directions to reduce working hours and measures to effectuate collective agreements.

Right to organize of public servants
(320th Report, paragraph 530(b)(i) and (ii))

383. The Government states that, in accordance with the agreement of 6 February 1998 at the first Tripartite Commission, to allow gradually public officials to set up a trade union, Public Officials' Workplace Associations (POWAs), a precursor of the recognition of unions of public servants, have been operating from 1 January 1999. The introduction of POWAs has boosted the morale of public officials and improved the atmosphere of workplaces. To enhance further the right to organize of public officials, the Government revised guidelines on activities of workplace associations. As a result, at the discretion of the head of an organization, membership is allowed to middle-level officials who do supervisory work, to officials in charge of administrative work in a bureau or division, and to officials who supervise and guide work related to cultural heritage and environment. The revised guidelines also permit the head of an organization to provide an office for associations and collect membership fees in order to facilitate their activities. As of January 2001, 209 POWAs have been established out of 2,400 eligible offices. Their number is rapidly increasing (54 per cent between September 2000 and January 2001).

384. The Government submits that not only the number of POWAs has increased but that there have also been improvements in their functioning, such as the 22-points agreement reached between the mayor of Changwan City and the City POWA, which includes early notification of personnel as regards management standards and office automation. This agreement, which is similar to collective agreements concluded in firms, shows that POWAs are an effective preparatory stage to trade unions for public servants.

385. The Tripartite Commission has continued to meet to provide reasonable measures for recognition of the right to organize of public servants such as the expansion in the scope of public servants eligible to join the POWAs. On 2 June 2000, the seventh meeting of the Standing Committee adopted "Operation and problems of Public Officials' Workplace Associations" as an agenda item. On 10 August 2000, the Subcommittee on Labour Relations held its 19th meeting to hear opinions from representatives of the Research Group to Promote Public Officials' Workplace Associations. On 31 August 2000, the 21st meeting of the Subcommittee on Labour Relations was given presentations by officials from the Ministry of Government Administration and Home Affairs on the operation of the POWAs. After reviewing the operation of workplace associations and discussion at the Tripartite Commission, the Government will expand the scope of eligibility to join POWAs. The Government will proceed with the recognition of trade unions for public servants after gaining further experience of the workplace associations and reviewing public opinion and discussion at the Commission.

Legalization of trade union pluralism at the enterprise level and establishment of a stable collective bargaining system
(320th Report, paragraph 530(b)(iii))

386. As the 1997 revision of the Trade Union and Labour Relations Adjustment Act provided that there would be multiple trade unions at enterprise level from 1 January 2002, the Government prepared a draft bill, based on the suggestions made by public interest representatives in the Tripartite Commission. The bill was submitted to the National Assembly on 29 December 1999, but automatically expired at the end of the 15th session

of the National Assembly on 31 May 2000. The issue was discussed at several rounds of meetings held from April 2000, but failed to produce an agreement. According to the Government, labour and management are not fully prepared to have trade union pluralism at enterprise level in view of lack of awareness and practices in this respect. To avoid disruptions that would ensure if the system were implemented hastily and without extensive debate and preparation, the Commission decided on 9 February 2001 to defer the implementation date for five years. The Government intends to respect this decision because this represents the will of both labour and management.

387. In the meantime, representatives from labour, management, government and public interests seriously discussed measures to unify collective bargaining channels and to deal with any potential problems. Experts were invited to give comparative presentations on the systems in the United States, France and Japan. From 13 to 18 September, the tripartite representatives and officials of the Ministry of Labour visited the relevant authorities and employees' and employers' organizations in developed countries including France, the United States and Italy to get a picture of collective bargaining practices involving multiple trade unions. In addition, the Commission outsourced research to build a model for a collective bargaining system under trade union pluralism, and the Subcommittee on Labour Relations invited a person concerned to present views on the issue. When agreement is reached at the Commission, the Government will ensure that the revised proposal based on that agreement is submitted rapidly to the National Assembly.

Prohibition of payment of wages to full-time union officials

(320th Report, paragraph 530(b)(vi))

388. The Government prepared a draft bill on that issue, based on the suggestions made by the public interest representatives in the Tripartite Commission. The bill was submitted to the National Assembly on 29 December 1999, but automatically expired at the end of the 15th session of the National Assembly, on 31 May 2000. The Tripartite Commission continued its deliberations on the subject and, in view of the unions' argument that banning the payment would worsen their financial situation and practically inhibit the exercise of basic labour rights, it agreed to defer the ban for five years. In addition, for equity reasons, full-time officials of newly established unions and of unions paid at the time of the 1997 TURLAA revision, were to receive wages for five years, under voluntary negotiations between employers and unions.

Scope of essential services

(320th Report, paragraph 530(b)(v))

389. In its communication of 22 February 2001, the Government basically reiterates the position expressed in its March 2000 communication [see 320th Report, para. 471], recalls that the right to strike is not automatically denied to essential public services, and gives examples of cases where some telecommunication workers in essential services participated in strikes.

Other legislative issues

(320th Report, paragraph 530(b)(iv) and (vii))

390. The Government indicated in its communications of 19 October 2000 and 22 February 2001 that it would provide its observations at a later date concerning the following issues: notification of the identity of third parties in collective bargaining and industrial disputes,

and repealing penalties in this respect; refusal to allow dismissed workers to maintain their trade union membership, and ineligibility of non-members to stand for trade union office.

Factual issues

Charges pending against the former KCTU president, Kwon Young-kil
(320th Report, paragraph 530(c)(i))

391. The Government recalls that Mr. Kwon Young-kil was charged with obstruction of traffic and other violations on 5 December 1995, but was released on bail on 13 March 1996. At present he is on his 26th trial. After release, he has actively engaged in politics without any legal constraint. In the 1997 presidential elections, he campaigned as a candidate of a political party, "Citizen's Victory 21". In April 2000, he ran for a seat at the National Assembly as a candidate of the Democratic Labour Party. He is now involved in political activities as a representative of the Democratic Labour Party.

392. In its communication of 22 February 2001, the Government indicates that on 31 January 2001, the Seoul District Court convicted Mr. Kwon Young-kil for violating section 40(2) of the TULRAA (prohibition of third party intervention in industrial disputes) and sentenced him to ten months of imprisonment with a two-year stay of execution. Mr. Kwon Young-kil, who is not detained because of the stay of execution, stated he would appeal.

Release of the 70 KCTU leaders
(320th Report, paragraph 530(c)(ii))

393. The Government indicates that among the 70 KCTU leaders, 45 were released on parole, 15 were released on bail, three had their sentences suspended, one had his arrest dismissed, two were released after the review of legality for confinement, and four were fined.

Reinstatement of Mr. Lee Seung-chan
(320th Report, paragraph 530(c)(iii))

394. The Government states that Mr. Lee Seung-chan, a public servant at the Yongsan-gu office of the Seoul Metropolitan City, was fired for his involvement in preparation works for POWAs and requested the review of his dismissal, which was dropped on 16 November 1998. He later brought a suit against the head of the Yongsan-gu office before the Seoul District Court; in March 1999, the Seoul Administrative Court overturned the dismissal decision. On 23 May 2000, he was reinstated in his job as the ruling was confirmed by the Seoul High Public Prosecutor's Office's decision to give up further appeal.

Reply to the KMWF's allegations

Arrest of trade unionists for "obstruction of business"
(320th Report, paragraph 530(d)(iii))

395. The Government indicates that, under article 314 of the Criminal Code, to interfere with the business of another by injuring its credit, by circulating false facts or through fraudulent means or by the threat of force, constitutes "obstruction of business". According to the case law of the Supreme Court, the term "threat of force" means all forms of power which may curb or disturb freedom of one's will. The term "business" is a work or undertaking where a person is involved. The term "obstruction" is defined as acts of impeding work or causing a danger which may impede work. Article 33(1) of the

Constitution provides that "to enhance working conditions, workers shall have the right to independent association, collective bargaining and collective action", and articles 3 and 4 of the TULRAA prescribe that a trade union or workers are immune to criminal or civil claims of damages inflicted by justifiable activities. The Court generally ruled that the occupation of offices by using violence, damages to properties, obstruction of traffic and blockade of gates constituted obstruction of business because no form of violence or act of destruction can be justified.

396. In the present case, the Government minimized the number of arrests by arresting only those involved in radical violence and destruction and leaving others free or uncharged. Some of those arrested were released with fines or had their indictment suspended during investigation, while the majority of them were released on bail or had their sentences suspended during trial. Those sentenced were also set free with presidential pardon.

Reinstatement of 182 workers at the Changwon Specialty Steel Company and of six workers at the OMRON company

397. The Government reiterates that, when the Changwon Specialty Steel Company took over the Changwon plant of the Sammi Specialty Steel Company, and OMRON Automotive Electronics Korea took over part of the Dong-hae Company, some of the workers of the latter companies had their employment relationship discontinued. The issue in these cases was whether the takeover in question was based on a "purchase of assets" or constituted a "merger and acquisition" and, accordingly, was subject to the legal requirement of employment succession or not. The National Labour Relations Commission (NLRC), the Seoul District Court and the Seoul Appeal Court, ruled that the takeover of the Changwon plant of the Sammi Specialty Steel Company constituted a merger and acquisition and, therefore, was required to ensure employment succession. The NLRC and the Seoul District Court made the same decision as regards the Dong-hae Company.

398. Taking into account the rulings of the NLRC and the courts, the dismissal of the 182 members of the Sammi Specialty Steel Workers' Union and of the six members of the Dong-hae union should not be viewed as related to trade union activities. The dismissed workers of the Sammi Specialty Steel Workers' Union applied for relief, not based on unfair labour practices to get rid of trade union leaders, but only on unfair dismissal. The Government therefore considers that the issue here is whether the takeover triggered the legal requirement of employment succession and, accordingly, of a legislative nature.

399. The Government has done all it could to obtain the reinstatement of the workers of the Sammi Specialty Steel Workers' Union and the Dong-hae union, after the NLRC ruling. The Ministry of Labour imposed penal sanctions on employers of the companies concerned and kept persuading labour and management to maintain dialogue. The Labour Minister met with the President of the controlling shareholder of Sammi Steel and called for progressive measures for employment stability of workers, prior to the Supreme Court ruling. In addition, the Director–General of the Labour Standards Bureau of the Ministry presided at two labour-management meetings in December 2000 and January 2001. At present, the Sammi Specialty Steel Workers' Union's case is pending at the Supreme Court and that of the Dong-hae union at the Seoul Appeal Court. The Government will take appropriate measures following the courts' rulings.

C. The KCTU's additional allegations

400. In its communication of February 2001, the KCTU protests against the five-year extension of the TULRAA provision banning trade union pluralism at the enterprise level, submits that this represents a blatant rejection of the ILO continued recommendations in this

respect, and points out that this decision was taken in a body in which it does not participate. The KCTU gives several examples of actual cases where workers' rights to organize were denied on the basis of that provision. As a result of current practices of the Government, new serious problems begin to arise with respect to the emergence of non-enterprise-based unions (territory-, craft- or industry-based unions): the result is an even greater ban on trade union pluralism.

D. The Committee's conclusions

401. *During its previous examination of the case, the Committee had called on the parties to act in good faith and expressed its hope that the tripartite dialogue would continue. The Committee had also noted with interest that a number of measures adopted by the Government constituted progress towards the acceptance of some of its recommendations, and encouraged the Government to continue taking such measures with a view to complying with its remaining recommendations. The Committee proposes to review these issues in the light of the partial information provided by the Government.*

Legislative issues

402. *As regards the right to organize of public servants, the Committee notes that Public Officials' Workplace Associations (POWAs), which the Government terms as "a precursor of the right to organize of public servants", have been in operation since 1 January 1999, that the Government has revised the guidelines concerning the activities of POWAs, and that discussions are continuing on this subject in the third Tripartite Commission. While noting this information, the Committee observes that POWAs have been set up at only 209 offices out of 2400 eligible workplaces; the Committee also refers to its previous comments on this subject [see 320th Report, paras. 509-510] i.e. that only 338,000 public servants out of a total of 930,000 were eligible to join these associations; the Committee further notes that the revised guidelines on this matter still leave this limited right to the discretion of the head of the organization. In these circumstances, the Committee is bound to draw, once again, the Government's attention to the fundamental principle that all public service employees, with the sole possible exception of the armed forces and the police should be able to establish organizations of their own choosing to further and defend the interests of their members [**Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 206] and that to deny public sector workers the right to set up trade unions where this right is afforded to private sector workers involves discrimination [**Digest**, op. cit., para. 216]. Given the above, and taking into account the lengthy period elapsed since the filing of this complaint, the Committee requests once again the Government to take concrete steps, as soon as possible, to extend the right of association and to recognize the right to establish and join trade union organizations for all public servants who should enjoy these rights in accordance with freedom of association principles.*

403. *Regarding the issue of trade union pluralism at the enterprise level, the Committee had regretted in its previous examination of the case that the Government maintained its decision to postpone the recognition of trade union pluralism until 2002 [see 320th Report, para. 512]. The Committee deeply regrets that the situation is now worse with the lengthy additional postponement – five years – for such recognition. The Committee urges once again the Government to speed up the legislative process and firmly hopes that it will be able to note concrete results in the very near future on this issue, particularly in view of the fact that it has now been examined and discussed at length. The Committee requests the Government to provide its observations on the KCTU's communication of February 2001, and urges it to take appropriate measures in this respect as soon as possible, in line*

with freedom of association principles, and to keep it informed of developments in this respect.

404. *As regards the prohibition of payment by employers of wages to full-time union officials, the Committee notes that, following discussions in the Tripartite Commission, the ban initially planned has been deferred for five years. The Committee further notes that the matter has been left for voluntary negotiations between some employers and unions. Recalling that the payment of wages to full-time union officers by employers should not be subject to legislative interference, the Committee trusts that this matter will be dealt with in conformity with freedom of association principles.*

405. *As regards the term "obstruction of business" under section 314 of the Criminal Code, i.e. the charge under which a large number of KMWF trade union leaders and members were arrested in connection with the 1997-98 events, the Committee notes that the legal definition of this term is so wide as to encompass practically all activities related to strikes. Recalling that this provision carries extremely heavy penalties (maximum sentence of five years' imprisonment and/or a fine of 15 million won), the Committee refers to its previous comments in this respect [see 320th Report, paras. 524 and 526] to emphasize that such a situation is not conducive to a stable and harmonious industrial relations system and requests the Government to bring section 314 of the Criminal Code in line with the narrower interpretation given to it by the Supreme Court as well as with freedom of association principles.*

406. *Concerning the other legislative issues, namely notification of the identity of third parties in collective bargaining and industrial disputes, and refusal to allow dismissed workers to maintain trade union membership, the Committee notes with regret that the Government did not report any concrete progress and merely stated that it would provide its observations at a future date. The Committee reiterates its requests in these respects [see 320th Report, para. 530 (b)(iv) and (vii)] and urges the Government to provide as soon as possible its observations on these issues.*

407. *As regards developments in the Tripartite Commission, the Committee takes note of the discussions that took place in the Commission on various subjects, including working hours reduction, human rights protection for migrant workers, protection for atypical workers, public sector restructuring and tax system revision. Noting that the Subcommittee on Labour Relations selected as priority items for 2000 some issues which have been the object of its previous comments (collective bargaining under trade union pluralism; scope of essential services; and refusal to allow dismissed workers to maintain trade union membership), the Committee is however deeply concerned that not only has no real progress been made on most of these issues, but that there was a serious setback as regards the first one, in view of the additional five-year postponement concerning the legalization of trade union pluralism at enterprise level. The Committee firmly hopes that the Tripartite Commission will accelerate its work and will come up rapidly with concrete proposals, in line with freedom of association principles, on all these outstanding issues. It urges the Government, once again, to keep it informed of the outcome of the deliberations of the Tripartite Commission.*

408. *Related to the immediately preceding point and recalling that, as early as June 1996 [see 304th Report, para. 254(e)], it had requested the Government to ensure that proposed amendments to labour-related legislation no longer be delayed, the Committee urges it once again to speed up the legislative process with a view to amending all the provisions mentioned above, in line with freedom of association principles. The Committee reminds the Government in this regard that it may avail itself of the technical assistance of the Office.*

Factual issues

409. *With regard to the charges pending against the former KCTU president, Mr. Kwon Young-kil, the Committee notes with regret that the Government limits itself to repeating the information previously given and that it continues to press the charges against Mr. Kwon, who is now on his 26th trial. The Committee deeply regrets to note that Mr. Kwon has been convicted for violation of section 40(2) of the TULRAA – a provision which is incompatible with freedom of association principles – and given a suspended sentence of ten months of imprisonment under that charge, which confirms the concerns expressed earlier by the Committee in this respect. The Committee urges the Government to drop the charges against Mr. Kwon, concerning events that occurred before the January 1997 strikes as a result of his trade union activities. It requests the Government to keep it informed of the outcome of pending trials, including Mr. Kwon's appeal against the judgement issued by the Seoul District Court on 31 January 2001.*

410. *Concerning the 70 KCTU leaders, the Committee notes that 45 of them were released on parole, 15 were released on bail, three had their sentences suspended, one had his arrest dismissed, two were released and four were fined. The Committee requests the Government to keep it informed of the developments in these cases, including judicial decisions, if any.*

411. *The Committee notes with interest that Mr. Lee Seung-chan has been reinstated in his job following the judgement of the Seoul Administrative Court.*

412. *Referring to its previous comments on the need to amend section 314 of the Criminal Code, the Committee requests the Government to ensure in future cases that the four-step plan it adopted in April 1999 to minimize the arrest and detention of trade unionists be effectively implemented, and that police intervention in labour disputes be strictly limited to situations where law and order is seriously threatened [see **Digest**, op. cit., para. 580], so that in future trade unionists are no longer arrested, detained or charged for legitimate trade union activities.*

413. *Considering that this general issue would be best dealt within the context of a tripartite discussion of a policy of decriminalization of labour conflicts, the Committee further suggests that the Tripartite Commission would constitute an appropriate forum for a thorough discussion and formal proposals.*

414. *Regarding the alleged unfair dismissal of 182 workers at the Sammi Specialty Steel Company and of six workers at the Dong-hae Company, the Committee notes that in both cases, the competent court ruled that the takeovers constituted a "merger and acquisition", which triggered employment succession obligations on the part of the Changwon and Omron companies. The Committee further notes the initiatives taken by the Government in this context, including its attempts at maintaining social dialogue between labour and management, and encourages it to pursue its efforts in this direction. The Committee requests the Government to keep it informed of the outcome of the appeals lodged against the judgements of the courts of the first instance.*

The Committee's recommendations

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

(a) The Committee reiterates its call, on all the parties, to act in good faith and expresses its firm hope that tripartite dialogue will continue on all issues it raised.

(b) As regards the legislative aspects of this case, the Committee:

(i) requests the Government, once again, to take concrete steps as soon as possible to extend the right of association, and to recognize the right to establish and join trade union organizations, for all public servants who should enjoy these rights, in accordance with freedom of association principles;

(ii) regretting that an additional delay of five years has now been imposed as regards the legalization of trade union pluralism at the enterprise level, requests the Government to provide its observations on the KCTU's allegations of February 2001, and urges it, once again, to speed up that process with a view to promoting the implementation of a stable collective bargaining system;

(iii) notes with regret that the Government did not provide information on the other outstanding legislative issues (notification of the identity of third parties in collective bargaining and industrial disputes, and repealing of penalties related thereto; refusal to allow dismissed workers to maintain trade union membership, and ineligibility of non-members of trade unions to stand for office), reiterates its previous requests in these respects, and urges the Government to provide as soon as possible its observations on these issues;

(iv) noting that the legal definition of the infraction of "obstruction of business" under section 314 of the Penal Code is so wide as to encompass practically all activities related to strikes, requests the Government to bring this provision in line with the narrower interpretation given to it by the Supreme Court as well as with freedom of association principles, and recommends that this matter be discussed by the Tripartite Commission with a view to making formal proposals;

(v) asks the Government to repeal section 40(2) of the TULRAA in conformity with freedom of association principles;

(vi) urges the Government to speed up the work of the Tripartite Commission and to keep it informed of the outcome of the deliberations within the Tripartite Commission or the National Assembly on all the above issues, which the Committee firmly hopes will be examined and resolved quickly in accordance with freedom of association principles; and

(vii) requests the Government to keep it informed on all measures taken to give effect to the above recommendations.

(c) As regards the factual aspects of this case:

(i) noting with deep concern that Mr. Kwon has received a suspended sentence of ten months of imprisonment for violation of a provision which is incompatible with freedom of association principles, the Committee regrets that the Government would continue to press charges against Mr. Kwon Young-kil, urges it to drop the charges concerning his legitimate trade union activities, and requests the Government to keep it informed of the outcome of pending trials, including Mr. Kwon's appeal against the judgement of the Seoul District Court of 31 January 2001;

(ii) the Committee requests the Government to keep it informed of developments concerning the 70 KCTU leaders and members, including judicial decisions, if any;

(iii) the Committee requests the Government to ensure in future cases that the four-step plan it adopted in April 1999 to minimize the arrest and detention of trade unionists be effectively implemented, and that police intervention in labour disputes be strictly limited to situations where law and order are seriously threatened, so that in future trade unionists are no longer arrested, detained or charged for legitimate trade union activities;

(iv) the Committee calls on all parties to exercise restraint in pursuing activities linked to labour relations disputes; and

(v) the Committee requests the Government to keep it informed of the outcome of the appeals lodged against the judgements of the courts of the first instance regarding the dismissal of 182 workers at the Sammi Specialty Steel Company and of six workers at the Dong-hae Company, and urges the Government to pursue its efforts towards maintaining social dialogue between labour and management on these issues.

CASE NO. 2093

DEFINITIVE REPORT

Complaint against the Government of the Republic of Korea presented by — the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) and — the Korean Federation of Tourism Workers' Union (KFTWU)

Allegations: Refusal to negotiate successor agreement; violence against, and arrest of, trade unionists during a labour dispute

416. The International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF), filed the present complaint on behalf of its affiliate the Korean Federation of Tourism Workers' Union (KFTWU) against the Republic of Korea in a communication of 17 July 2000.

417. The Government submitted its observations in a communication dated 19 October 2000.

418. The Republic of Korea 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

419. In its communication of 17 July 2000, the IUF states on behalf of the KFTWU that following the expiration of a previous collective bargaining agreement in May 2000, the Lotte Hotel Workers' Union, affiliated to the KFTWU, attempted to negotiate a successor agreement. Rather than enter into good faith negotiations, the hotel management declared a deadlock and invoked a compulsory arbitration clause contained in the expired agreement, which had been negotiated when the union belonged to a different labour federation. The arbitration board set up by the Seoul Labour Relations Commission (LRC) ruled that there should be no change in the previous agreement. The union was thereby deprived of its rights to collective bargaining under ILO Convention No. 98 since it was saddled, without remedy, with the terms of an expired collective agreement it had not negotiated.

420. Under the expired collective bargaining agreement, hotel management deprived an ever-growing number of its employees of their rights to freedom of association and collective bargaining by falsely labelling all newly hired employees as "temporary", thereby excluding them from the terms of the collective agreement and denying their right to union membership. The Government, acting through the arbitration board of the Seoul Labour Relations Commission, has prevented the union from ending this discriminatory practice through collective bargaining.

421. The union went on strike to pursue its legitimate aims. On 29 June and again on 10 July striking union members were subjected to brutal police interventions leading to mass injuries and arrests. These Government actions are effectively denying the union members their right to freedom of association under ILO Convention No. 87, and to collective bargaining under ILO Convention No. 98.

B. The Government's reply

422. In its communication of 19 October 2000, the Government states, as regards the decision of the Seoul LRC, that article 62 of the Trade Union and Labour Relations Adjustment Act (TULRAA) provides that the Commission shall conduct an arbitration, inter alia "at the request of one of the parties, in accordance with the provisions of a collective agreement" which was the case at Lotte Hotel. This was not a case of compulsory arbitration, which can only take place in disputes concerning essential public services. In fact, arbitration requests are made far more frequently by trade unions than by employers. For instance in 1999, out of 199 such requests, 187 were made by unions and 12 by employers.

423. As regards the particular case of the Lotte Hotel, the collective agreement had been concluded with an expiry date of 31 May 2000. Article 32(3) of the TULRAA provides that "if a new collective agreement has not been concluded at the expiry date of the existing agreement, even though the parties concerned continued to conduct collective bargaining with a view to coming up with a new collective agreement, the existing collective agreement shall remain effective for another three months after its expiry date, except that there exists a separate agreement". In addition, Addendum 2 of the Lotte Hotel collective agreement states that "if a new collective agreement has not been concluded between management and labour, the existing agreement shall remain effective for 90 days after its expiration".

424. The hotel management applied for arbitration on 8 June 2000 (i.e. before 30 August, the expiry date of the existing agreement) and the Seoul Labour Relations Commission ruled on 20 June 2000. Therefore, considering the provision of the TULRAA and the collective agreement of the Lotte Hotel, and the dates of application and ruling, the Government considers that the decision was legitimate.

425. Concerning the IUF's argument that the arbitration award was unjust because it was based on a collective agreement negotiated when the Lotte Hotel trade union belonged to a different labour federation, the Government states that collective agreements concluded between employers and trade unions are effective as long as they are in force. Thus, the Lotte Hotel's collective agreement should remain effective regardless of the fact that the union leadership had changed, or that the trade union did not belong to the former federation any more.

426. As regards the allegation that the Seoul Labour Relations Commission ruled that there should be no change in the previous agreement, the Government points out that, in fact, the Commission issued its arbitration award as a mediator, taking into account the opinions of labour and management. For instance, the Commission decided to raise wages by 8 per cent despite management's reluctance to negotiate wages. In relation to the issue of retirement, the Commission adjusted the retirement age upward to 56 and decided to allow retired personnel to work another year on a contract basis, while the management demanded to maintain retirement age at 55.

427. Regarding the allegation that police intervention in the legal strike violated workers' rights to freedom of association and collective bargaining, the Government recalls the chronology of events. After a preliminary meeting on 12 May 2000, the Lotte Hotel trade union and the management entered into a first bargaining round on 25 May 2000, but made no progress. The union held strike votes from 3 to 5 June and launched the strike on 9 June. The trade union did not participate in four rounds of arbitration meetings held from 13 June. From 22 June, union members began to camp in a ballroom of the hotel. On 20 June, the Seoul Labour Relations Commission ruled according to clauses of the Lotte Hotel collective agreement, after accepting the request from the management (the arbitration award is effective from 20 June 2000 to 31 May 2002).

428. The strikes which started from 9 June, after the case was referred to arbitration on 8 June, violated article 63 of the TULRAA which prescribes that industrial actions shall not be conducted for 15 days from the date when industrial disputes have been referred to arbitration. Moreover, strikes after arbitration awards are against the obligation of peace imbedded in the nature of collective agreements, because arbitration awards have the same effect as collective agreements.

429. The Lotte Hotel trade unions were involved in the following illegal activities during strikes. Union members assaulted police officers after dragging them to protest sites. A group of about 200 protesters destroyed a reservation room door on the third floor of the hotel and stopped the duty-free shop business, by occupying it and swearing and yelling at shoppers. About 100 union members made a protest visit to the welfare department of the hotel, used violence against officials and destroyed facilities. They also threatened high-ranking officials to kneel down and write a statement, and to beat them.

430. As violence against the management continued, a warrant was issued and the police tried twice to arrest attackers at the hotel on 28 June, but failed. On 29 June, the police entered the protest site to implement requests by the management for protection of the premises, and to execute the arrest warrants. Before entering, the police took all safety measures such as preparing fire engines, mattresses, nets and ambulances and dispatching 150 female police officers, and did all it could do to prevent violent clashes. Yet the moment the police

entered the hotel, 1,000 unionists strongly resisted, throwing dishes, glasses and knives and spraying fire-extinguishing chemicals from behind barricades erected with a piano and chairs in the corridors of the 36th and 37th floors. During the process, 15 police officers and 35 union members were injured.

431. Other incidents occurred on 10 July while police were dispersing crowds gathered at an unreported and violent rally. From 10 a.m. to 6.30 p.m., 700 unionists tried to ram through the hotel, despite repeated warnings of the police to break up. The police responded to protesters who were engaged in violence, wielding wooden pipes. Thirteen law enforcers and five union members were injured until the strike ended around 6.30 p.m. Thirty people were arrested but all were released. The Government finds it very unfortunate to see clashes between the police and union members during protests, but the measures the police took were inevitable to maintain social order and protect citizens' safety.

432. The Government adds that it made all efforts to settle the dispute. Collective bargainings were encouraged through frequent dialogues with leaders of the KFTWU and the management and labour of the hotel since the start of the strike on 9 June. The Government urged the management to engage in good faith collective bargaining, and the trade union to stop violent protests. It maintained a non-interventionist approach which indicates its respect for the principle of a voluntary dispute settlement between management and labour. Despite these efforts, the management insisted on not being involved in collective bargaining, citing the decision of the Commission, while the union did not stop striking, reasoning that the decision was not acceptable.

433. The basic position of the Government is that legitimate collective bargaining and strikes are fully allowed, but illegal ones accompanied by violence and destruction will be punished according to the law. The hotel management demanded police protection for hotel facilities and safety of foreign guests during the strikes. There were violent actions against law enforcers and management, which called for police intervention to protect the lives and properties of citizens. The Government recognizes its responsibility to protect labour rights guaranteed by the Constitution. However, collective actions involving violence do not constitute justifiable collective actions.

434. The Government adds that, due to its continued efforts as a mediator to bring both sides to the table, the labour and management of the hotel signed an agreement on 21 August. This agreement settles contentious issues, such as the elimination (effective from June 2002) from the existing collective agreement of the clause on arbitration requested by one of the parties, a wage increase and the shift of status of atypical workers into that of regular employees. With this agreement, the trade union and management withdrew all complaints and accusations which occurred during the strikes, thereby completely ending the disputes.

C. The Committee's conclusions

435. *The Committee notes that this case concerns the alleged refusal of an employer to negotiate a successor agreement, as well as police intervention and arrests of trade unionists during a violent strike.*

436. *As regards the parties' attitude in bargaining, the violence that erupted during the strike and the intervention of police forces, the Committee observes that the competent authorities tried, without success, on the one hand to persuade the hotel management to adopt a more conciliatory approach towards collective bargaining rather than insisting strictly on the application of the previous collective agreement and, on the other hand, to convince the union to stop violent protests. Noting that such entrenched positions often result in more or less violent confrontations, the Committee recalls 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 [**Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 817].*

437. *The Committee further recalls that while workers and their organizations have an obligation to respect the law of the land, the intervention by security forces in strike situations should be limited strictly to the maintenance of public order and that such intervention should be in proportion to the threat to public order [**Digest**, op. cit., paras. 581 and 582].*

438. *The Committee notes that, with the help of official mediation services, the management of the hotel and the trade union representing the workers signed in August 2000 an agreement which ended completely the dispute, including the removal from the collective agreement of the compulsory arbitration clause which, it seems, was a paramount factor in triggering the conflict in the first place. Taking into account that the parties came to an agreement and that both of them withdrew all complaints and accusations made during the strike, the Committee considers that this case does not call for further examination.*

The Committee's recommendation

439. ***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. 1984

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

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

Allegations: Acts of anti-union discrimination and intimidation in plantations

440. The Committee examined this case at its June 1999 and March 2000 meetings and presented two interim reports [see 316th Report, paras, 391-447, and 320th Report, paras. 531-546, approved by the Governing Body at its 275th and 277th Sessions respectively (June 1999 and March 2000)].

441. The Government sent further observations in communications dated 13 April, 12 May and 14 August 2000.

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

A. Previous examination of the case

443. Following its examination of the case in March 2000, the Committee made the following recommendations on the allegations which remained pending [see 320th Report, para. 546]:

Allegations concerning the enterprise Bananera Isla Grande S.A.

(a) Regretting to note that the Government once again has not provided complete observations and noting that in its investigation into allegations concerning the enterprise Bananera Isla Grande S.A. the administrative authority had found that harassment had been used to force workers to leave their union, that there had been serious violations of labour legislation, and that the judicial authorities on 5 August 1998 ordered the reinstatement of the workers who had been dismissed to date (five in all), but that this decision has not been implemented to date, the Committee is bound to deplore once again these facts and urges the Government to send without delay the text of the final ruling made by the judicial authorities and to have the court ruling, already handed down and ordering the reinstatement of five dismissed workers, implemented pursuant to its obligations.

(b) The Committee regrets once again that the Government has not sent its observations on the other allegations concerning the company Bananera Isla Grande S.A., namely: the dismissal for "unjustified absence" of 90 trade union members who had signed the list of claims following an operation against illegal migrants conducted at the border between 17 and 19 August 1998 by police and immigration officials in the presence of company representatives and using lists of union members; pressure on workers to make them join a solidarity association; the proposal made to workers to sign a "direct arrangement" bypassing the union; and pressure on union members to sign blank pieces of paper. The Committee urges the Government promptly to send its observations in this regard.

Allegations concerning the enterprise PAIS S.A.

(c) The Committee requests the Government to send the text of the ruling given on the complaint presented by the administrative authorities concerning the use of harassment and threats against employees of PAIS S.A. to make them resign from their union as well as the withholding of trade union membership dues. The Committee requests the Government to inform it of any administrative action taken in response to the allegation that there are security doors at the enterprise and guards who aggressively prevent union officials from entering.

The complainant's allegations of 5 May 1999

(d) The Committee requests the Government to inform it of any ruling given on allegations concerning the dismissal of 16 workers employed by Bananera Isla Grande S.A. once it learned of their membership to the Agricultural Workers' Union of Limón (UTRAL). The Committee requests the Government to indicate whether or not the 16 workers concerned worked in the company and, if so, to indicate the reason for their dismissal.

(e) The Committee requests the Government to verify once again whether the dismissal of the trade union official Mr. Augustín Gaitán Fernández was due to unjustified absences over a three-day period, as the company claims, and to inform it in this regard.

(f) The Committee urges the Government to send its observations on the complainant's allegations of 21 May and 17 November 1999 concerning anti-union dismissals and other anti-union acts.

444. In its communications of 21 May and 17 November 1999 (mentioned in the Committee's last recommendation), the IUF alleges that Mr. Daniel Gutiérrez Cárdenas, Secretary-General of the Workers' Trade Union of the Chiriquí Land Company, was dismissed in order to prevent him from using his experience towards the negotiation of a new collective agreement, that the company refuses to recognize him as a legitimate workers' representative, and that Mr. Fernando Valdelomar Canales was given a formal reprimand without good reason. It is also claimed that the company Oropel S.R. Ltd. is harassing the worker and trade union official, Mr. Roberto Durán, and accusing him of insubordination; that the Compañía Bananera Canfín dismissed Mr. José Reynaldo López González, a member of SITAGAH, after accusing him of verbally attacking the company administrator and another person; that the banana-producing company Roble is harassing the trade unionist Mr. Luis Pérez Jarquín, and blaming him alone for a poor harvest despite the fact that work is done in teams; that the banana company El Ceibo Limitada 1 and 2 is harassing members of the union SITRAP even though it has lodged a complaint with the Minister of Labour for alleged unfair labour practices by the union, thereby prompting a swift response from the Ministry [see 320th Report, para. 536].

B. The Government's reply

445. In its communications of 13 April, 12 May and 14 August, the Government refers to the ongoing action by the Ministry of Labour and Social Security to resolve the collective disputes that have arisen and indicates that as a result of this action satisfactory agreements for both parties have been concluded; these are detailed below. The National Directorate of the Inspectorate of Labour is the competent body to ensure compliance with labour legislation and to investigate complaints of unfair labour practices, while the Labour Affairs Department is responsible for mediating amicably in industrial disputes to achieve out-of-court conciliation in the interests of maintaining social and industrial peace in work centres. The information provided below comes from various reports from these agencies which the Government sent with its reply.

446. With regard to the allegations concerning the dismissal of Mr. Daniel Gutiérrez Cárdenas, the Secretary-General of SITRACHIRI, the company's refusal to recognize him, the formal reprimand without good reason given to Mr. Fernando Valdelomar Canales and the alleged insubordination of trade union official Mr. Roberto Durán, the Government submits an agreement concluded between the trade union SITRACHIRI and the enterprise Chiriquí Land Company dated 11 January 2000 in which the trade union undertakes to withdraw all the complaints (including those relating to the enterprise Bananera Isla Grande) it has submitted to the Ministry of Labour, the courts and the ILO, and the enterprise undertakes: (1) to take steps to annul the proceedings against the trade union and against Mr. Daniel Gutiérrez Cárdenas (Secretary-General of the trade union); (2) to allow him to participate in collective bargaining as the Secretary-General of the trade union; and (3) with regard to the dismissal of this official, it undertakes to pay double the benefits and compensation due to him. In view of this agreement the authorities filed the case. Whatever the case may be, with reference to the alleged dismissal of 90 workers from the enterprise Bananera Isla Grande, all of them members of the trade union who had signed a list of claims, the Government states that no formal complaints have been lodged and therefore there are no administrative proceedings relating to this matter. The Government sends a copy of a decision dated 2 July 1999 in which the enterprise Chiriquí Land Company is cleared of a complaint of giving preferential treatment to the solidarity association, prompting workers who belong to the trade union SITRACHIRI to resign their membership, harassment of trade unionists and anti-union dismissals.

447. Concerning the dismissal of 11 workers from the UTRAL trade union at the enterprise Bananera Isla Grande and other anti-union practices, the Government sends a copy of an agreement dated 16 February 2000 concluded between the enterprise and the trade union in which the latter undertakes to relinquish all proceedings under way and the enterprise to pay 250,000 colones to cover damages (compensation for the trade union's financial outlays), to respect freedom of association (acceptance of memberships and resignations from memberships, deduction of trade union dues, etc.) and to refrain from taking reprisals against the members of the UTRAL trade union. This agreement covers four sets of proceedings that were under way and was officially approved by the judicial authority; the imputed party was the enterprise Proyecto Agroindustrial de Sixaola S.A. (País S.A.).

448. With respect to the alleged dismissal of the trade union official Mr. Agustín Gaitán Fernández, the Government states that the trade union organization and the enterprise Chiriquí Land Company reached an agreement, the trade union desisted from the action it had undertaken and the administrative authority therefore filed the case.

449. With regard to the alleged dismissal of Mr. José Reynaldo López González by the banana company Canfín after he was accused of verbally attacking the company administrator and another person, the Government states that the Ministry of Labour convened the parties for administrative conciliation proceedings, during the course of which on the request of the workers' representative, the party in question was awarded compensation for his labour rights and benefits.

450. Concerning the allegations relating to the enterprise Oropel (reprimands addressed to the trade union official Mr. Roberto Durán in the context of trade union persecution), the Government indicates that at the request of the trade union organization SITAGAH the Ministry of Labour carried out conciliation proceedings. The trade union party requested that its complaint be submitted to the General Labour Inspectorate.

451. As regards the allegations concerning the enterprise Roble (harassment of the trade unionist Mr. Luis Pérez Jarquín), the Government indicates that, without prejudice to the investigation (under way) initiated by the General Directorate of the Inspectorate of Labour, conciliation proceedings were conducted. The trade union representative asked that this matter be transferred to the General Labour Inspectorate.

452. Concerning the allegations about the banana enterprise Ceibo (persecution of SITRAP members), the Government states that it is not true that the trade union organization has submitted a complaint to the Ministry of Labour.

C. The Committee's conclusions

Pending questions relating to the enterprises Chiriquí Land Company, Bananera Isla Grande and Proyecto Agroindustrial Sixaola S.A. (País S.A.)

453. *The Committee takes note of the agreements concluded between the enterprise Chiriquí Land Company, the enterprise Bananera Isla Grande and the Proyecto Agroindustrial Sixaola S.A. (País S.A.) on the one hand and the trade union organizations SITRACHIRI and UTRAL on the other, as well as of the fact that SITRACHIRI undertook to desist from the complaints submitted against the enterprise (including those submitted to the ILO) and UTRAL undertook to cease all proceedings under way. Likewise, the Committee notes that the enterprise Chiriquí Land Company and the trade union organization reached an agreement relating to the dismissal of the trade union official Mr. Agustín Gaitán Fernández and that the trade union desisted from the action that it had taken. The Committee observes that on the basis of these agreements the administrative and judicial*

proceedings taken in relation to these matters were filed. The Committee also notes the decision of 2 July 1999 which clears the enterprise Chiriquí Land Company from a complaint of giving preferential treatment to the solidarist association, prompting workers who belong to SITRACHIRI to resign their membership, harassment of trade unionists and anti-union dismissals.

454. *Given this situation, the Committee will not pursue the examination of the allegations and questions contained in its recommendations (a), (b), (c) and (d) of paragraph 546 of its 320th Report nor the portion of the allegations made by the complainant on 21 May and 17 November 1999 relating to anti-union acts against SITRACHIRI officials and members (the dismissal of the trade union leader Mr. Daniel Gutiérrez Cárdenas and the refusal by the enterprise to recognize him; the formal reprimand without good reason (warning) given to trade union official Mr. Fernando Valdelomar Canales).*

Questions relating to other banana enterprises

455. *With regard to the dismissal of Mr. José Reynaldo López González (banana enterprise Canfín), the Committee notes that during the administrative conciliation proceedings the representative of this worker asked compensation for his labour rights and benefits.*

456. *Concerning the allegations relating to the enterprise Oropel (anti-union reprimands addressed to the trade union official Mr. Roberto Durán in the context of trade union persecution) and to the enterprise Roble (harassment of the trade unionist Mr. Luis Pérez Jarquín, blaming him alone for a poor harvest), the Committee notes that during the conciliation proceedings the trade union representative asked that these matters be transferred to the General Labour Inspectorate. The Committee requests the Government to keep it informed of the results of the investigation conducted into this matter.*

457. *Lastly, with regard to the allegations concerning the banana enterprise Ceibo (persecution of SITRAP members), the Committee notes that according to the Government the trade union organization has not submitted a complaint to the Ministry of Labour. Noting the contradiction between the complainant's allegations and the reply of the Government concerning the submitting of a complaint, the Committee urges the Government to ensure that this matter is promptly investigated.*

The Committee's recommendations

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

(a) With regard to the allegations concerning the enterprise Oropel (anti-union reprimands addressed to the trade union official Mr. Roberto Durán in the context of trade union persecution) and to the enterprise Roble (harassment of the trade unionist Mr. Pérez Jarquín, blaming him alone for a poor harvest), the Committee notes that during the conciliation proceedings the trade union representative asked that these matters be transferred to the General Labour Inspectorate. The Committee asks the Government to keep it informed of the results of the investigation conducted into this matter.

(b) As regards the allegations concerning the banana enterprise Ceibo (persecution of SITRAP members), the Committee urges the Government to ensure that this matter is promptly investigated.

CASE NO. 2069

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

Complaint against the Government of Costa Rica presented by the Secondary School Teachers' Association of Costa Rica (APSE)

Allegations: Refusal to grant time off for trade union activities

459. The complaint is contained in a communication from the Secondary School Teachers' Association of Costa Rica (APSE) dated 11 January 2000. The Government sent its observations in communications dated 2 May and 14 August 2000.

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

A. The complainant's allegations

461. In its communication dated 11 January 2000, the Secondary School Teachers' Association of Costa Rica (APSE) states that since its inception it has always had permission to take time off to carry out its activities (assemblies, meetings, etc.) during the working day. APSE adds that the Minister of Public Education established a school calendar that included 200 teaching days and ruled out any trade union activities on these days during the working day (or at least partly) as it considered these to be an activity that was distinct from teaching. APSE believes that this violates Conventions Nos. 87, 98 and 135 of the ILO.

B. The Government's reply

462. In its communications of 2 May and 14 August 2000, the Government states that the allegations in this case are identical to those of Case No. 2024, which was examined in the 320th Report of the Committee. The Government refers back to the observations that it presented in this report and to the agreement of 22 June 1999 between the trade union organizations and the Government, which allowed these issues to be resolved.

C. The Committee's conclusions

463. *The Committee observes that the case under discussion deals with the same issue that arose in Case No. 2024 (see 320th Report, paras. 547-567), i. e. the denial of trade union leave in the public education sector during the working day (or part thereof) as a result of a new school calendar with 200 actual days of school.*

464. *In this respect, the Committee refers to its conclusions in Case No. 2024 (paras. 565-566) where it noted with interest that the Ministry of Public Education and the trade union organizations reached an agreement on 22 June 1999 whereby as from the 2000 school year the Ministry will negotiate the school calendar with the trade union organizations, incorporating trade union activities and granting the necessary leave to attend national assemblies and sessions of executive committees.*

465. *The Committee notes that the complainant organization (APSE) is mentioned in the agreement of 22 June 1999 and that its complaint (which dates from January 2000) does not mention whether negotiations for the year 2000 took place with the authorities, as was agreed in the aforementioned agreement. The Committee also observes that the complainant organization does not refer to any specific case of denial of trade union leave. In these circumstances, the Committee reiterates the conclusions that it came to in Case No. 2024 and requests the Government to keep it informed of the negotiation process provided for in the agreement of 22 June 1999 and its outcome.*

The Committee's recommendation

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

The Committee requests the Government to keep it informed of the negotiation process provided for in the agreement of 22 June 1999 and its outcome.

CASE NO. 2084

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

Complaint against the Government of Costa Rica presented by
— the Trade Union of Workers and Retirees of the National Registry and Allied Workers (SITRARENA) and
— the Rerum Novarum Confederation of Workers (CTRN)

Allegations: Temporary suspension of duties on trade union grounds

467. The complaint is contained in a joint communication from the Trade Union of Workers and Retirees of the National Registry and Allied Workers (SITRARENA) and the Rerum Novarum Confederation of Workers (CTRN) of May 2000. The Government sent its observations in a communication dated 25 August 2000.

468. 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

469. In their communication of May 2000, the Trade Union of Workers and Retirees of the National Registry and Allied Workers (SITRARENA) and the Rerum Novarum Confederation of Workers (CTRN) allege that on 30 March 1998 disciplinary proceedings were initiated against Mr. Mario Alberto Zamora Cruz, general secretary of SITRARENA, with the clear aim of dismissing him for his involvement on behalf of the workers and his denunciatory stance with regard to irregularities in the National Registry.

470. The complainants add that in response to this, SITRARENA filed a complaint for unfair labour practices and anti-union harassment with the Ministry of Labour on 11 May 1998. This complaint was examined by the Ministry of Labour authorities and resulted in a report

stating that there were clear indications of anti-union persecution and in the initiation of proceedings on 10 August 1998 before the small claims labour court of the second circuit of San José with the aim of ascertaining the truth of the matter; these proceedings have been slow and complicated.

471. In addition to the proceedings for anti-union harassment, on 19 April 1999 ordinary proceedings were initiated against the Minister of Justice and in September 1998 criminal complaints were brought against two of the Minister's advisers for corruption when they justified their position by instituting ordinary proceedings against trade union leader Mr. Mario Zamora Cruz. According to the complainants these ordinary proceedings were riddled with irregularities, such as the disappearance of the report of the body responsible for conducting the disciplinary proceedings against the trade union leader.

472. The complainants state that as of 31 January 2000 Mr. Mario Zamora Cruz was suspended from his duties despite the fact that the disciplinary proceedings and other judicial sanctions were pending. The complainants criticized the authorities' delay in this case, which shows that measures of legal protection have been inadequate and inappropriate, in particular as a result of the authorities' delaying tactics. Nonetheless, these authorities have discredited Mr. Mario Zamora Cruz in the national press, pointing out that dismissal proceedings are pending against him.

B. The Government's reply

473. In its communication of 25 August 2000, the Government states that it is not true that disciplinary proceedings were initiated against Mr. Mario Zamora Cruz on 30 March 1998 as alleged by the complainant. It is true that administrative disciplinary proceedings were initiated against him, for which a body was appointed to carry out the procedure in order to ascertain the truth of the matter, in accordance with the constitutional principle of due process, by an administrative decision issued on 13 July 1998. In this respect, it is important to point out that the acts which gave rise to the complaint and investigation are as follows: (1) failing in his duties as a public official by allowing, through his negligence and irresponsibility, more than 40 documents submitted for registration to the National Registry to be mislaid, these documents being in his custody and under his responsibility, since as a public official and as the "right-hand man" for sector 2-06 he was in charge at the time the documents were lost, and has not yet reported their whereabouts, displaying indifference to such a serious matter; (2) he also failed in his duties by allowing himself, in his position as official responsible for sector 2-06, to fall entirely behind with his work without having accounted for this so far, with the result that the Directorate of the Property Registry had to restructure this sector as a precautionary measure in view of the backlog; (3) failing to hand in a report as the official responsible for sector 2-06, on the mislaid documents and to report on their whereabouts before resigning on grounds of incompetence as he was duty-bound to do, especially since he was the official in charge when the abovementioned documents were lost. It is clear from the above that Mr. Mario Zamora Cruz was guilty of serious misconduct, which constituted the grounds for filing a petition for dismissal with the competent body, in this case the General Directorate of the Civil Service, which was received on 29 October 1998 as recorded in the case file.

474. As regards Mr. Mario Zamora Cruz's complaint of unfair labour practices and anti-union harassment filed with the Ministry of Labour, in the course of the proceedings it became clear that he attempted to distort the facts on which the petition for dismissal was based, even going so far as to file endless complaints intended to delay the proceedings, without so far giving any explanation to the administration concerning the whereabouts of the 40 documents he mislaid since, as noted above, he was the official in charge of processing these documents, given that they were in his custody.

475. It is true that the complaint of unfair labour practices has been examined by the Ministry of Labour; the case file contains allegations by the National Registry submitted as evidence that the complaint is unfounded. Moreover, in a further effort to distort the facts, Mr. Mario Zamora Cruz filed another action with the labour court of the second circuit, which was dismissed.

476. Mention should be made of the unfounded acts of Mr. Mario Zamora Cruz, who has used every available means to distort the facts, alleging that anti-union harassment took place, in an effort to misrepresent the facts leading to the institution of administrative disciplinary proceedings against him in accordance with the law, in which the complainant exercised his right to defence according to the highest principles of due process, and even had himself represented by six or seven lawyers, and which culminated in a petition for dismissal which again was in conformity with the law; he also filed complaints against the lawyers who had been appointed to conduct the proceedings, in accordance with the constitutional principle of due process.

477. The ordinary proceedings instituted against Mr. Mario Alberto Zamora Cruz were in conformity with the principle of legality and the constitutional principle of due process, to the extent that Mr. Zamora Cruz actively took part in them, filing, through his lawyers, all manner of motions and unfounded appeals with the aim of delaying the final ruling. This is evidenced by the fact that all of the appeals for protection of his constitutional rights filed with the constitutional chamber of the Supreme Court of Justice were dismissed on grounds that they were unfounded. As regards the disappearance of the report drawn up by the body in charge of the proceedings, it has repeatedly been noted in letters submitted by the National Registry that this report was never lost, as evidenced by the fact that it is provided in this reply as part of the documentary evidence requested.

478. On 26 November 1999 an addition to the petition for dismissal filed against Mr. Mario Alberto Zamora Cruz was presented to the General Directorate of the Civil Service in view of the fact that, for purposes of defamation, Mr. Zamora Cruz had signed a document which he submitted to the President of the Republic, inter alia, containing denunciations and entitled "Denunciation of serious political anomalies in the National Registry", subtitled "Influence peddling and corruption", a document which is blatantly defamatory and libellous with regard both to the ministerial department and to the members of the administration of the National Registry. It is important to point out that the document in question does not have the support or approval of the Trade Union of Workers and Retirees of the National Registry, since in a letter of 15 November 1999, reference No. STRN-229199, signed by Mr. Felipe Espinosa Fernández, general secretary of the trade union, states the following:

> Concerning the denunciation presented by Mr. Mario Zamora Cruz, entitled "Denunciation of serious anomalies in the National Registry", our organization did not authorize, neither does it authorize, the denunciation written or drawn up by Mr. Mario Zamora Cruz and does not accept it as a denunciation by this organization since it did not meet the formal requirements under the rules of our organization.
>
> To this end the executive committee of the Trade Union of Workers and Retirees of the National Registry, at its extraordinary meeting No. 24 on 4 November 1999 stated the following:
>
> Agreement 1:
>
> The SITRARENA executive committee does not authorize and dissociates itself from any denunciation presented by Mr. Mario Zamora Cruz, labour relations secretary of this organization, to the Office of the Controller-General of the Republic.

479. These serious acts prompted the National Registry to present new allegations to the competent body as grounds for dismissal of the official Mario Alberto Zamora Cruz. It also requested temporary suspension with pay of the official based on the provisions of section 43.

480. The Government states that at no time did it publicize the dismissal proceedings against Mr. Mario Zamora Cruz. As regards the alleged delay in the proceedings, the Government emphasizes that Mr. Mario Zamora Cruz resorted to delaying tactics, as is incontestably clear from the fact that he is constantly filing various appeals aimed at holding up a final decision in the case.

C. The Committee's conclusions

481. *The Committee observes that in this case the complainant organizations alleged the institution of disciplinary proceedings and subsequent suspension of Mr. Zamora Cruz, general secretary of SITRARENA, for activities on behalf of the workers of the National Registry and for having denounced irregularities in that institution. In this context, according to the complainants, ordinary proceedings were instituted against the Minister of Justice and criminal complaints for corruption brought against two of the Minister's advisers. Lastly, the complainants criticize the delay in the proceedings, in particular as a result of delaying tactics by the authorities.*

482. *The Committee observes that according to the Government: (1) the administrative disciplinary proceedings against Mr. Zamora Cruz were due to the fact that he was guilty of seriously failing in his duties as an official (having mislaid over 40 documents submitted for registration to the National Registry through his negligence and irresponsibility, falling behind with his work without explaining why and failing to account for the lost documents); (2) Mr. Zamora Cruz has attempted to distort the facts and has filed endless complaints in order to delay the proceedings for unfair labour practices; (3) in the ordinary proceedings for serious misconduct instituted against Mr. Zamora Cruz, his lawyers filed various motions and unfounded appeals in order to delay the final decision; (4) Mr. Zamora Cruz subsequently signed a defamatory and libellous document against the Minister of Justice and against the National Registry – which was not authorized by the trade union to which he belongs and which its executive committee dissociated itself with – with the result that, in accordance with the law, a request was submitted for temporary suspension with pay of the official, which the latter did not challenge; (5) in this document Mr. Zamora Cruz used terms such as corruption, abuse of power, influence peddling and embezzlement of public funds, and the case was therefore referred to the Attorney-General's Office in order for court proceedings to be instituted.*

483. *The Committee observes that the versions put forward by the complainants and the Government concerning the facts that prompted the administrative and judicial proceedings filed by and against trade union leader Mr. Zamora Cruz are entirely contradictory. In these circumstances, the Committee requests the Government to keep it informed of the final administrative decisions and judicial verdicts handed down in relation to the case of trade union leader Mr. Zamora Cruz, so that it may reach a decision in this case.*

The Committee's recommendation

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

The Committee requests the Government to keep it informed of the final administrative decisions and judicial verdicts handed down in relation to the case of trade union leader Mr. Zamora Cruz, so that it may reach a decision in this case.

CASE NO. 2060

DEFINITIVE REPORT

Complaint against the Government of Denmark presented by
— the Danish Nurses' Organization (DNO) and
— the Confederation of Salaried Employees and Civil Servants in Denmark (FTF)

Allegations: Violation of the right to strike and interference in the right to bargain collectively

485. In communications dated 26 November 1999 and 11 January 2000 the Danish Nurses' Organization (DNO) and the Confederation of Salaried Employees and Civil Servants in Denmark (FTF) submitted a complaint of violations of freedom of association against the Government of Denmark.

486. The Government sent its observations in a communication dated 27 April 2000.

487. Denmark 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

488. In their communication dated 26 November 1999, the Danish Nurses' Organization (DNO) and the Confederation of Salaried Employees and Civil Servants in Denmark (FTF) indicated that the negotiations between the DNO and the employers at county, local and city levels on renewal of the collective agreements as at 1 April 1999 concluded in a result on 16 March 1999. However, the result of the negotiations was rejected in a ballot among the nurses, after which a declared strike became effective on 13 May 1999.

489. Approximately 10 per cent of all nurses were affected by the strike and, in accordance with the general agreements, the DNO and the employers had concluded agreements to maintain emergency and vital services. The agreements to maintain emergency and vital services implied that all nursing/radiograph functions which the doctors of the respective departments prescribe as vital, urgent or required in order to avoid potential consequences that may endanger the health of patients or have permanent health effects would be maintained to ensure that the life, personal safety and health of the patients were not unduly threatened.

490. On the other hand, the strike did mean that planned surgery that did not threaten the life, personal safety and health of the patients was postponed, leading to an increase in the so-called "waiting lists", but experience has shown that the delays in relation to surgery, etc., are recovered within a fairly short period of time. Furthermore, the strike covered home-care services in selected municipalities, but again all vital functions were

carried out, ensuring that, for example, diabetic patients received the necessary insulin treatment.

491. The complainants emphasized that it was being indicated from all quarters, including the Danish Government, that the emergency services functioned as intended. After just seven days of conflict, the Danish Parliament passed an Act on 21 May 1999 on extension and renewal of employment contracts and agreements for nurses, radiographers, district nurses, etc., terminating the strike from midnight on 21 May 1999. A copy of the Act is attached to the complaint. The intervention had the effect that the draft settlement which had been rejected was given the force of law, and the contracts and agreements were extended and renewed for a period of three years.

492. In reference to, inter alia, the provisions of the general agreements on the setting up of emergency services in connection with lawful conflicts, the complainants contend that the Danish Parliament should not generally interfere in lawful conflicts, and certainly not as prematurely as was seen in the spring of 1999. Furthermore, they consider that the duration of the extension is unacceptable in the light of the fact that the intervention enacted the very result of the negotiations which had been rejected in a ballot among the members. According to the complainants, this is a violation of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

493. The complainants request that the Government be informed of the conclusion of the Committee on Freedom of Association with respect to this complaint and that – if indicated in the light of that conclusion – the Government should within a reasonable time limit present a report on any corrective measures that might be taken. In this respect, the complainants hope that the Government's repeated violations will persuade the Committee on Freedom of Association to: (1) adopt a harsher critique of the measures terminating the strike in spite of well-functioning emergency services; (2) make forceful recommendations regarding appropriate guarantees to protect the interests of employees deprived of the right to bargain collectively; and (3) condemn even more forcefully the repeated practice of statutory prolongation of collective agreements.

494. In their communication dated 11 January 2000, the complainants highlight the differences between this case and a similar case which had been examined by the Committee in respect of Denmark (Case No. 1882). In connection with the strike by the DNO in 1995, the employers' side had effected an extensive lockout, and this was undoubtedly a factor which strongly contributed to the legislative intervention by the Government. The strike in 1999 however covered approximately 10 per cent of the total of 50,000 nurses and the conflict was not extended by a lockout from the employers.

495. According to the complainants, the Government cannot therefore use the argument that the conflict was extremely extensive, as was the case in 1995, to justify the legislative intervention in 1999. Furthermore, the complainants believe that the employers speculated in legislative intervention, since several of the political parties in the Danish Parliament intimated in the daily newspapers already a few days after the conflict started that there would be rapid legal intervention.

496. The complainants moreover submit that the legislative intervention in 1999 was more extensive than the intervention in 1995 since, for the latter, a provision was included in the Act to the effect that the nurses' conditions of pay and employment should be investigated and adjusted within a specified framework by a committee with equal representation of the parties.

497. When the Government intervened in 1999, 6,000 operations and 28,000 preliminary examinations had been cancelled, whereas in 1995, 26,000 operations had been cancelled. The delays in relation to surgery that had been cancelled in 1995 were recovered within a fairly short period of time. There are no publicly available statistics on the number of operations and preliminary examinations that are cancelled in normal circumstances. Furthermore, when the Bill came up for reading in the Danish Parliament, the Government stated that the conflict did not give rise to any situations that threatened the life, personal safety and health of the patients. The result of the negotiations was rejected in a ballot among the nurses on 16 March 1999 and the strike became effective on 13 May 1999. There was no immediate reaction from the employers and there were no further negotiations between the employers and the employees.

B. The Government's reply

498. In its communication dated 27 April 2000, the Government indicates that, in 1999, negotiations took place in the public sector (the State and the counties/municipalities) concerning the renewal of the collective agreements which were to expire on 1 April. The renewals affected more than 800,000 employees – of which more than 600,000 were in the county/municipal sector.

499. Both in the state sector and in the county/municipal sector, the negotiations started with negotiations concerning the framework for the renewal of the collective agreements. The employees' organizations in both of these public sectors have for this purpose established separate negotiation bodies. Prior to each round of negotiations concerning the renewal of the collective agreement, the organizations agreed on the course of the negotiations and the commitment in relation to the negotiation result.

500. In the county/municipal sector the negotiations about the general framework took place between the county/municipal employers and the employees' negotiating body, the Association of Public Servants and other Public Employees (KTO). The KTO represents 62 member organizations with about 643,000 members. The KTO covers all employees in county and municipal administrations. The aim of the KTO is that the organizations act together in negotiations concerning general pay and working conditions. The KTO concludes collective agreements with the employers (the National Association of Municipal Associations (KL), the National Association of County Associations (ARF), and the municipalities of Copenhagen and Frederiksberg) in connection with the general collective bargaining rounds in the county/municipal field. The KTO cannot enter into binding agreements on behalf of the organizations. Each individual member organization is to approve the agreement(s) concluded by the KTO before it will be bound.

501. The negotiations between the county/municipal employers and the KTO concerning the general framework took place in the months of January and February 1999 and were concluded by a compromise already in the month of February 1999. The main elements of this compromise were the framework for wage increases, the continued financing of a new wage system, a currency period of three years for collective agreements and other benefits. This compromise was based on an assumption of general wage increases of 5.96 per cent over a three-year period. The result of the compromise was a "package solution" and the agreement between the employers and the KTO had been reached on the assumption that it was accepted as a general KTO agreement.

502. After agreement had been reached on the general framework, the negotiations continued successfully on specific themes within individual occupational fields/organizations where agreement was reached. The results of the compromises in the individual fields covered under the framework of the KTO compromise were made the subject of a ballot among the members of the individual KTO organizations.

503. In some fields, the negotiation results were rejected by the members. This was, for instance, the case of nurses, bio-analysts, midwives and teachers. Strike notices were then issued and, at the same time, the negotiating parties in the individual sectors started new negotiations. Following the rejection of the negotiation result in the field of nurses, the negotiations in this field were resumed – this time with the assistance of the Public Conciliator. But, on 12 May 1999, the Public Conciliator had to draw the conclusion that further negotiations would not lead to any result and that there was no basis for postponing the strike which then started as described.

504. In the field of nurses, the negotiators thus failed to reach any new result during the period of four weeks before the notified dispute could start or during the strike. The strike started on 13 May and ran until 22 May when it was stopped by legislative intervention. The Act prolonged and renewed the collective agreements of nurses, radiographers and district nurses with the amendments following from the negotiation result which had been rejected by the employees.

505. The strike affected about 5,000 nurses, of which about 2,500 were district nurses in 15 municipalities. The district nurses are responsible for the care and nursing of elderly and sick persons in their own homes. The emergency services set up were functioning and ensured the performance of tasks which were vital, urgent or necessary to avoid health impairments or permanent health effects. After a period of eight days, however, the Government found the situation serious for exposed groups of the population in spite of the emergency services established in the sectors affected by the strike. A protracted dispute could be foreseen and, against the background of the deadlock positions of the two sides, this would at some point in time involve a risk to the health of the population.

506. It was, in particular, a serious situation that the district nurses in the 15 municipalities affected by the strike were not able to offer the same care as usual to sick and elderly persons; this could lead to insecurity, inconveniences and, in the last analysis, to suffering for a population group which was already an exposed group. Furthermore, the Government was very concerned about the fact that planned operations were cancelled in great numbers which meant that constantly growing groups of the population were experiencing further inconvenience and pains as well as insecurity as to when their suffering could be remedied. The Minister of Health estimated that it was a matter of about 1,500 operations daily. At the same time, pre-examinations were also postponed on a large scale and this could mean that serious diseases were not diagnosed until a (maybe too) late date.

507. The emergency services established did not compensate for cancelled operations and the lack of pre-examinations. This situation in the field of healthcare should be seen in the light of the fact that there was no prospect of the two sides being able to solve the dispute on their own. This difficult situation was clearly demonstrated by the fact that the Public Conciliator had to give up any conciliation attempts and even refrained from postponing the announced industrial disputes. But, it became even more clear when both sides to the dispute clearly indicated to the Minister of Labour that there were no signs of a rapprochement between them. The bargaining positions of the two sides had not changed since the outbreak of the dispute. On the part of the strikers, it had been clearly indicated that only an increase in the wage sum beyond the framework laid down in the KTO compromise would be acceptable and that a reallocation of means within this framework had been rejected. The employers had refused to increase the wage sum for these groups which had turned down the negotiation result and other employees' groups within the KTO supported the employer's conception of this matter.

508. Under these circumstances, the Government and the Folketing found that it would be meaningless and irresponsible in relation to the population to allow the dispute to continue and brought the dispute to an end on 22 May 1999 after nine days.

509. The Government does not find that this Act is a violation of ILO Conventions Nos. 87 and 98 and wishes to stress that one of the main elements of its deliberations was the fact that there was no prospect of the two sides being able to find a solution on their own and that the sector within which nurses are working belongs to essential services with a risk of development of situations of dangers to health and safety.

510. The Government also finds it important to note that the two sides had had the chance to continue their negotiations both during the month preceding the outbreak of the strike and during the period of eight days for which the strike had been running. When the complainants argue that the dispute had been running for "just seven days" and that the Government had admitted that the emergency services were functioning satisfactorily, it should be noted that it is true that the dispute had not until then led to any fatal situations. A responsible Government, however, cannot wait for that sort of situation to arise but has to act on the basis of an evaluation of the risk of the occurrence of such situations. Considering the deadlock positions, the Government found that the two sides were not able to solve the dispute themselves within a foreseeable future – a time perspective which was so long that the risk of fatal situations and unacceptable suffering for the population could not be accepted.

511. The Government also wishes to emphasize that the act prolonged and renewed the collective agreements in question, with the amendments following from the overall negotiation result in the county/municipal sector which all other sectors finally accepted. This special joint negotiation body is, of course, of a mutual nature and the reactions from the other groups of employees clearly showed that a breach of solidarity would not be accepted. The compromise had been agreed on the assumption that it was a "package solution" and this had been accepted by all of the organizations in the KTO. The Government did not find it appropriate to propose a reallocation within the given framework as the nurses had already clearly indicated that they were not interested in such a reallocation.

512. Furthermore, the Government does not agree with the complainants' allegation that the Government automatically intervenes in lawfully established strikes. As mentioned above, the midwives also rejected the result which their negotiators had agreed on with the employers; the subsequent lawfully established strike went on for a month before the negotiators reached a new agreement which was then approved by the members.

513. By way of conclusion, the Government finds that the nurses' voluntary participation in the joint negotiating body, the KTO, meant that it would in reality not be possible for them as the only group to break the common framework set for the negotiations which they had all agreed upon. On the other hand, the nurses were not interested in a reallocation of the means within the framework which had solved the problems for other groups (teachers, bio-analysts and midwives) who had turned down their respective agreements in the first round. The prospect was thus a protracted dispute and the Government could not assume responsibility for the risk of fatal situations and suffering for the population that a dispute might have entailed irrespective of the emergency services set up.

C. The Committee's conclusions

514. *The Committee notes that the allegations in this case concern the legislative interruption of lawfully undertaken industrial action in the hospital sector at the county, local and city levels and the legislative extension of collective agreements for the nurses and hospital workers concerned. The Committee further notes that the complainants believed that the employers speculated in legislative interventions.*

515. *The Committee recalls that it had examined a similar case against the Government of Denmark concerning legislative interruption of strike action and legislative extension of collective agreements in the hospital sector in its 306th Report (Case No. 1884). In this case, the Committee had concluded that, given the essential nature of the service in question, the legislative intervention that had put an end to the industrial action could not be considered to be an infringement of ILO principles on freedom of association. On the other hand, the Committee considered that the statutory renewal and extension of collective agreements covering nurses was not in conformity with the principle of free collective bargaining under Article 4 of Convention No. 98 and requested the Government to refrain from taking such measures in the future [see 306th Report, para. 438].*

516. *The complainants in this case draw the Committee's attention to two distinctions between the earlier case and the present complaint. Firstly, the complainants state that in the previous case the strike was further exacerbated by an extensive lockout action by the employers which created a situation wherein the minimum service required could not be met, whereas in the present case the established minimum service was being ensured and no lives were in danger. Indeed, the Committee notes both from the complainants and the Government that the strike in the present case had not yet resulted in harm to the life, personal safety or health of whole or part of the population. The Committee takes due note, however, of the Government's indication that a responsible Government cannot wait for that sort of situation to arise, but has to act on the basis of an evaluation of the risk of the occurrence of such situations. At the same time, the Committee notes the complainants' statement that the concluded agreement on minimum services gave the doctors of the respective departments the authority to prescribe the necessary functions to be maintained during the strike.*

517. *In this respect, the Committee once again recalls that the right to strike may be restricted or even prohibited in the case of essential services in the strict sense of the term, i.e. services whose interruption would endanger the life, personal safety or health of whole or part of the population and that it has considered the hospital sector to be an essential service [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, paras. 526 and 544]. To determine situations in which a strike could be prohibited, the criteria which has to be established is the existence of a clear and imminent threat to the life, personal safety or health of the whole or part of the population [see* ***Digest****, para. 540]****.*** *In the case of Denmark where the legislation permits industrial action in the hospital sector when minimum services are provided, the assessment of any risk justifying restrictions on the otherwise lawful industrial action is within the Government's prerogative. Any questions related to the application of the national legislation in this respect are at least in the first instance a matter for determination at the national level. The Committee therefore considers that the termination of the hospital sector strike by the Danish Parliament does not constitute a violation of ILO principles on freedom of association.*

518. *A second distinction from the previous case raised by the complainants concerns the legislative extension of the collective agreements which was, according to them, far more extensive in the present case than the intervention that occurred in 1995. In this respect, the Committee once again recalls that where the right to strike is restricted or prohibited in essential services such as hospitals, adequate protection should be given to the workers concerned to compensate them for this limitation on their freedom of action. This could be done, for example, by providing adequate, impartial and speedy conciliation and arbitration procedures in which the parties concerned can take part at every stage and in which the awards, once made, are fully and promptly implemented [see* ***Digest****,* op.cit., *paras. 546 and 547]. When examining the specific question of guarantees to compensate for restrictions on the right to strike in Case No. 1884, the Committee had considered that the 1995 legislative intervention which had provided for the appointment of committees*

comprised of the concerned parties to analyse the activities, salary levels, etc., for negotiations to be entered into and, in the absence of agreement, for a determination to be made by the chairpersons of the committees, represented adequate, impartial and speedy procedures with the involvement of the parties and, as such, safeguarded the interests of the workers whose strike action was restricted [see 306th Report, para. 431].

519. *In the present case, the legislative intervention has imposed until 31 March 2002 the draft settlement which had been rejected by the nurses. No committees were established as in the case of the previous intervention permitting for further negotiation, and, if necessary, in the event of a deadlock, providing for machinery that enjoys the confidence of all parties concerned; instead, the terms of a previously rejected negotiation were unilaterally imposed on the workers.*

520. *The Committee takes due note of the Government's indication concerning the procedures for negotiations in the public sector. It notes that the employees' negotiating body in the public sector, the Association of Public Servants and other Public Employees (KTO), represents 62 member organizations with about 643,000 members. While the KTO concludes collective agreements in connection with the general collective bargaining rounds in the county/municipal field, it cannot enter into binding agreements on behalf of the organizations it represents. Each individual member organization must approve the agreement(s) concluded by the KTO before it may be bound.*

521. *The negotiations between the county/municipal employers and the KTO concerning the general framework took place in January and February 1999 and, according to the Government, were concluded by a compromise representing a "package solution" on the assumption that it was accepted as a general KTO agreement. After agreement had been reached on the general framework, the negotiations continued successfully on specific themes within individual occupational fields/organizations where agreement was reached. The results of the compromises in the individual fields covered under the framework of KTO compromise were made the subject of a ballot among the members of the individual KTO organizations. The members in some fields such as nurses, bio-analysts, midwives and teachers rejected the negotiation results. Strike notices were issued and at the same time the negotiating parties in the individual sectors started new negotiations. In the field of nurses, the negotiations resumed with the assistance of a public conciliator who concluded in May 1999 that there was a deadlock and that there was therefore no basis for postponing the strike.*

522. *The Government emphasises that the Act prolonged and renewed the collective agreements with the amendments following from the overall negotiation result which all the other sectors had finally accepted. The special negotiation body which had reached this package solution was of a mutual nature and, according to the Government, the reactions from the other groups of employees clearly showed that a breach of solidarity would not be accepted. The Government considers that the nurses' voluntary participation in the KTO meant that it would not be possible for them to break the common framework set for the negotiations which they had all agreed upon. On the other hand, the Government asserts that the nurses were not interested in a reallocation of the means within the framework which had solved the problems for other groups who had turned down their respective agreements in the first round.*

523. *While taking into due consideration the Government's explanation of the applicable procedures for negotiations within the public sector, the Committee observes that these procedures also provide that each member organization of the KTO is to approve the agreement before it will be bound. Yet, in the present case, the nurses are now legislatively bound by an agreement which they had rejected. While the Government states that the only solution for the nurses would have been an unacceptable break from the common*

framework which all member organizations had agreed upon, the Committee observes that the legislative extension of the collective agreements as amended by the rejected agreement was imposed by the same Act that terminated the industrial action. In other words, no further opportunities were given to the nurses to re-enter into negotiations or have the benefit of other dispute resolution mechanisms once their right to strike had been restricted. In these circumstances, the Committee considers that the Government did not take appropriate steps to ensure the provision of compensatory guarantees for workers who had been deprived of the right to strike. It requests the Government to consider with the social partners, measures to ensure that, whenever the exercise of the right to strike is legitimately restricted in the future, adequate protection is given for this limitation on freedom of action by means of dispute resolution mechanisms which enjoy the confidence of all parties concerned.

524. *Furthermore, the Committee must recall that a basic aspect of freedom of association is the right of workers' organizations to negotiate wages and conditions of employment freely with employers and their organizations and that any restriction on this right should be imposed as an exceptional measure and only to the extent necessary, without exceeding a reasonable period; any restriction should be accompanied by adequate safeguards to protect living standards of the workers concerned [see 306th Report, para. 432]. As in the previous case which it had examined concerning Danish nurses, the Committee now notes that the Act in question puts an end to negotiations in this sector for several years (in the present case, from 21 May 1999 until 31 March 2002, the life of the statutorily extended agreements). As in previous cases concerning Denmark (Case No. 1421 concerning junior doctors and Case No. 1884 concerning nurses), the Committee is of the opinion that government intervention went beyond the criteria set out above since the method used went beyond the extent necessary and a reasonable period by prolonging and extending the terms of the agreements for a period just short of three years. While noting once again the Government's indication that negotiations and conciliation procedures undertaken prior to the industrial action had proven to be in vain, the Committee reiterates its observations it had made in the previous case [see 306th Report, para. 436] and in this case concludes that no evidence had been put forward to show that the hospital sector was faced with an emergency situation such as to justify intervention in voluntary collective bargaining. Further, given the repetitive recourse to such intervention and the lengthy extension of the imposed agreements, the Committee must once again urge the Government to refrain from taking such action in the future.*

The Committee's recommendations

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

(a) The Committee considers that the termination of the hospital sector strike by the Danish Parliament does not constitute a violation of ILO principles on freedom of association.

(b) The Committee considers that, in the circumstances of this case, the Government did not take appropriate steps to ensure the provision of compensatory guarantees for workers who have been deprived of the right to strike. It requests the Government to consider, with the social partners, measures to ensure that, whenever the exercise of the right to strike in the essential services is legitimately restricted in the future, adequate protection is given for this limitation on freedom of action by means of dispute resolution mechanisms which enjoy the confidence of all the parties

concerned. The Committee requests the Government to keep it informed in this respect.

(c) The Committee considers that the statutory renewal and extension of collective agreements covering nurses was not in conformity with the principle of free collective bargaining with a view to the regulation of terms and conditions of employment under Article 4 of Convention No. 98, ratified by Denmark. Given the repetitive recourse to government intervention in this respect and the lengthy extension of the imposed wages and terms of employment, the Committee urges the Government to refrain from taking such action in the future.

CASES NOS. 1851, 1922 AND 2042

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

Complaints against the Government of Djibouti presented by
— the International Confederation of Free Trade Unions (ICFTU)
— the Djibouti Inter-Trade Union Association of Labour/General Union of Djibouti Workers (UDT/UGTD)
— the Organization of African Trade Union Unity (OATUU)
— Education International (EI)
— the Secondary Teachers' Union (SYNESED) and
— the Primary Teachers' Union (SEP)

Allegations: Dismissals, suspensions and removal of trade unionists following strike action; confiscation of trade union archives; obstruction of May Day demonstrations and interference in a trade union general meeting

526. The Committee has already examined Cases Nos. 1851 and 1922 on several occasions, most recently at its November 1999 meeting when it submitted an interim report to the Governing Body. On this occasion, it also examined for the first time Case No. 2042 [see 318th Report, paras. 188-207, approved by the Governing Body at its 276th Session in November 1999].

527. The Committee has twice had to postpone examination of this case because it has not received the Government's observations. At its November 2000 meeting [see 323rd Report, para. 9], the Committee urgently requested the Government to send its observations, drawing the Government's attention to the fact that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body, it may present a report on the substance of these cases if the Government's observations or information have not been received in due time.

528. Djibouti 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 Cases Nos. 1851, 1922 and 2042

529. At its meeting in November 1999, in the light of the Committee's interim conclusions, the Governing Body approved the following recommendations:

(a) The Committee once again strongly urges the Government to ensure that the trade union leaders and members who were dismissed, in particular the senior union leaders of the UDT/UGTD, are reinstated in their posts and functions if they so request, and reiterates its previous recommendations concerning the importance which it attaches to the principle that declarations of loyalty or other similar commitments, such as the acknowledgement of wrongdoing demanded in the present case, should not be imposed as a condition for reinstatement of the trade unionists in question.

(b) The Committee insists that the workers of Djibouti must be able to elect their trade union representatives freely and democratically, and requests the Government to allow elections to be held in the different affiliated unions and general meetings to be held by the UDT and UGTD under the sole supervision of independent judicial bodies, and to keep it informed in this regard.

(c) The Committee requests the Government to ensure that in future workers can hold public meetings on May Day, given that such meetings constitute an important aspect of trade union rights.

B. New information

530. According to information gathered by members of the ILO Addis Ababa multidisciplinary advisory team who went to Djibouti in October/November 2000, it seems that, contrary to the previous situation, all the trade union representatives of the country now wish for trade union elections at the grass-roots level to resume. Furthermore, the Minister of Employment and National Solidarity has indicated that the procedure for reinstatement of the trade union members who were dismissed is already in progress, in particular at the Ministry of National Education where these cases are being studied and where some reinstatements have already taken place. Finally, a meeting will be held between the trade union members who were dismissed and the Government in order to agree upon the official conditions of the reinstatement, including the issue of arrears of wages.

C. The Committee's conclusions

531. *The Committee deplores the fact that, despite the time which has elapsed since the last examination of this case and taking into account the seriousness of the allegations, the Government has provided no new information even though it has been requested to send its observations on several occasions, including by means of an urgent appeal. In these circumstances, and in accordance with the applicable rule of procedure [see 127th Report of the Committee, para. 17, approved by the Governing Body at its 184th Session], the Committee is obliged to submit a report on the substance of these case sin the absence of the information it had hoped to receive in due time from the Government.*

532. *The Committee reminds the Government once again that the purpose of the whole procedure established by the International Labour Organization to examine allegations concerning violations of freedom of association is to promote respect for trade union rights in law and in fact. If this procedure protects governments against unreasonable accusations, governments on their side will recognize the importance of formulating for*

objective examination detailed factual replies concerning the substance of the allegations brought against them [see 1st Report of the Committee, para. 31].

533. *The Committee recalls that Cases Nos. 1851 and 1922 gave rise to a direct contacts mission in January 1998 and that a number of positive developments were identified on that occasion. However, the Committee had noted with concern that the trade union situation had seriously deteriorated since its last examination of Cases Nos. 1851 and 1922, and Case No. 2042 in November 1999. Since this date, and despite the absence of new information from the Government, the Committee notes that an ILO multidisciplinary advisory team has visited the country four times.*

534. *With regard to the failure to reinstate in their posts and functions the leaders of the UDT/UGTD who were dismissed for starting a strike in September 1995 in protest against the Finance Act, the Committee recalls the legitimate nature of the protest strike of 1995 as a means of defending the economic and professional interests of the workers, and the commitments made by the Government to the direct contacts mission that it would seek the reinstatement of the workers concerned. The Committee notes that, according to the new information provided, reinstatement procedures for the trade union members who were dismissed are under way, in particular at the Ministry of National Education, and that a meeting is to be organized between the parties concerned to agree on the official conditions for the reinstatement. While noting this information, the Committee once again strongly urges the Government to ensure that the trade union leaders and members who were dismissed are reinstated in their posts and functions if they so request, and reiterates its previous recommendations concerning the importance which it attaches to the principle that declarations of loyalty or other similar commitments, such as the acknowledgement of wrongdoing demanded in the present case, should not be imposed as a condition for reinstatement of the trade unionists in question. The Committee requests the Government to keep it informed in this regard.*

535. *With regard to the trade union elections in the country, the Committee notes that, according to new information, all the trade union representatives of the country now wish for trade union elections at the grass-roots level to resume. In this regard, the Committee once again insists that the workers of Djibouti must be able to elect their trade union representatives freely and democratically, and requests the Government, in this specific case, to allow elections to be held in the different affiliated unions and general meetings by the UDT and UGTD under the sole supervision of independent judicial bodies, and to keep it informed in this regard.*

The Committee's recommendations

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

(a) The Committee once again strongly urges the Government to ensure that the trade union leaders and members who were dismissed are reinstated in their posts and functions if they so request, and reiterates its previous recommendations concerning the importance which it attaches to the principle that declarations of loyalty or other similar commitments, such as the acknowledgement of wrongdoing demanded in the present case, should not be imposed as a condition for reinstatement of the trade unionists in question.

(b) The Committee once again insists that the workers of Djibouti must be able to elect their trade union representatives freely and democratically, and

requests the Government, in this specific case, to allow elections to be held in the different affiliated unions and general meetings by the UDT and UGTD under the sole supervision of independent judicial bodies, and to keep it informed in this regard.

CASE NO. 2077

DEFINITIVE REPORT

Complaints against the Government of El Salvador presented by — the World Federation of Trade Unions (WFTU) and — the International Confederation of Free Trade Unions (ICFTU)

Allegations: Mass unfair dismissals following strike action and violence against demonstrators

537. The complaints in this case are contained in communications from the World Federation of Trade Unions (WFTU) dated 27 January, 15 April and 13 November 2000, and in a communication from the International Confederation of Free Trade Unions (ICFTU) dated 10 March 2000. The Government sent its observations in communications dated 19 May, 18 July and 8 September 2000 and 26 January 2001.

538. El Salvador has not ratified either the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainants' allegations

539. In its communication dated 27 January 2000, the World Federation of Trade Unions (WFTU) states that since 1997 the Union of Workers of the Salvadoran Social Security Institute (STISSS) and the Union of Doctors and Workers of the Salvadoran Social Security Institute (SIMETRISS), of which all the doctors employed by the Salvadoran Social Security Institute (ISSS) are members, have been struggling to get the Government to improve the medical care dispensed by the social security system, with an initial dispute leading in May 1998 to the conclusion of agreements between the Government and the doctors' union under which the latter would be given the possibility of actively participating in future policy-making for the health sector. Given the Government's passive stance and following repeated demands by employees which were ignored by the Ministry of Labour, on 15 November 1999 a nationwide rotating strike was held in all of the social security health care centres with the strikers, demanding that the ISSS comply with the agreement concluded with its directorate in December 1998, calling for a wage increase and an end to plans to privatize health services. The Third Labour Court Judge declared the strike illegal and the Director of the ISSS dismissed 221 employees, as well as 150 employees of the Supply Department, on the pretext that they had abandoned their posts (when in fact they had been shut out).

540. The STISSS and SIMETRISSS members held a 77-day work stoppage because the Government is implementing its plan to privatize public health services by offering a concession on two hospitals in the social security system. The Government being determined to privatize the health services, the abovementioned workers were dismissed, the national police force was called into the workplace in order to intimidate employees, the Christmas bonus and the wages due for November and December 1999 to over 7,000

workers were withheld, as well as trade union dues, and pay deductions were made for those months. Parallel to this, the complainants had recourse to collective bargaining and, as a last resort, to arbitration provided by the Ministry of Labour. The WFTU points out further that the ISSS directorate did not take account of the collective contract signed between the ISSS and SIMETRISS, which prohibits the dismissal, transfer or suspension of workers, with special protection for the members of the trade union executive, except on justified grounds, and provides that collective suspensions of workers cannot be carried out without meeting all the legal requirements for doing so.

541. In its communication of 15 April 2000 the WFTU stated that although the Third Labour Court had initially declared the strike illegal (pursuant to which the Director of the ISSS had carried out the abovementioned dismissals), it decided subsequently that the dismissals were lawful, although ultimately, following an appeal filed by the STISSS, the Labour Court found that this mass dismissal constituted a violation of fundamental rights and of the terms of the collective contract. Middle management coerced and intimidated the workers, threatening them with dismissal if they continued to support the strike. The Government has severely suppressed this workers' movement by applying coercive measures against the workers and the trade union members who supported them in defence of public health.

542. Lastly, in its communication of 13 November 2000, the WFTU states with regard to the workers dismissed arbitrarily after a legal battle waged by the STISSS, that the Civil Division of the Supreme Court of Justice ordered the ISSS to pay damages to the complainants and to comply with the labour provisions that had been violated. However, the Executive Council of the ISSS only partly executed this judgement, unilaterally agreeing that the workers could choose between reinstatement and compensation. The WFTU adds that the irresponsible attitude of the Government and ISSS authorities, who resort to delaying tactics and evasive behaviour to reach their ends, could spark off another labour dispute. For this reason, the Legislative Assembly has been requested to issue a decree to ensure that the authorities execute the court decision and pay the wages and benefits owed to the 221 workers affected.

543. In its communication dated 10 March 2000, the International Confederation of Free Trade Unions (ICFTU) states that the doctors and workers employed by the Salvadoran Social Security Institute (ISSS) who had been on strike since the end of 1999 were victims of government attacks. The latter declared a state of emergency in order to apply an "alternative health plan" under which army barracks would be used and military doctors would replace the striking workers. On 6 March 2000, the deputy commissioner responsible for liaison of the National Civil Police (PNC) and representatives of the striking unions and the Office of the Human Rights Procurator held talks near the ISSS Surgical Medical Centre (San Salvador) with a view to finding a peaceful solution to the workers' public protest and avoiding unnecessary confrontations. In response to this conciliatory stand on the part of the Government, a group of the union strikers agreed to withdraw at noon on the same day from an extremely busy thoroughfare of the city of San Salvador. This did not prevent the Chief of the PNC from confirming an order for the riot squad (UMO) to clear the street, which it did at 11.45 with excessive use of force (including tear gas) affecting ISSS employees and passers-by, among others.

544. Moreover, according to the complainant, the Minister of Internal Affairs announced that it envisaged revoking the legal personality of the SIMETRISSS and the STISSS, as well as that of the Medical Association. Lastly, the Director of the ISSS announced that she would not comply with the decision handed down by the First Labour Court to reinstate the dismissed workers, but that the Government would contest it before the Supreme Court of Justice, a process which could last over a year before a final decision was handed down.

B. The Government's reply

545. As regards the allegation of excessive use of force by the police, the Government stated in its communication dated 19 May 2000 that the action of the riot squad (UMO) had been aimed at restoring public order on 6 March that year when the STISSS had entirely blocked an extremely busy thoroughfare in the city of San Salvador in blatant violation of citizens' right to freedom of movement. After requesting the trade union members in vain to clear the street, and exhausting the necessary means of persuasion to get them to withdraw of their own accord (including talks and warnings), the UMO had no choice but to intervene in the interest of public order, in accordance with the established procedure for dispersing demonstrators.

546. In response to this police action, a complaint was filed with the courts against the Chief of the National Civil Police (PNC) for arbitrary acts against the public administration; proceedings were initiated on 23 March of the same year before the city's Eighth Magistrates' Court and the case was dismissed in favour of the defendant. According to the record of the proceedings attached by the Government with its reply, the prosecution maintained that at 11.45 on 6 March 2000 the UMO had resorted to excessive use of force (tear gas, a water cannon and physical violence) against unarmed persons carrying out a peaceful demonstration, despite the verbal agreement reached between the trade unionists and the police to unblock the streets; at no time were the trade unionists found to be armed or to have acted violently. This repression therefore constituted a violation of the basic constitutional principles that inform the PNC's conduct as well as abuse of the security forces' discretionary powers, affecting ISSS employees and passers-by, among others. The defence asserted that the security forces had been provoked and that the accused official, who had not participated directly in the operations, had given the order to clear the streets not only after having exhausted the necessary means of persuasion, but also in the belief that he was acting correctly, given the extent of traffic disruption caused by the demonstration. Concluding that the accused had used every means of persuasion to get the demonstrators to clear the blocked thoroughfare and that he had used a reasonable amount of force, the defence requested the judge to dismiss the case in favour of the defendant. The judge did so, based on this argument, on 19 May 2000.

547. As regards the alleged risk that legal personality would be withdrawn from the STISSS and the SIMETRISSS unions, as well as from the city's Medical Association, the Government indicated in a communication dated 18 July 2000 that this allegation was unfounded. The Ministry of Internal Affairs is not the competent body to withdraw legal personality from these entities and, while it is true that at one point the Government was envisaging the possibility of applying this measure to the Medical Association, it is no less true that ultimately it discarded the idea despite the fact that it could have done so pursuant to the Act respecting associations and non-profit foundations, under which "associations and foundations shall be dissolved by judicial decision when they are found to be engaged in illicit activities, aimed at direct profit, contrary to morality, safety and public order, or mismanagement of funds and property belonging to the entity, causing serious and irreparable damage to third parties or to the State", and " the Attorney-General, of his own motion or on the petition of any public authority, as well as the Ministry of Internal Affairs, shall have the capacity to institute proceedings for the dissolution of an association or foundation, should any of the grounds for their judicial dissolution occur".

548. As regards the allegation that the management of the ISSS had the intention not to comply with the court decision to reinstate the workers, the Government stated in its communication dated 8 September 2000 and 26 January 2001 that, after appealing the judgements handed down by the First Labour Court of San Salvador and the Civil Division of the Supreme Court of Justice, both of which ruled in favour of the STISSS, the Executive Council of the ISSS requested the STISSS to offer its employees who had been

dismissed the choice between being reinstated, on the same terms under which they had been employed until 29 November 1999, and not returning to their jobs in return for the compensation due under the law. The employer made this offer conditional upon their signing a suspension of the individual contract of employment by mutual agreement between the parties during the period between 29 November 1999 and the date of reinstatement. The agreement was signed by the ISSS and the Human Resources and Legal Committee on behalf of the STISSS. Under these conditions, 187 workers opted for reinstatement and 32 for voluntary retirement with compensation under an out-of-court settlement with the defendant and after abandoning all of the actions brought against it. Finally, the Government indicates that: (1) the ISSS was not legally bound to pay the wages during the conflict since the workers had requested a special leave without pay from 29 November 1999 to 6 August 2000; and (2) the conflict has now been resolved satisfactorily for both parties.

C. The Committee's conclusions

549. *As regards the mass dismissals at the ISSS at the end of 1999 following a strike, the Committee notes that the Government indicates that: (1) the Executive Council of the ISSS offered the employees dismissed during this dispute the choice between reinstatement, under the same terms as those under which they were employed until 29 November 1999, or not returning to work in exchange for statutory compensation, and made this offer conditional upon the dismissed employees signing a suspension of their individual contracts of employment by mutual agreement between the parties during the period between 29 November 1999 and the date of reinstatement; (2) this agreement was signed by the ISSS and the Human Resources and Legal Committee on behalf of the STISSS; and (3) 187 workers opted for reinstatement and 32 for voluntary retirement with compensation, under an out-of-court settlement with the defendant and after abandoning all the actions brought against it, which brought an end to the conflict in a satisfactory way for both parties. In these circumstances, the Committee will not continue its examination of this allegation.*

550. *Concerning the allegation that the doctors and workers employed by the ISSS who had been on strike for several months had been the victims of government attacks and that a group of demonstrators were the victims of excessive use of force, the Committee notes that the Government indicates that:*

(i) the riot squad (UMO) sent to the trade union members a written request asking them to evacuate but they refused to cooperate. The UMO used every means of persuasion to get the demonstrators to leave voluntarily;

(ii) the UMO thus had to intervene in order to evacuate the demonstrators, in conformity with the provisions on the maintenance of public order;

(iii) following the incidents involving the National Civil Police (PNC), legal proceedings were brought against the Chief of the PNC. The case was later dismissed by the judicial authorities which concluded that he had used every means of persuasion to get the demonstrators to clear the blocked thoroughfare and that he had used a reasonable amount of force. In these conditions, the Committee will not continue its examination of this allegation.

551. *As regards the alleged intention of the Government to apply an alternative health plan aimed at replacing workers – doctors and workers employed by the ISSS – who had been on strike for several months by military personnel, the Committee observes that the Government did not send any comments on this allegation. Accordingly, it recalls that the employment of the armed forces or of another group of persons to perform duties which*

have been suspended as a result of a labour dispute can, if the strike is lawful, be justified only by the need to ensure the operation of services […] whose suspension would lead to an acute crisis. The utilization by the Government of labour drawn from outside the undertaking, with a view to replacing striking workers, entails the risk of derogation of the right to strike which may affect the free exercise of trade union rights [see ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, para. 574]. Nonetheless, considering that the activities carried out by doctors and auxiliary medical personnel of the ISSS form part of services that are essential in the strict sense of the term, since medical care – whether that dispensed by a doctor or, for example, authorization issued by an institution to care for a patient – is a service the interruption of which could endanger the life, personal safety or health of the patients, and that the strike declared in this essential service lasted for several months, the Committee considers that the use of military personnel to perform the duties of doctors and auxiliary medical personnel of the ISSS does not violate the principles of freedom of association.*

552. *Concerning the alleged risk that legal personality would be withdrawn from the SIMETRISSS and the STISSS unions, as well as the city's Medical Association, the Committee notes the Government's communication to the effect that this allegation is unfounded since the Ministry of Internal Affairs is not the competent body to withdraw legal personality from these entities, and while it is true that the Government envisaged the possibility of applying this measure to the Medical Association under the Act respecting associations and non-profit foundations, it ultimately discarded the idea.*

The Committee's recommendation

553. ***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. 2010

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

Complaint against the Government of Ecuador presented by the International Confederation of Free Trade Unions (ICFTU)

Allegations: Murder of a trade union official, threats against another trade union official and deaths during demonstrations

554. The Committee last examined this case at its meeting in March 2000 and presented an interim report [see 320th Report, paras. 626 to 634, approved by the Governing Body at its 277th Session in March 2000]. Observations were subsequently received from the Government in communications dated 19 June and 17 August 2000 and 8 February 2001.

555. 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. Previous examination of the case

556. In its previous examination of the case the Committee made the following recommendations concerning the allegations which remained pending [see 320th Report, para. 634]:

- the Committee invites the complainant to provide additional information concerning the allegation of training by paramilitaries of 38 Ecuadorian nationals with a view to launching an attack on social activists;

- the Committee requests the Government to keep it informed of any progress made in the judicial inquiry into the death of the trade union official Mr. Saúl Cañar Pauta and to inform it of the results as soon as they are given;

- the Committee requests the Government to inform it of the outcome of the investigations into the deaths of Mr. José Geover Bowen (police officer) and of Mr. Jorge Aníbal Mena and Mr. Javier Bone Roa (demonstrators) during the demonstrations held in connection with the general strike of 1 October 1998.

B. The Government's reply

557. In its communications of 19 June and 17 August 2000 and 8 February 2001, the Government supplies documents relating to the investigations into the deaths of the trade union official Mr. Saúl Cañar Pauta, the demonstrators Mr. Jorge Aníbal Mena and Javier Bone Roa and the police officer José Geover Bowen. Specifically, the documents in question indicate that:

- as regards the case of Mr. Saúl Cañar Pauta, during the judicial inquiry an order was issued on 15 May 2000 to detain Mr. José Meza and Mr. Freddy Flores as witnesses. The judge ended the preliminary hearings on 17 July 2000. The Attorney-General abstained from laying charges against anyone. It has not been possible to date to identify the authors or accomplices of this homicide. The Ombudsman decided to follow up on this case as part of the inquiry on the death of Mr. Saúl Cañar Pauta to ensure due process;

- as regards the case of Mr. Jorge Aníbal Mena, on 16 June 2000, the presiding judge in the judicial inquiry asked the ballistics department of the national police force for its report on the analysis of the projectile that killed Mr. Mena, and asked the Commandant of the First Naval Zone to submit a report on the events that occurred on 1 October 1998 on the perimeter road near the Guayaquil cooperative; this case is at the stage of inquiry;

- with regard to Mr. Javier Bone Roa, the judicial authorities in 1998 ordered tests on the fatal bullet; this case is at the stage of inquiry;

- as regards Mr. José Geover Bowen, the police investigation found that Mr. Bowen had died in the line of duty as a result of a grenade explosion that occurred during the national strike in the sleeping quarters of the Special Operations Group.

C. The Committee's conclusions

558. *In its previous examination of the case, when it examined allegations relating to the death of a trade union official, two demonstrators and a police officer during a national strike*

and allegations of training by paramilitaries with a view to launching an offensive against social activists, the Committee invited the complainant to provide additional information concerning the allegation of training by paramilitaries, and requested the Government to keep it informed of any progress made in the judicial inquiry into the death of the trade union official Mr. Saúl Cañar Pauta and to inform it of the outcome, and to inform it of the results of the investigations into the deaths of Mr. José Geover Bowen (a police officer) and of Mr. Jorge Aníbal Mena and Mr. Javier Bone Roa (demonstrators) during the demonstrations held in connection with the general strike of 1 October 1998.

559. *As regards the investigation into the death of the trade union official Mr. Saúl Cañar Pauta, the Committee notes the Government's statements in this regard and in particular that the judge ended the preliminary hearings on 17 July 2000 and that the Attorney-General abstained from laying charges against anyone since it has not been possible to identify the authors or accomplices of this act. The Committee hopes that the inquiry into the death of the trade union official in question, which occurred almost two years ago, will be concluded soon, and requests the Government to keep it informed of the final outcome.*

560. *With regard to the deaths of Mr. José Geover Bowen (a police officer) and of Mr. Jorge Aníbal Mena and Mr. Javier Bone Roa (demonstrators) during the demonstrations held in connection with the general strike of 1 October 1998, the Committee notes the Government's statements to the effect that: (1) the investigation into the death of Mr. Bowen concluded that he had died on police premises as a result of a grenade explosion during the national strike in 1998; (2) during the judicial inquiry into the death of Mr. Mena, the judicial authorities on 16 June 2000 ordered a number of tests (ballistic analysis of the bullet that killed Mr. Mena) and a request for the official report from the Commandant of the First Naval Zone on the events of 1 October 1998, with the case being at the inquiry stage; and (3) as part of the investigation into the death of Mr. Bone Roa, tests on the fatal bullet were ordered in 1998, with the case being at the inquiry stage.*

561. *Under these circumstances, the Committee deplores the long time taken by the authorities to undertake and complete an investigation. The Committee strongly hopes that the inquiries into the deaths of the demonstrators Mr. Bone Roa and Mr. Mena will be concluded soon and that the guilty parties will be punished. The Committee requests the Government to keep it informed of the findings of these inquiries.*

562. *As regards the allegation regarding training by paramilitaries of 38 Ecuadorian nationals with a view to launching an offensive against social activists, the Committee notes that the complainant has not provided the additional information that had been requested. Under these circumstances, the Committee will not proceed with its examination of this allegation.*

The Committee's recommendation

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

> ***Deploring the long time taken by the authorities to undertake and complete an investigation into the deaths in 1998 of Mr. Saúl Cañar Pauta (trade union official), Mr. Jorge Aníbal Mena and Mr. Javier Bone Roa, the Committee firmly hopes that the judicial inquiries will be concluded soon and that the guilty parties will be punished. The Committee requests the Government to keep it informed of the final outcome of these inquiries.***

CASE NO. 2035

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

Complaint against the Government of Haiti presented by the Workers' Union of YAS Sewing Enterprise (SOYASSE)

Allegations: Dismissals of trade unionists following the establishment of a union, acts of anti-union discrimination

564. The complaint is contained in a communication from the Workers' Union of YAS Sewing Enterprise (SOYASSE) dated 8 June 1999.

565. In the absence of a reply from the Government, the Committee had to postpone its examination of the case twice. At its June 2000 meeting [see 321st Report, para. 9], the Committee issued an urgent appeal to the Government drawing its attention to the fact that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body, it might present a report on the substance of the case at its next meeting if the information and observations of the Government had not been received in due time.

566. Haiti 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

567. In its communication of 8 June 1999, the complainant explains that on 11 May 1999 it informed the management of YAS Sewing Enterprise in writing of the establishment of a workers' organization within the enterprise, called the "Workers' Union of YAS Sewing Enterprise", emphasizing that this organization has been recognized by and registered with the Labour Directorate of the Ministry of Social Affairs, and complies with Law No. VI on trade unions of the Labour Code in force. In its communication to the enterprise management, the newly created trade union requested a meeting with the management to discuss employees' working conditions, in order to reach a mutually acceptable agreement on these issues. This letter was signed by Messrs. Paul Brissaut and André Clervin, in their capacity as members of the executive committee of the new union.

568. Following this letter, the complainant states that Messrs. Brissaut and Clervin were dismissed by YAS Sewing Enterprise on 12 May 1999. In the dismissal letters, attached to the file by the complainant, the enterprise management refers to "conduct aimed at disrupting the smooth running of the enterprise" to justify the two dismissals. In addition, the complainant alleges that, since the establishment of the union, the enterprise management has been systematically harassing and threatening all workers suspected of being members of the union. Any worker caught distributing union leaflets is threatened with dismissal, as well as with physical reprisals against family members.

B. The Committee's conclusions

569. *The Committee deplores the fact that, despite the time that has elapsed since the submission of the complaint, and given the serious nature of the allegations that have been*

made, the Government has not replied to any of the allegations made by the complainant, although it has been invited on several occasions to present its own comments and observations on the case, including by means of an urgent appeal. Under these circumstances and in accordance with the applicable rule of procedure [see the Committee's 127th Report, para. 17, approved by the Governing Body at its 184th Session], the Committee is bound to present a report on the substance of the case, even without the information which it had hoped to receive from the Government.

570. *The Committee reminds the Government, first, that the purpose of the whole procedure set up in the International Labour Organization for the examination of allegations of violations of freedom of association is to promote respect for trade union rights in law and in fact. If the procedure protects governments against unreasonable accusations, governments on their side should recognize the importance of formulating, so as to allow objective examination and detailed replies to the allegations brought against them [see First Report of the Committee, para. 31].*

571. *Finally, the Committee expresses its deep concern at the fact that this is the third complaint made against the Government of Haiti in the last 18 months without the latter having conveyed information of any sort to the Committee.*

572. *The Committee notes that the present complaint concerns allegations of dismissals of trade unionists following the establishment of an enterprise trade union and acts of intimidation against workers suspected of being members of the union.*

573. *The Committee observes that the complainant states that it informed the management of YAS Sewing Enterprise of the establishment of a trade union within the enterprise on 11 May 1999. The Committee also notes that, according to the complainant, the trade union in question has been recognized by and registered with the Labour Directorate of the Ministry of Social Affairs, and complies with the legislation in force on trade unions. The two signatories of the letter informing the enterprise management of the establishment of the union were dismissed the day following dispatch of the letter, i.e. on 12 May 1999, on grounds of conduct, according to the employer, aimed at disrupting the smooth running of the enterprise. In addition, since this date, the complainant affirms that numerous workers suspected of belonging to the union have been the victims of acts of intimidation and harassment.*

574. *In these circumstances and in the absence of any reply from the Government, the Committee first of all recalls that the dismissal of workers on grounds of membership of an organization or trade union activities violates the principles of freedom of association [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 702]. The Committee cannot but point out here that the persons concerned were dismissed immediately after the establishment of the union had been announced to the employer. In the Committee's opinion, there is consequently a strong presumption that the dismissals in question took place on account of activities connected with the setting up of a trade union. Under these circumstances, the Committee urges the Government to take the necessary measures to ensure that an independent inquiry is immediately carried out on this matter. Should the outcome of this inquiry confirm the anti-union nature of the dismissals, the Committee requests the Government to adopt the necessary measures for the two leaders to be reinstated in their posts. The Committee requests the Government to keep it informed in this respect. As regards the other acts of intimidation to which several workers of the company are said to have been subjected, the Committee asks the Government to investigate the matter and reminds it that it is responsible for preventing any acts of anti-union discrimination, 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 **Digest**, op. cit., para. 739]. The Committee requests the Government to keep it informed of developments in this respect.*

The Committee's recommendations

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

(a) The Committee deplores the fact that the Government has not replied to the allegations despite the fact that it was invited to do so on several occasions, including by means of an urgent appeal, and urges it to reply promptly.

(b) As regards the dismissals of the two union leaders by YAS Sewing Enterprise, the Committee urges the Government to take the necessary measures to ensure that an independent inquiry is immediately carried out on this matter. Should the outcome of this inquiry confirm the anti-union nature of the dismissals, the Committee requests the Government to take the necessary measures for the two leaders to be reinstated in their posts. The Committee requests the Government to keep it informed in this respect.

(c) As regards to the acts of intimidation to which several workers of YAS Sewing Enterprise are said to have been subjected after they joined the new union, the Committee asks the Government to investigate the matter and reminds it that it is responsible for preventing any acts of anti-union discrimination and requests it to ensure that the basic regulations that exist in the national legislation be accompanied by procedures to ensure that effective protection against such acts is guaranteed. The Committee requests the Government to keep it informed of developments in this respect.

CASE NO. 2072

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

Complaint against the Government of Haiti presented by — the National Confederation of Haitian Teachers (CNEH) and — Education International (EI)

Allegations: Anti-union discrimination; disciplinary measures following a strike

576. The complaint is contained in communications dated 17 December 1999 and 22 June 2000 from the National Confederation of Haitian Teachers (CNEH). This complaint was supported in a communication dated 4 February 2000 from Education International (EI).

577. The Committee has had to postpone examination of this case on two occasions because the Government has not sent its observations. At its November 2000 meeting [see 323rd Report, para. 9], the Committee sent an urgent appeal to the Government, drawing its attention to the fact that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body, it may present a report on the

substance of these cases if the Government's observations or information have not been received in due time.

578. Haiti 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

579. In its communications of 17 December 1999 and 22 June 2000, the complainant organization states that on 17 February 1997 the CNEH and other trade union organizations signed a draft agreement relating to the working conditions of teaching staff with the Government of Haiti. This draft agreement included, specifically, a wage adjustment of 82 per cent, and the establishment of a vocational training plan, an insurance plan for teachers and a commission for trade union matters. According to the complainant organization, the Government paid only 50 per cent of the wage adjustment and did not respect any of the other points of the agreement. Faced with a government refusal to enter into negotiations again, the CNEH threatened to carry out periodic strikes. Following a general strike in January 1999, an agreement was signed on 4 February 1999 by the Minister of National Education and the CNEH specifying full implementation of the draft agreement of February 1997.

580. The complainant organization explains that as none of the elements in the agreement of 4 February 1999 were respected, it continued its efforts to convince the Government to honour its commitments with the aim of avoiding further strikes. Finally, the CNEH and the Ministry of National Education came to an agreement in May 1999. However, once again, the complainant organization states that when school started again in September 1999 the Government had still not fulfilled the terms of the agreement. Therefore, on 23 September 1999 the CNEH gave notice of strike action in a letter to the Government for 4 October 1999 onwards unless the Government fulfilled its commitments as laid down in the agreements. The strike began on the date specified.

581. Following a meeting between the Minister of National Education and representatives of the CNEH on 20 October 1999, the parties agreed to call upon the Ombudsman to mediate. However, on 23 October 1999, the Prime Minister stated on the radio that disciplinary measures would be carried out against those teachers on strike. He made no mention of the mediation. Subsequently, on 28 October 1999, 11 teachers, including three regional and national trade union officials of CNEH, were suspended without pay for serious reasons. The CNEH adds that on 16 October a representative of the Ministry had invited the teachers, during a public meeting, to return to work unconditionally. Roussan Coffy, Hervé Alix and Andréanne Roy, the three members of CNEH who were disciplined, requested the representative to negotiate with the trade unions and not with the teachers. The complainant organization claims that a number of attempts were made by the Ministry of National Education to negotiate directly with the teachers in order to sideline the trade unions.

582. The complainant organization explains that it made the lifting of the strike conditional to the lifting of sanctions and the resumption of negotiations conditions. Furthermore, it maintains that other types of reprisals were carried out by the Government, in particular hiring, under contract, non-teachers to fill the positions of the teaching staff on strike. Finally, the CNEH indicates that the Government encouraged the creation of a trade union for teachers on 10 November 1999.

583. In a recent communication of 22 June 2000, the complainant organization states that, following the teachers' strike, 77 members of CNEH whose files were transferred to the

Ministry of National Education were disciplined in a discriminatory manner as their salaries for October 1999 were reduced without warning, in violation of the laws currently in force. The complainant organization also indicates that, following negotiations with the Ministry of National Education in January 2000, Messrs. Coffy and Alix were reinstated in their respective posts. However, Ms. Roy has still not been reinstated and Mr. Alix has since been transferred without justification and in violation of the law.

B. The Committee's conclusions

584. *The Committee deplores the fact that, despite the time which has elapsed since the presentation of the complaint and bearing in mind the extreme gravity of the allegations, the Government has not provided in due time the comments and information requested by the Committee, although it was invited to send its reply on several occasions, including by means of an urgent appeal at its November 2000 meeting. In these circumstances, and in accordance with the applicable rule of procedure [see 127th Report of the Committee, para. 17, approved by the Governing Body at its 184th Session], the Committee is obliged to submit a report on the substance of this case in the absence of the information it had hoped to receive in due time from the Government.*

585. *The Committee once again reminds the Government that the purpose of the whole procedure established by the International Labour Organization to examine allegations concerning violations of freedom of association is to ensure respect of trade union rights in law and in fact. If this procedure protects governments against unreasonable accusations, governments on their side will recognize the importance of formulating for objective examination detailed factual replies concerning the substance of the allegations brought against them [see First Report of the Committee, para. 31].*

586. *Finally, the Committee expresses its deep concern that this is the third complaint that has been lodged against the Government of Haiti in the last 18 months, and that the Government has provided no information whatsoever to the Committee. It hopes that the new Government will demonstrate its good faith by cooperating in the future over complaints lodged against it before the Committee.*

587. *The Committee notes that the current complaint concerns allegations of disciplinary measures carried out following strike action and acts of anti-union discrimination. Regarding the allegations of disciplinary measures taken against teachers following the strike that took place in October 1999, the Committee notes that, according to the complainant organization, 11 teachers, three of whom were trade union officials of CNEH, were suspended without pay for serious reasons one month following the start of the strike. The Committee notes the CNEH declaration that, since January 2000, only one of the trade union officials has been reinstated in his post while a second has been unjustly transferred and the third, Ms. Roy, has still not been reinstated. No information has been received regarding the outcome of the situation for the eight other teachers. In this regard, the Committee recalls that it has always recognized the right to strike by workers and their organizations as a* ***legitimate means*** *of defending their economic and social interests. Furthermore, no one should be penalized for carrying out or attempting to carry out a legitimate strike [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, paras. 474 and 590]. In this particular case and according to the information available in the file, there is nothing to indicate that the strike organized by the teachers after long and fruitless negotiations with the Government was illegal, since Haitian legislation grants teachers the right to strike and prior notice of the strike had been lodged. The Committee emphasizes that respect for the principles of freedom of association requires that workers should not be dismissed or refused re-employment on account of their having participated in a strike or other industrial action. Consequently, the Committee requests the Government to take the necessary steps without delay to ensure*

the immediate reinstatement in their respective posts of all the teachers, including the trade union officials of CNEH, who were disciplined following their participation in the October 1999 strike. The Committee requests the Government to keep it informed in this regard.

588. *Regarding the allegations of anti-union discrimination against the 77 teachers who are members of CNEH and whose wages for October 1999 were reduced following their participation in the strike, the Committee notes that the strike began on 4 October and the wage deductions for the days of the strike in October seemed to correspond to the duration of the strike. In these circumstances, this measure cannot be considered as disciplinary action in response to the strike.*

589. *Regarding the allegations of hiring non-teachers to fill the positions of the teaching staff on strike, the Committee, in the absence of detailed information from the complainant organization and the Government's reply, can only state that the hiring of workers to break a strike in a sector which cannot be regarded as an essential sector in the strict sense of the term constitutes a serious violation of freedom of association [see* ***Digest****, op. cit., para. 570]. As the teaching sector does not constitute an essential service in the strict sense of the term, the Committee requests the Government to refrain from hiring non-teachers to replace teachers on strike.*

590. *Finally, regarding the allegations that the Government encouraged the creation of a trade union for teachers in November 2000, the Committee recalls that only through the development of free and independent organizations can a government confront its economic and social problems and resolve them in the best interests of the workers and the nation. The Committee once again emphasizes the importance it attaches to the respect of the Resolution concerning the Independence of the Trade Union Movement, adopted by the International Labour Conference at its 35th Session (1952). Recalling that governments should not attempt to transform the trade union movement into an instrument for the pursuance of political aims, nor should they attempt to interfere with the formal functions of a trade union movement because of its freely established relationship with a political party [see* ***Digest****, op. cit., para. 451], the Committee urges the Government to refrain from interfering in the creation of a trade union, or from showing favouritism towards, or discrimination against, any given trade union.*

The Committee's recommendations

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

(a) The Committee expresses its deep concern that this is the third complaint that has been lodged against the Government of Haiti in the last 18 months, with the Government providing no information whatsoever to the Committee.

(b) The Committee requests the Government to take the necessary steps without delay so that all teachers, including the trade union officials of CNEH who were disciplined following their participation in the strike of October 1999, are immediately reinstated in their respective posts. The Committee requests the Government to keep it informed in this regard.

(c) Recalling that the teaching sector is not an essential service in the strict sense of the term, the Committee requests the Government to refrain from hiring non-teachers to replace those teachers on strike.

(d) Emphasizing the importance that it attaches to the respect of the Resolution concerning the Independence of the Trade Union Movement, adopted by the International Labour Conference at its 35th Session (1952), the Committee urges the Government to refrain from interfering in the creation of trade unions or from showing favouritism towards, or discrimination against, any given trade union.

CASE NO. 2078

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

Complaint against the Government of Lithuania presented by the Motor-Transport Workers' Federation (MTWF)

Allegations: Violations of the right to strike

592. In communications dated 14 December 1999 and 6 March and 19 July 2000 the Motor-Transport Workers' Federation submitted a complaint of violations of freedom of association against the Government of Lithuania.

593. The Government sent its observations in communications dated 30 May, 13 September and 12 October 2000.

594. Lithuania 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

595. In its communication dated 14 December 1999, the Motor-Transport Workers' Federation (MTWF) indicated that the employees of the Vilnius public passenger transportation enterprises picketed in April and May 1999 to express their disappointment over a reduction in wages and delay in their payment, but to no avail. The Trade Union Confederation of the Vilnius Public Transportation Workers started to resolve the dispute according to the procedures established under the Collective Disputes Regulations and began to prepare for the strike, coordinating its activities with the Lithuanian Workers' Union (LWU), the MTWF and the International Transport Federation (ITF). The required secret ballot for strike action was held in June and July 1999 and the majority required was easily achieved. The drivers at the bus and trolleybus depots thus had the right to go on strike. The demands included a negotiated increase in wages, their timely payment and job preservation.

596. On 19 July 1999, the employers, the Vilnius Municipality and the Government were informed that warning strikes would be organized on 17, 24 and 31 August and that the buses would not be on the routes from 4 a.m. to 6 a.m. If these warning strikes were unsuccessful, all buses and trolleybuses would strike on 9 September.

597. The Act on the Settlement of Collective Disputes requires that the mentioned enterprises establish a minimum service to satisfy the urgent needs of the society during the strike. The Vilnius Municipality adopted Decision No. 1443V on 12 August 1999, only five days before the first warning strike was to take place, and established a minimum service of

70 per cent. There was no agreement among the parties concerned about this decision, nor was the decision taken by an independent body. In effect, this determination of the required minimum service resulted in a prohibition of strike action.

598. The strike was postponed to January 2000 because negotiations were continuing. There was a promise to pay wages on time and an action plan was adopted which would improve the economic situation. The Municipality was not keeping its promises however.

599. In its communication dated 6 March 2000, the complainant indicated that wages continued to be paid late and thus a two-hour strike was organized on 18 January 2000 and a one-day strike on 27 January. The two-hour strike was held between 4 a.m. and 6 a.m. The Municipality then appealed to the court to declare this strike and the one to be held on 27 January illegal. Furthermore, the Director of the Municipality Energy and Economics Department issued Order No. 38 on 25 January, obligating the administration of the enterprises to drive away from the enterprises 38 new buses and 24 trolleybuses so as to deteriorate the working conditions and leave about 200 drivers out of work.

600. On 25 January, the court decided to postpone the strike which was to be held on 27 January to 23 and 24 February. On the same day, the trade union leaders were invited to the Municipality without advance notice or explanation of the purpose of the meeting and, according to the complainant, an incorrect negotiation took place where they were informed of the above decisions and, without the opportunity to decide carefully, they signed a short-term agreement to postpone the strike to 15 March. The Municipality for its part postponed the implementation Order to drive away the buses and trolleybuses and promised to pay wages on time. On 3 February, the Municipality withdrew its appeal to the court concerning the illegality of the strike, thus for all practical purposes acknowledging the legal nature of the strike.

601. While, as promised, the means of transportation were not driven away, on the other hand the wages for January were not paid on time. The trade unions thus decided to strike on 16 March. The complainant requests the Committee to indicate whether the unilateral decision to require a 70 per cent minimum service, the decision to take away the buses and trolleybuses from the employees on strike and the court decision to postpone the strike are in accordance with the principles of freedom of association.

602. In its communication dated 19 July 2000, the complainant indicates that the drivers of the Vilnius municipal bus and trolleybus enterprises went on strike on 18 May. Only two trolleybuses and several buses out of 500 in total were on routes till 4 p.m. when an agreement had been reached and 101 more buses went on routes. During the strike it had been agreed that both parties would abstain from all actions that could cause conflict and that negotiations would start with the trade unions on 22 May. But the negotiations did not start on 22 May. On 26 May the mayor refused to withdraw the claims before the court requesting a declaration of the strikes as illegal. The mayor refused to negotiate the demands of the collective dispute and to raise the wages at least partially. Thus the trade unions considered that the agreement made during the strike on 18 May 2000 had been violated.

603. The court procedure in the Vilnius city court on the legality of the bus and trolleybus drivers' strike was conducted on 4 July 2000 and the verdict was that the strike of the bus and trolleybus drivers was illegal because of the different interpretation of the legal procedure.

B. The Government's reply

604. In a communication dated 30 May 2000, the Government referred to the 1991 Law on Collective Agreements and Collective Labour Agreements, the 1991 Law on Trade Unions and the 1992 Act on the Settlement of Collective Disputes. The Act on the Settlement of Collective Disputes provides the procedure which must be followed prior to declaring a strike. The assessment of the legitimacy of a strike falls under the competence of the court which may, if it determines that the strike is illegal, either enjoin the action or immediately terminate it. Furthermore, the court has the right to postpone a strike action for up to 30 days due to especially important reasons. Pursuant to article 109 of the Constitution, justice is administered by courts only, therefore, according to article 14 of the Code of Civil Procedure the effective court decision, ruling or resolution shall be binding for all state authorities and officials, all natural persons, enterprises, institutions and organizations and it shall be obeyed in the whole territory.

605. The Government indicates that section 12 of the Act on the Settlement of Collective Disputes provides that strikes held in public transportation enterprises must guarantee minimum services for meeting the vital demands of the society which shall be determined by the Government or the executive body of the Municipality. Pursuant to article 4 of the Code of Road Transportation, the state administration of road transportation is performed by the Ministry of Transport and Communications and by municipalities. Municipalities manage and organize the transportation of passengers by local transportation routes and by taxis and issue acts of law binding for carriers. Therefore, only the Municipality may establish the minimum services of public transportation required during the strike in the given territory.

606. In reaction to the trade union resolution to carry out a warning strike in August 1999 and a one-day strike in September, the administration of the Municipality of Vilnius adopted Decision No. 1433V "on provision of fixed-route passenger transportation services during strikes" on 12 August. In conformity with section 12 of the Act on the Settlement of Collective Disputes, this resolution was based on the data of passenger-route analysis carried out by a technical university and by the Municipality.

607. Furthermore, the Government argues that, while one of the reasons for calling the strike was the reduction of drivers' wages in 1999, in reality, tariff wages of the drivers did not decrease. Overtime work, however, was reduced or completely abolished due to the worsened financial situation and the drivers thus started to earn less. According to the Government, in spite of the reduced overtime work, the average monthly remuneration in 1999 of employees at the Vilnius bus and trolleybus depots was the highest in comparison with the average remuneration for the public transportation drivers of other cities of Lithuania.

608. The Government admits that, for valid reasons, on several occasions the payment of wages to the drivers was delayed by several days, but adds that the duration of the delay is decreasing. Furthermore, an action plan was developed and coordinated with the Ministry of Transport and Communications, the Ministry of Finance, the Ministry of Social Security and Labour and the Ministry of Public Administration Reform and Local Authorities in August 1999, with the participation of trade union representatives. This plan is being implemented by the Municipality. In any event, the late payment of wages is not exceptional as the payment of wages in certain enterprises was delayed by one to two months due to difficult financial situations.

609. In order to avoid the consequences of the declared strike, the administration of the Vilnius bus depot appealed to the district court to declare the warning strike of 18 January 2000 and the one-day strike of 27 January illegal. The court decided to postpone the strike

planned for 27 January to 24 February in order to "satisfy the request regarding the application of measures for the assurance of claim".

610. As concerns the removal of buses and trolleybuses from the enterprises, the Government stated that, in accordance with the 1994 Company Law, these buses and trolleybuses were not owned by the Vilnius Bus and Trolleybus Depots, Ltd. (the enterprise); rather they were included in the balance sheet of the Management Department of Vilnius for the Municipality to use at its own discretion. In any event, they were not removed and are still used in location transportation routes and, on 18 May, it was resolved to transfer the buses to the balance sheet of Vilnius Bus Depot, Ltd. within two months.

611. Considering the existing economic situation the Government and the Municipality of Vilnius deal with issues related to public transportation of passengers and are ready to solve the most important issues related to labour remuneration, social guarantees and other issues by means of negotiation and consulting with trade unions. Based on the aforementioned, the Government considers that Decision No. 1443V is in compliance with the laws of the Republic and affirms that the bus and trolleybus depot companies and the Municipality of Vilnius are ready to settle disputes by means of negotiation.

612. Finally, the Government adds that a one-day strike was carried out by the Motor-Transport Workers' Federation (MTWF) on 18 May 2000, despite a ruling of the district court on 17 May to postpone the strike until 17 June. The same day, the Deputy Mayor of Vilnius met with the representatives of the MTWF and it was decided to terminate the strike and to transfer the buses to the bus depot company balance sheet within two months. It was further undertaken not to take any actions that may provoke conflicts and to start negotiations on the highest level between the trade unions and the Mayor of Vilnius on 22 May.

613. In its communication dated 13 September 2000, the Government confirms that the Vilnius District Court had declared the strike of 18 May 2000 to be illegal and that the trade union of the Vilnius trolleybus enterprise had appealed this judgement. In its communication dated 12 October 2000, the Government indicates however that, on 20 September, the Court of Appeals annulled the Vilnius District Court judgements of July 2000.

614. According to the Government, collective bargaining is now going on at the bus and trolleybus enterprises and there is still disagreement around the issue of wages. Two draft collective agreements are under consideration by the Vilnius trolleybus enterprise. The Government states that it will keep the Committee informed of any developments in this regard.

C. The Committee's conclusions

615. *The Committee notes that the allegations in this case concern government interference in the right to strike through the imposition of a unilaterally determined minimum service for a strike at the bus and trolleybus depots, as well as court judgements postponing the strike action. It further notes that the complainants contest the decision to take away the buses and trolleybuses from the enterprises concerned, thus leaving about 200 drivers without work.*

616. *First, as concerns the imposition of a minimum service, the Committee has considered that the transportation of passengers and commercial goods is not an essential service in the strict sense of the term; however, this is a public service of primary importance where the requirement of a minimum service in the event of a strike can be justified. [See* ***Digest of decisions and principles of the Freedom of Association Committee,*** *4th edition, 1996, para. 566.] In the case at hand, the Committee notes that section 12 of the Act on the*

Settlement of Collective Disputes indeed provides that, in city public transport enterprises, among others, the body leading the strike shall ensure the minimum services necessary to satisfy the vital needs of society. It further notes however from the legislation and the Government's reply that this decision shall be established by the Government or by the executive body of the local government and, as concerns city public transport, solely by the Municipality.

617. *The Committee must therefore recall that the determination of minimum services and the minimum number of workers providing them should involve not only the public authorities, but also the relevant employers' and workers' organizations. This not only allows a careful exchange of viewpoints on what in a given situation can be considered to be the minimum services that are strictly necessary, but also contributes to guaranteeing that the scope of the minimum service does not result in the strike becoming ineffective in practice because of its limited impact, and to dissipating possible impressions in the trade union organizations that a strike has come to nothing because of over-generous and unilaterally fixed minimum services. [See, **Digest**, para. 560.] The Committee therefore regrets that the 70 per cent minimum service established by Decision No. 1443V was taken without any consultation with the social partners concerned. Furthermore, the Committee finds itself obliged to conclude that, in this case, the requirement to ensure 70 per cent of the services provided cannot be considered to be a truly minimum service and that the likely result of such an imposition would be to render the exercise of the right to strike ineffective in practice. Noting that the legislation provides for a unilateral determination by the government authorities of the minimum services required, the Committee requests the Government to take the necessary measures to amend the legislation so as to ensure that the workers' and employers' organizations concerned may participate in the determination of the minimum service to be provided and, in the event that no agreement is reached, to ensure that the matter is settled by an independent body. In the meantime, the Committee requests the Government to take the necessary measures to ensure that Decision No. 1443V is revoked and that any further requirement of minimum services in the event of a strike is determined in consultation with the workers' and employers' organizations concerned.*

618. *As concerns the court decisions of 25 January and 17 May to postpone for 30 days the strike actions declared at the Vilnius bus and trolleybus depots, the Committee notes from section 13 of the Act on the Settlement of Collective Disputes and from the Government's reply that the court has the right to postpone strikes due to "especially important reasons"; there is no further clarification in the legislation however as to what might constitute "especially important reasons". The Committee further notes that the local government had appealed to the courts to have the bus and trolleybus depots' strikes declared illegal both when the strike action was declared in January and then again in May. On each occasion the court had enjoined the action for 30 days. The Vilnius District Court had declared the strike action illegal in July 2000, but this judgement was overturned by the Court of Appeals*

619. *Noting that the Act on the Settlement of Collective Disputes requires preliminary procedures before calling a strike, including the consideration of the dispute by a reconciliation commission and a 21-day warning notice for strikes in city public transport, among others, the Committee considers that any systematic use of section 13 in order to postpone legitimate strike action would be contrary to the principles of freedom of association. Given that the unclear drafting of section 13 could give rise to such abuse, the Committee requests the Government to consider amending this provision so as to ensure that it is not used to restrict the right to strike in practice beyond what is permissible under accepted principles of freedom of association.*

620. *Finally, as concerns the removal of buses and trolleybuses from the Vilnius Bus and Trolleybus Depot, Ltd., the Committee notes the Government's indication that these were not actually owned by the enterprise in question but were still on the balance sheet for the Municipality to use at its own discretion. It further notes that the buses were never removed and that during a meeting between the Mayor of Vilnius and the Motor-Transport Workers' Federation on 18 May 2000, it was resolved to transfer the buses to the balance sheet of the bus depot enterprise. Noting from the Government that negotiations are currently under way at the Vilnius bus and trolleybus enterprises, the Committee requests the Government to keep it informed of any developments in this respect.*

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

The Committee's recommendations

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

(a) The Committee requests the Government to take the necessary measures to amend the Act on the Settlement of Collective Disputes so as to ensure that the workers' and employers' organizations concerned may participate in the determination of the minimum service to be provided and, in the event that no agreement is reached, to ensure that the matter is settled by an independent body. In the meantime, the Committee requests the Government to ensure that Decision No. 1443V is revoked and that any further requirement of minimum services in the event of a strike is determined in consultation with the workers' and employers' organizations concerned.

(b) Given the unclear drafting of section 13 of the Act on the Settlement of Collective Disputes as concerns the postponement of strike action for "especially important reasons", the Committee requests the Government to consider amending this provision so as to ensure that it is not used to restrict the right to strike in practice beyond what is permissible under accepted principles of freedom of association.

(c) Noting from the Government that negotiations are currently under way at the Vilnius bus and trolleybus enterprises, the Committee requests the Government to keep it informed of any developments in this respect.

(d) The Committee draws the legislative aspects of this case to the attention of the Committee of Experts on the Application of Conventions and Recommendations.

CASE NO. 1980

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

Complaint against the Government of Luxembourg presented by the Luxembourg Association of Bank and Insurance Employees (ALEBA)

Allegations: Legislation in violation of the right to bargain collectively

623. In its communications dated 13 July, 2 September and 27 November 1998, the Luxembourg Association of Bank and Insurance Employees (ALEBA) presented a complaint of violations of freedom of association against the Government of Luxembourg. ALEBA provided additional information in communications dated 6 January and 25 October 2000.

624. The Government sent its observations in communications dated 21 September 1999, and 4 February, 17 and 22 March, 16 May and 27 October 2000.

625. 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). However, it has not ratified the Collective Bargaining Convention, 1981 (No. 154).

A. The complainant's allegations

626. The Luxembourg Association of Bank and Insurance Employees (ALEBA) alleges that both Luxembourg legislation and its application infringe freedom of association and complains in particular that it is not recognized as a representative trade union.

Brief presentation of ALEBA and trade unionism in Luxembourg

627. ALEBA explains that labour law in Luxembourg is characterized by a marked distinction between manual workers and salaried employees, with the latter consisting of workers in predominantly intellectual activities. The law also draws a distinction between private sector salaried employees and those employed by a public legal entity, who have a different status.

628. ALEBA is a union of workers and more particularly a union of private sector salaried employees. ALEBA has 9,200 members, drawn primarily from the 19,195 employees of banks and insurance companies established in Luxembourg (1998 data from the Chamber of Private Sector Salaried Employees). In November 1998, during the most recent elections to the Chamber of Private Sector Salaried Employees, ALEBA received 68 per cent of votes in the banking and insurance group (group III) and hence is the majority trade union in that group by a large margin. Besides banking and insurance salaried employees, ALEBA has approximately 1,200 members working in other sectors, notably in commerce and services (group IV).

629. ALEBA states that Luxembourg has three trade union federations: the Federation of Private Sector Salaried Employees-Independent Federation of Workers (FEP-FIT), with a

membership among private sector salaried employees; the Luxembourg Confederation of Christian Trade Unions (LCGB); and the Independent Trade Union Confederation of Luxembourg (OGB-L). The latter two are essentially and historically organizations of manual workers, though little by little they have established sectoral representation for private sector salaried employees in the various branches of economic activity.

630. Until 1976, ALEBA was affiliated to the FEP-FIT. Because of internal conflicts in that organization, which, according to the complainant, were endless and brought about its ruin, ALEBA resigned its membership, and was followed in this respect by the steelworkers and by many salaried employees of small and medium-sized enterprises.

631. ALEBA emphasizes that it is by far the largest and most important trade union outside the trade union federations. In this context, ALEBA recalls that it led all of the negotiations of the collective agreements signed within the banking and insurance group; these were declared generally binding, except for one in 1993 which was negotiated and signed by a sectoral minority. The latest collective agreement is the one signed for the 1996 to 1998 period, which was also declared generally binding. The president of ALEBA was designated spokesperson for the inter-union grouping during the negotiations, which the complainant believes proves that it and its president are recognized by their peers and by their social partners as valid interlocutors in every respect.

632. Moreover, the complainant emphasizes that the failure to recognize it as representative has direct repercussions for social plans negotiated by it. It states that, in a letter of 14 May 1998, the Minister of Labour rejected a social plan negotiated following the merger of two German banks on the pretext that ALEBA was not a representative trade union organization on the national level and was therefore not in a position to negotiate and sign a social plan.

Examination of the Luxembourg legislation under criticism

633. The law at the centre of the complaint ("the 1965 Act") was adopted on 12 June 1965 and concerns collective agreements. Having defined in section 1 what is meant by collective agreement, the Act provides in section 2, paragraphs 1, 2 and 3, that:

> Only trade unions that are the most representative at the national level may be parties to a collective agreement: Provided that individual employers or groups of employers may be parties to such an agreement.
>
> All occupational groups having their own organization with the objective of representing their members, defending their occupational interests and improving their living conditions shall be deemed to be trade unions.
>
> The most representative trade unions shall be deemed to be those which are distinguished by their large membership, by their activities and their independence.

634. ALEBA subsequently refers to the preparatory work which preceded the adoption of the 1965 Act in order to emphasize the fact that the reference to the "national level" in section 2(1) was added without any proper discussion. During the regular session of the Chamber of Deputies in 1961-62, the Government put forward a draft Act pursuant to which collective agreements could be signed by "trade unions sufficiently representative of the occupational interests affected" (parliamentary document No. 919, regular session of 1962-63, page 2). This wording met with no specific objection by the Council of State or the competent committee of the Chamber of Deputies. Acknowledging the lack of a

precise definition of "representative organizations", the Council of State left "to the competent minister sufficient scope to assess in each case the representative nature of different trade unions" (parliamentary document No. 919, regular session of 1962-63, page 2). However, if the Chamber of Deputies judged it appropriate to define these concepts, the Council of State would suggest that it "keep to specific criteria and provide [for the term 'representative organizations'] the following definition: 'The most representative trade unions shall be deemed to be those which are distinguished by reason of their large membership, by their activities and their independence'." (ibid.). The complainant recalls that the Chamber of Deputies adopted the observations of the Council of State. However, a year later, in 1964-65, the Government intervened in the regular session of the Chamber of Deputies to modify the agreed text in order to add to the concept "most representative trade unions" the qualifier "at the national level", claiming that it was "essential that a trade union's activities extend beyond the limited field of a single enterprise or a single economic sector". The Council of State did not oppose the modification. The modified text was adopted and became the text of section 2(2) of the 1965 Act as it stands today.

635. ALEBA notes that the 1965 Act was addressed in three cases, the first being an arbitration decision of 10 November 1979 (Pasicrisie 24, pages 386 et seq.). According to that decision, a trade union in order to sign a collective agreement must, under the 1965 Act, prove that it fulfils simultaneously the criteria of both national and multi-sector representation. National representation is taken in this context to mean sectoral representation with a geographic spread covering the entire country, rather than a regional or local representation. Consequently, it is not enough for a trade union to have a strong sectoral representation in order to be representative and be the sole signatory to a collective agreement: the union must be represented throughout the country and in different sectors of activity.

636. This precedent was confirmed by two subsequent decrees of the Council of State in June 1980 and July 1988, which specified notably that a union must, in order to claim to be representative, demonstrate a level of membership and thus a certain following in different sectors of economic activity (digests of administrative decrees of the Council of State, Volume for 29 January 1980 to 18 December 1980 (No. VIII). See also ibid., Volume for 26 March 1987 to 22 July 1988 (No. XII)).

637. According to the complainant, the legal result of such an interpretation is to deprive it of the status of a representative trade union since it does not have national representation considered to be multi-sectoral within the meaning of the jurisprudence of Luxembourg, even though it represents approximately two-thirds of the voting salaried employees of group III, "banking and insurance".

Identification of violations of freedom of association

638. The complainant stresses that freedom of association is among the freedoms known as "Abwehrrechte gegen den Staat", freedoms which essentially constitute a defence against the State's authority to intervene by means of general standards in the exercise of the guaranteed freedoms other than in order to promote their exercise or to limit the exercise of one group's freedoms in relation to those of another group. In no case may the State make one group's freedom depend on the goodwill of another.

639. ALEBA makes reference to the international labour Conventions, alleging that the actual state of Luxembourg law violates the elementary principles developed in the Conventions. ALEBA states notably that the Preamble to Convention No. 87 places freedom of association and the protection of trade union rights on an equal footing. It is provided expressly in Article 3(2) that "the public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof". Moreover, the

complainant states that Convention No. 87 makes provision for the right to form federations and confederations, but that no obligation is imposed in this respect. Concerning Convention No. 98, ALEBA remarks that Article 4 provides that "measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation [...] of collective agreements". ALEBA also mentions the Collective Agreements Recommendation, 1951 (No. 91), and the Collective Bargaining Recommendation, 1981 (No. 163), which refer to the determination of the representative organizations. In addition, ALEBA notes that Recommendation No. 163 provides that "measures adapted to national conditions should be taken, if necessary, so that collective bargaining is possible at any level whatsoever, including that of the establishment, the undertaking, the branch of activity, the industry, or the regional or national levels" (Paragraph 4(1)). The complainant concludes therefore that the dual (national and multi-sectoral) representation required for the signing of a collective agreement under the law of Luxembourg does not respect the principles of freedom of association.

640. The complainant maintains that, if it is true that only representative unions can sign collective agreements, it is sufficient for their representative status to be evaluated on the basis of the sector concerned.

641. In addition, ALEBA maintains that the concept of national representation should be interpreted in contrast with purely local or regional representation. Representation within a sector is thus quite sufficient on condition that it is national, i.e. representative on the national scale for a given sector. ALEBA adds that it is in any case perfectly multi-sectoral in that it is represented in at least two quite distinct sectors.

642. ALEBA also considers that Luxembourg is violating its own law in disputing its national representative status on the pretext of multi-sectoral representation through the confusion of "group" in the context of the legislation on the Chamber of Private Sector Salaried Employees with "economic sector". In order to ensure some level of proportional representation in that body, the number of its members by group of activity group is governed by law. The concept of group is not synonymous with that of sector. The group is a somewhat arbitrary unit, established for a specific purpose, whereas a sector is a much broader and more general socio-economic concept.

643. In a subsequent communication dated 6 January 2000, ALEBA provides information concerning developments in the situation since the complaint was presented. It points out amongst other things that on 16 July 1998 the trade union "Union of Private Sector Employees" (UEP) was established to defend the interests of all private sector employees in Luxembourg. ALEBA and UEP formed a trade union federation on 27 April 1999. UEP participated in the November 1998 social elections and obtained 6.95 per cent of votes of employees electing the statutory body of the private sector employee's health insurance fund. In the same elections ALEBA obtained 17.063 per cent of all votes, totalling 23.99 per cent for ALEBA and UEP together. In addition, ALEBA and the ALEBA-UEP federation signed a collective agreement on 29 April 1999 that had been negotiated with the Association of Banks and Bankers of Luxembourg (ABBL). ALEBA states that on the recommendation of the Director of the Labour and Mines Inspectorate, the Minister of Labour and Employment issued an order refusing to register this collective agreement on the pretext that ALEBA does not possess the degree of representativeness at the national level that is required in order for it to be the sole signatory of collective agreements. On 22 December 1999 the complainant applied to the administrative tribunal for a stay of execution and conservatory measures with respect to the Minister's decision. In a decision of 14 January 2000 the court refused the application for a stay of execution but granted the application for a conservatory order for the purpose of temporarily applying the measures

provided for in the collective agreement between ALEBA and the ABBL pending a decision on the substance of the case.

644. Finally, in a communication of 25 October 2000, the complainant organization sent a copy of the judgement issued by the Administrative Tribunal of Luxembourg, which recognizes the national representativity of ALEBA for the purpose of signing collective agreements.

B. The Government's reply

Description of ALEBA

645. The Government acknowledges that ALEBA has a significant, though not exclusive, following in the banking and insurance sector. This sector is part of the occupational category of private sector employees, which, according to the surveys upon which the 1998 social elections were based, consists of 94,412 employees, 19,543 of whom work in the banking and insurance sector. The Government notes that ALEBA claims to represent 9,200 employees, which is 9.7 per cent of the country's private sector employees.

646. The Government refers to three electoral results which can be used to measure the level of a trade union's influence:

– elections to the occupational chambers;

– elections to the management organs of the social security institutions; and

– elections to the staff delegations of enterprises.

There are two occupational chambers, which provide the general, effectively parliamentary representation of an occupation. The representatives of the 94,412 private sector employees working in Luxembourg are elected to the Chamber of Private Sector Salaried Employees. These private sector employees are divided into six groups, depending on the size and economic importance of the sector: private sector salaried employees in industry (four seats), in the steel industry (three seats), in banking and insurance (eight seats), in commerce (13 seats), in health care (four seats) and in the rail system (six seats). ALEBA is represented only in the "banking and insurance" group, in which it gained 68.19 per cent, or six seats in total. While the Government recognizes that ALEBA's importance in the banking and insurance sector cannot be denied, it emphasizes that only 37.89 per cent of potential electors participated in the elections and that ALEBA is far from the exclusivity or monopoly of representation it claims to have. Moreover, the six seats gained should be viewed in the context of the total number of seats in the Occupational Chamber (38), since Luxembourg does not have separate categories for banking and insurance employees. From the Government's point of view, ALEBA's six seats represent merely 15 per cent of the total seats in the institution representing the occupational category of private sector employees in Luxembourg.

647. The situation in the management organs of the social security institutions is similar. The members are elected to the following organs:

– management organs of health insurance or pension funds;

– management organs of the occupational accident insurance association or the social contributions' registration and collection centre;

– management organs of the dependants' insurance fund and the public welfare fund;

– social jurisdictions.

The management organs of the health insurance funds for the different occupational categories (manual workers, private sector employees and civil servants) have a total of 145 workers' delegates. The Government notes that four of them, or 2.75 per cent, are from ALEBA. The health insurance fund for private sector employees specifically has 42 delegates, of whom four are from ALEBA, representing 9.52 per cent. Consequently, according to the Government, ALEBA represents only 9.52 per cent of private sector employee delegates in the management organs of the health insurance fund for private sector employees. In the general assembly of the pension fund for private sector employees, there are two ALEBA representatives among a total of 15 members, in other words 13 per cent. ALEBA is not represented in the management committee of the pension fund.

648. Concerning ALEBA's representation in the staff delegations of enterprises in the only sector in which it is established, the Government states that, while it is significant, it far from attains the level of importance claimed in the complaint. According to the most recent figures officially produced by the Labour and Mines Inspectorate, the body officially responsible for assessing the results of the November 1998 social elections, ALEBA gained 182 of the 570 seats so far notified to the Inspectorate, or 31.93 per cent.

Freedom of association in Luxembourg

649. The Government emphasizes that Luxembourg has clearly recognized and respected freedom of association through ratification of the international instruments for the protection and exercise of human rights. Moreover, article 11(5) of the Constitution of Luxembourg guarantees trade union freedoms. The Government stresses that any occupational group fulfilling the structural and functional criteria laid down by the 1965 Act, in other words being an occupational group having its own organization with the objective of representing its members, defending their occupational interests and improving their living conditions, can claim recognition as a trade union in full conformity with the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). Trade unions, including ALEBA, benefit from all of the rights ensuing from Convention No. 87, namely the right to establish themselves without previous authorization, to draw up their internal and administrative constitutions and rules, to elect their representatives in full freedom, to appoint their representatives freely to higher bodies, to organize their administration and activities and to formulate their programmes and demands. All trade unions, including ALEBA, can exist, accept members, protect their interests, exert pressure and demonstrate. The Government emphasizes that the establishment and functioning of trade unions in Luxembourg are, through the principles ensuing from the Constitution of Luxembourg and the international labour Conventions, based on an absolute liberalism which moreover is a powerful factor encouraging the development of trade union pluralism. Luxembourg has at least ten trade unions of various sizes, which is a remarkable figure given the limited size of the country and the number, small in absolute terms, of economically active persons in Luxembourg (approximately 200,000 including cross-border workers).

Representativeness and collective bargaining

650. The Luxembourg legislator, while fully respecting trade unions' freedom to establish themselves and to function, has found it appropriate to make some modifications to the rule of strict trade union equality, in connection with their representativeness, but only in the context of the right to sign collective agreements. The Government points to the relevant provisions of the 1965 Act. Section 2(1) of the 1965 Act gives the exclusive right

to sign collective agreements to the most representative trade unions at the national level. Paragraph 3 of the same section lays down the criteria for assessing a trade union's representativeness at the national level. The criteria listed are the union's large membership, its activities and its independence from the employer. These criteria are objective, fixed and known by unions in advance. Several decisions of the Council of State, which was until the creation of the administrative jurisdictions the highest administrative jurisdiction in the country, have refined those criteria. The main ideas developed by the judges were the following: nationally representative trade unions should firstly protect their members' occupational interests and represent their members, the large size of their membership being one of the conditions for a trade union to be signatory to collective agreements (general/national criterion); nationally representative trade unions should establish that through their participation in bargaining and signing a collective agreement they are undertaking the protection of the occupational interests and representation of those of their members to whom the collective agreement in question will apply (criterion of activity in (each of) the sectors to which the collective agreement will apply); the use of the plural to refer to the most representative organizations at the national level shows that the legislator, while reinforcing the role of representative trade unionism at the national level, did not wish to depart from the pluralistic tradition: in order to determine the threshold below which a trade union may not be recognized as nationally representative, pragmatic considerations should be taken into account. For example, in a specific case, the Council of State had judged that a membership of 20 per cent of all union members among employees was the "large size" required by law. Moreover, the Council of State judged that the representative status of a union at the national level did not ensue *ipso facto* from being established at a purely sectoral level. The union needed, on the contrary, to demonstrate a large membership, and hence a certain membership in different sectors of economic activity.

651. The Government explains that the Luxembourg labour relations system does not tend to encourage the formation of trade union bodies organized by occupational branch, sector or at enterprise level with a view to only signing collective agreements. However, trade unions are placed on an equal footing during the negotiations. Single-sector trade unions, enterprise trade unions and even "house" trade unions are therefore not excluded from collective bargaining either by law or by the competent authorities. However, in excluding them from signing collective agreements in favour of unions which are representative at the national level, the national legislator intended to discourage the establishment of specialized unions and minimize the disadvantages of undue fragmentation of trade union efforts. In refusing to allow trade unions whose activities are confined to a single enterprise, economic sector or occupational branch to sign collective agreements, the law is seeking to check the harmful increase of trade union pluralism in a country characterized by, amongst other things, its limited size and the small number, in absolute terms, of workers, and unionized workers in particular (approximately 40 per cent of workers, according to union data).

652. In this context, the Government draws attention to the fact that Luxembourg law recognizes only two occupational categories: manual workers and private sector salaried employees. Hence, the 1965 Act allows each enterprise or division of an enterprise to conclude only one collective agreement for all of the private sector salaried employees and one for all of the manual workers, it being understood that the right to sign those agreements belongs to the most representative trade unions at the national level for each of those two occupational categories of workers. In this connection, the Government draws attention to the fact that any trade union may challenge, before the competent authorities, a refusal by the Minister to register a collective agreement on the grounds of the non-representative status of the trade union(s) signing it. It is in fact only at the stage of registration of a collective agreement that Luxembourg law provides for verification of the legal capacity of the signatory trade unions.

653. In the light of these details, the Government stresses that it never disputed the fact that ALEBA is a trade union entitled to the prerogatives provided under the international labour Conventions. The Government adds that it is not only permitted to participate in collective negotiations in the banking and insurance sector, but is the leader *(federführend)* in this respect despite the presence of national representative trade unions. With only one exception, all collective agreements in the sector have been signed only with the agreement of ALEBA. According to the Government, ALEBA has thus for decades, with only one exception, been de facto not only involved in bargaining, but even the co-signatory to the ensuing collective agreement.

654. In other words, Luxembourg law and jurisprudence in no way prevent ALEBA from participating in collective bargaining in the sector in which it enjoys a large following, nor even from "co-signing" a collective agreement signed by the nationally representative trade union. Moreover, the nationally representative trade unions have never objected to ALEBA's presence during collective bargaining in the banking and insurance sector. In addition, the Government has never refused to register a collective agreement co-signed by ALEBA. It is rather a case of the law and jurisprudence not permitting ALEBA to be the sole signatory to collective agreements since it does not fulfil the established representativeness criteria. ALEBA is a single-sector union and the workers it represents are, under Luxembourg law, part of the occupational category of private sector salaried employees and not a separate category for which it could claim to be representative at the national or sectoral level. From the Government's point of view, it appears that the complainant intends on its own initiative to create a new occupational category (private sector salaried employees in the banking sector) not recognized by the law and contrary to the safeguarding of social peace. Moreover, the Government considers that the ILO is not competent to pronounce on the existence of such an occupational category, which would be the only means for ALEBA to establish any kind of representative status.

655. Finally, the Government considers that ALEBA has diverged from national solidarity among workers and has directly endangered social peace in Luxembourg by attempting to be the sole signatory to the most recent collective agreement. In addition, the agreement fails to fulfil the European Union guidelines on employment as incorporated in the Luxembourg national plan of action for employment (a tripartite plan at national and multi-sector levels) and in the Act of 12 February 1999 which transposes that national plan of action for employment and modifies the 1965 Act by imposing on the parties an obligation to negotiate on the four specific subjects linked to employment and to combating unemployment.

ALEBA-UEP federation

656. Concerning the ALEBA-UEP federation, the Government states that pursuant to section 2 of the 1965 Act, only trade unions that are the most representative at the national level may be parties to a collective agreement. Hence, a trade union not only has to pursue a trade union objective, but must also be an organization, and must constitute a trade union and not merely a confederation of two or more trade unions. Trade unions that sign a collective agreement are required to meet the criteria for representative status themselves without having to resort to forming a confederation with other trade unions to this end. The Government emphasizes that the collective agreement at issue referred to by ALEBA in its complaint was signed on 29 April 1999, i.e. two days after the establishment of the ALEBA-UEP trade union federation which is in fact a confederation. Hence it is clear that the collective agreement was entirely negotiated by ALEBA before the ALEBA-UEP confederation even existed, as the latter was established for the sole purpose of creating the impression that a trade union federation meeting the criteria laid down in section 2 of the 1965 Act was involved. The Government points out that the signature of the collective agreement by ALEBA-UEP was done in evasion of the law, the evasion consisting of

establishing a trade union federation for the sole purpose of being able to sign a collective agreement that had already been entirely negotiated by one of the constituent trade unions.

Independence of ALEBA

657. As regards the independence of ALEBA, the Government recalls that the independence of trade union organizations is necessary to guarantee flawless protection of members' interests without external pressure. The legal term "independence" means economic independence from employers. The officers of a trade union should be remunerated exclusively out of membership dues and should in no way be answerable to an employer. The Government emphasizes that, in the case of ALEBA, there does not appear to be any such independence since all of the officers of this organization are still in the service of a bank or an insurance company. Moreover, the Government notes that the ABBL and ALEBA instituted joint proceedings against a ministerial order refusing to register a collective agreement that had been signed only by ALEBA, which would seem to prove that the interests of the two organizations are linked.

658. The Government attaches to its communication reports presented by the Independent Trade Union Confederation of Luxembourg (OGB-L) and the Luxembourg Confederation of Christian Trade Unions (LCGB), which consider ALEBA's complaint to be unfounded and categorically contest all the figures put forward by ALEBA.

659. In a communication dated 16 May 2000, the Government sends a joint letter from the Presidents of OGB-L and LCGB in which they reiterate their opposition to the complaint presented by ALEBA and contest once again the figures put forward by ALEBA with regard to the number of its members. OGB-L and LCGB also raise the question of the lack of independence of ALEBA vis-à-vis the employers of the banking sector.

660. Finally, in a communication of 27 October 2000, the Government provides a copy of the judgement issued by the Administrative Tribunal of Luxembourg, which recognizes the national representativity of ALEBA. The Government states that it is entitled to appeal this judgement but has not yet made a decision on this point.

C. The Committee's conclusions

661. *The present complaint concerns difficulties encountered by the complainant, the Luxembourg Association of Bank and Insurance Employees (ALEBA), in being recognized as a representative trade union under the 1965 Luxembourg Act on collective agreements ("the 1965 Act").*

662. *The Government emphasizes that ALEBA's status as a trade union has never been disputed in so far as it meets the structural and functional criteria laid down by the 1965 Act in that respect, namely that it is an occupational group "having [its] own organization with the objective of representing [its] members, defending their occupational interests and improving their living conditions". It is only the issue of the complainant's representative status, an essential criterion for signing collective agreements, that gives rise to the complaint.*

663. *The Committee notes that the 1965 Act and the issue of the representative status of workers' organizations in Luxembourg have already been examined [see Case No. 590, 119th Report, paras. 33-63]. Before returning to the conclusions reached by the Committee at that time and subsequently pronouncing on the case in point, the Committee wishes to mention the relevant principles which have been developed concerning the representative status of trade unions.*

664. *Concerning representative status and collective bargaining, the Committee observes that various instruments adopted by the International Labour Conference refer expressly to the concepts of representative status or representative organizations; in this connection, the Committee points to the preparatory work for the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and to the Collective Agreements Recommendation, 1951 (No. 91), and the Collective Bargaining Recommendation, 1981 (No. 163). In addition, the Committee notes that under Article 4 of Convention No. 98, governments shall take measures appropriate to national conditions to encourage and promote machinery for voluntary negotiation of collective agreements. In this context, the Committee has always emphasized the importance of workers being able to choose the organization which represents them; the public authorities should refrain from all intervention liable to influence or vitiate that free choice. However, since the diversity of the trends in the trade union movement has led legislators to reserve certain rights for organizations with the largest following among workers, the Committee has admitted the drawing of a distinction between unions, by one system or another, according to the extent to which they are representative [see in particular Case No. 918, 197th Report, para. 157]. Thus, the Committee has accepted that, for the purposes of collective bargaining, a distinction may be drawn between the most representative organizations and all others, acknowledging that the former may have preferential bargaining rights, including as regards the conclusion of collective agreements. However, in adopting this position, the Committee has insisted on the necessity of having objective standards for deciding on the representativeness of organizations [see Case No. 590, 119th Report, para. 59].*

665. *The Committee considers it appropriate at this stage to recall the conclusions which it reached in the above case and which also referred to the 1965 Act. In that matter, the Committee had before it a complaint presented by a Luxembourg trade union which considered itself the most representative of a category of workers not recognized as a special category for the purposes of collective bargaining. The union was already legally recognized at the national level but did not have the capacity to conclude separate collective agreements on behalf of its members. The Committee, taking into account national conditions, notably the small size of the country, which justified granting the right to negotiate only to those organizations which were most representative at the national level, had considered that neither the law nor practice should prevent a union representing the majority of workers of a certain category from furthering the interests of its members. The Committee had recommended the Governing Body to request the Government to examine the measures which it might take in order to afford the union in question the possibility of being associated with the collective bargaining process so as to permit it adequately to represent and defend the collective interests of its members [ibid., para. 63].*

666. *In the case in point, according to the information brought to the attention of the Committee by the complainant, ALEBA is a trade union with approximately 9,200 members, recruited essentially among the 19,195 employees of banks and insurance companies established in Luxembourg (1998 data from the Chamber of Private Sector Salaried Employees). In November 1998, at the last elections to the Chamber of Private Sector Salaried Employees, ALEBA gained 68 per cent of the votes in the banking and insurance group (group III), which gives the union a large majority in that body. The Committee notes, however, that both the Government and the trade union confederations OGB-L and LCGB contest certain figures put forward by ALEBA that would seem to demonstrate its majority in the sector concerned.*

667. *The Committee notes however that the Government in no way disputes the key role played by the complainant in the banking and insurance sector. On the contrary, the Committee notes the Government's declaration that Luxembourg law and jurisprudence in no way prevent ALEBA from participating in collective bargaining in the sector in which it enjoys a large following. Moreover, the Committee notes that the complainant has not only*

participated for many years in the negotiation of almost all collective agreements signed concerning group III, "banking and insurance", but that its president on its behalf has acted as an inter-union spokesperson. The Government emphasizes that with only one exception, all collective agreements in the sector were signed only with the agreement of ALEBA; in addition, all but one were declared generally binding.

668. *Nobody disputes the fact that ALEBA has participated in collective bargaining in its sector and has on numerous occasions even signed the ensuing collective agreements together with other unions recognized as representative. The issue here is the representative status of the complainant – which would permit it to be the sole signatory to collective agreements – pursuant to the 1965 Act and case law.*

669. *As regards legislation, the Committee considers it appropriate, at this stage, to recall the relevant provisions of the 1965 Act, namely paragraphs 1, 2 and 3 of section 2, which state as follows:*

> *Only trade unions that are the most representative at the national level may be parties to a collective agreement: Provided that individual employers or groups of employers may be parties to such an agreement.*
>
> *All occupational groups having their own organization with the objective of representing their members, defending their occupational interests and improving their living conditions shall be deemed to be trade unions.*
>
> *The most representative trade unions shall be deemed to be those which are distinguished by their large membership, by their activities and their independence.*

According to the 1965 Act, the most representative trade unions are those which are prominent by reason of their large membership, by their activities and their independence. Those criteria are sufficiently objective, precise and conclusive, in the Committee's opinion, to allow identification of the representative organizations. However, the 1965 Act also provides that organizations must be representative at the national level; the Act provides no further particulars about this. The Committee notes that the Act in question has been addressed in at least three cases, which elucidated the legislator's intention in respect of "the national level". From those decisions, copies of which have been provided to the Committee, and from the information brought to the Committee's attention, it follows that, in order to be representative at the national level, a workers' organization must demonstrate both national and multi-sectoral representation in one or other of the occupational groups recognized by law, in other words private sector employees or manual workers. In order to claim to be representative and have the capacity to be the sole signatory to collective agreements, the organization in question needs to demonstrate the size of its membership and thus a certain following in different sectors of economic activity in one or other group. The Committee considers that the combination of these two requirements – national and multi-sectoral representativeness – for the signing of collective agreements raises problems with regard to the principles of freedom of association in terms of representativeness. Its application could have the consequence of preventing a representative union in a given sector from being the sole signatory to the collective agreements ensuing from the collective negotiations in which it has participated.

670. *In the present case, the Committee notes that, though the complainant represents a large number of salaried employees in the banking and insurance sector at the national level, it cannot be the sole signatory to collective agreements negotiated by it and covering the workers of that sector, since the Government does not consider it to be representative because it cannot demonstrate a following in different sectors of economic activity. The Committee considers the interpretation by the competent Luxembourg authorities of the*

1965 Act in imposing national and multi-sectoral representation to be contrary to the principles of freedom of association since it prevents the most representative union in a given sector from being the sole signatory to collective agreements and thus from defending fully the interests of the workers whom it represents. The unions with the right to negotiate collective agreements with a view to the regulation of terms and conditions of employment (to use the words of Convention No. 98) should be designated according to pre-established objective criteria. It appears clear that the size of membership or the results of occupational elections meet that requirement for pre-established objective criteria. The Committee thus finds itself obliged to reiterate the conclusions which it reached in its previous examination of the case of Luxembourg (Case No. 590), namely that ALEBA should be associated with the collective bargaining process in its sector. In the Committee's view, such an association with the negotiation process, in order to be fully effective and real, implies that ALEBA should be able to sign, and where necessary to be the sole signatory to, ensuing agreements when it wishes, provided that its representativeness in the sector has been objectively demonstrated.

671. *Moreover, the Committee considers that participation in collective bargaining and in signing the ensuing agreements necessarily implies independence of the signatories from the employer or employers' organizations as well as from the authorities. It is only when their independence is established that trade union organizations may have access to bargaining.*

672. *Accordingly, in order to determine whether an organization has the capacity to be the sole signatory to collective agreements, two criteria should be applied: that of representativeness and that of independence. In the Committee's view, the determination of which organizations meet these criteria should be carried out by a body offering every guarantee of independence and objectivity.*

673. *The Committee takes note of the judgement issued on 24 October 2000 by the Administrative Tribunal of Luxembourg, which recognizes the national representativity of ALEBA for the purpose of signing collective agreements.*

674. *In this context, the Committee requests the Government to examine the situation anew in the light of its conclusions and requests it to take the necessary measures so that a trade union whose representativeness in a sector has been objectively demonstrated and whose independence is established is able to sign, and where necessary to be the sole signatory to, collective agreements, in order to make Luxembourg practice fully compatible with freedom of association. The Committee requests the Government to keep it informed in this respect.*

The Committee's recommendations

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

(a) The Committee requests the Government to examine the situation anew in the light of its conclusions and to take the necessary measures so that an organization whose representativeness, in line with ILO principles, has been objectively demonstrated and whose independence is established is able to sign, and where necessary to be the sole signatory to, collective agreements, in order to make Luxembourg practice fully compatible with freedom of association. The Committee requests the Government to keep it informed in this respect.

(b) The Committee draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to the legislative aspects of this case.

CASE NO. 2055

DEFINITIVE REPORT

Complaint against the Government of Morocco presented by the Democratic Organization of African Workers' Trade Union (DOAWTU)

Allegations: Acts of anti-union discrimination, including dismissal of workers following a strike; employer's refusal to deduct union dues

676. The Committee last examined this case at its June 2000 meeting, when it submitted an interim report to the Governing Body [see 321st Report, paras. 342-356, approved by the Governing Body at its 278th (June 2000) Session].

677. The Government sent some observations in a communication dated 15 September 2000.

678. Morocco has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98); it has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

A. Previous examination of the case

679. At its May-June 2000 meeting, the Committee examined allegations concerning two separate situations, although these both involve the same umbrella organization. As regards the various allegations of discrimination and inequality of treatment of trade union organizations within the national airline company, the Committee had invited the Government to urge Royal Air Maroc to supply all the relevant information as soon as possible. As regards the events that occurred in the Urban Transport Company of Casablanca (SALAMA), while noting that an out-of-court settlement was ultimately reached between the parties with the assistance of the conciliation service of the competent ministry, the Committee noted that the establishment of the trade union affiliated to the UGTM and dismissals of workers and trade union officers occurred at the same time. In the light of the interim conclusions of the Committee, the Governing Body approved the following recommendations:

(a) Noting that an out-of-court settlement was reached between the parties in the Urban Transport Company of Casablanca, the Committee recalls that no person should be dismissed or prejudiced in his or her employment by reason of trade union membership or legitimate trade union activities, and requests the complainant to confirm whether the terms of the settlement were in fact carried out.

(b) The Committee invites the Government to urge Royal Air Maroc to supply all the relevant information as soon as possible concerning the collective dispute involving the UGTM and to forward it to it as soon as it has been received.

B. The Government's further reply

680. In its communication of 15 September 2000, the Government states that Royal Air Maroc (RAM) denies the allegations of discrimination and sidelining of workers who are members of the Air Transport Workers' Trade Union (STTA) affiliated to the General Union of Workers of Morocco (UGTM) and specify that the latter enjoy the same facilities and advantages as their colleagues who are affiliated to other trade union centrals. In fact, leave was authorized for members of the STTA and means of transportation were put at their disposal so that they could take part in the festivities of 1 May.

681. RAM also states that members of the STTA were granted interviews and meetings with the management of the company whenever these were requested. With regard to deducting trade union dues to UGTM at source, RAM confirms that this procedure, which has become accepted through use, is applied for members of STTA as it is for their colleagues. Moreover, in the context of RAM's support to the entire trade union movement, the company, at the request of the General Secretariat of the UGTM (a copy of which is annexed to the communication), paid the travel and accommodation costs for Mr. Moulay Aissa Lamrani to come to Geneva to attend the 88th Session of the International Labour Conference.

C. The Committee's conclusions

682. *The Committee notes that the present complaint concerns two separate situations, although it involves the same umbrella organization. As regards the events that occurred in the SALAMA company, the Committee had noted that an out-of-court settlement was reached between the parties concerning the reinstatement of SALAMA workers. In this regard, the Committee had requested the complainant to confirm whether the terms of the settlement were in fact carried out. The Committee regrets that the complainant has still not provided the requested information nearly one year after the request was made. This being the case, the Committee has decided not to pursue its examination of this allegation.*

683. *Regarding the various allegations of discrimination and inequality of treatment of trade union organizations within the national airline company, the Committee notes that the versions provided by the parties contradict each other. While the complainant states that the STTA cannot obtain interviews with the chairman and managing director of the company, is excluded from negotiations with the management, does not enjoy deduction of trade union dues at source for its members, and that its officers were not allowed leave for the festivities of 1 May 1998; RAM claims that the STTA is treated in exactly the same way as the other trade union organizations in the company. According to RAM, members of the STTA have interviews and hold meetings with the management whenever they request this, have their trade union dues deducted at source and have been granted leave to take part in the festivities of 1 May. In these circumstances, the Committee can only state that both the government authorities and employers should refrain from any discrimination between trade union organizations, especially as regards recognition of their leaders who seek to perform legitimate trade union activities. Moreover, public meetings and the presentation of social and economic claims are traditional trade union prerogatives for 1 May. Finally the Committee recalls that the withdrawal of the check-off facility, which could lead to financial difficulties for trade union organizations, is not conducive to the development of harmonious industrial relations and should therefore be avoided [see* ***Digest of decisions and principles of the Freedom of Association Committee,*** *4th edition, 1996, paras. 307 and 435]. The Committee requests the Government to ensure that Royal Air Maroc respects these principles fully in the future.*

The Committee's recommendation

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

> ***The Committee requests the Government to ensure that the national airline company RAM respects fully the principles of non-discrimination between trade union organizations and participation in the festivities of 1 May, and that the check-off facility for trade union dues be granted for members of all trade unions.***

CASE NO. 2013

INTERIM REPORT

Complaint against the Government of Mexico presented by the Academic Workers' Union of the National College of Technical Occupational Education (SINTACONALEP)

Allegations: Refusal to register an organization, acts of interference and anti-union discrimination by the employer

685. The Committee examined this case at its March 2000 meeting and submitted an interim report to the Governing Body [see 320th Report, paras. 723 to 734, approved by the Governing Body at its 277th Session (March 2000)].

686. The Government sent further observations in communications dated 24 May 2000.

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

A. Previous examination of the case

688. In its previous examination of the case, the Committee formulated the following conclusions and recommendations [see 320th Report, paras. 728 to 734]:

> The Committee notes that the questions raised by the complainant teachers' organization relate to the following: (1) the refusal to register SINTACONALEP since its establishment on 2 February 1997; and (2) acts of interference and discrimination against the members of this organization by the National College of Technical Occupational Education (CONALEP).
>
> The complainant explains that the General Directorate's pretext for refusing the registration is the absence of an employment relationship between the members of the group concerned and the National College of Technical Occupational Education, meaning that the members of this group are not workers in the meaning of the Federal Labour Act. The complainant states that, according to the General Directorate, inspections carried out with the employers' legal representatives showed that while none of the members of this group were recognized as workers within the meaning of the abovementioned Act, some members were recognized as providers of occupational services, as they had signed contracts for the provision of occupational services. It was therefore

deduced that their relationship was of a strictly civil nature and did not constitute an employment relationship. SINTACONALEP maintains that it fulfils the legal conditions as demonstrated by its trade union statutes, the fact that its initial request related to 220 workers and that it submitted the documents required under section 365 of the Federal Labour Act. According to SINTACONALEP, the General Directorate took a negative decision as a delaying tactic, acting in bad faith and looking for arguments to support the illegal refusal to register. The Committee notes that, according to SINTACONALEP, having invented one cause for incompetence which was rejected by the higher bodies, the General Directorate went on to invent further requirements, such as having to prove the employment relationship, which is stipulated in neither the Constitution nor the Federal Labour Act.

The Committee notes that, according to the Government, the refusal to register SINTACONALEP is in accordance with the legal provisions in force in Mexico and with ILO Conventions, an interpretation that was in fact confirmed by two courts, thus definitively settling this question.

The Committee recalls that "by virtue of the principles of freedom of association, all workers – with the sole exception of members of the armed forces and police – should have the right to establish and to join organizations of their own choosing". Nevertheless, in order to draw conclusions on all the elements of information, the Committee requests the Government to transmit the most detailed information on: (1) the manner in which an unregistered organization may defend and promote effectively the interests of its members and carry out activities; and (2) the applicable legislation and whether it sets forth the denial of registration and on what basis.

With respect to the acts of interference and the acts of discrimination against the members of SINTACONALEP by CONALEP, the Committee notes that the Government gives no response to the complainant's allegations. The Committee also notes that, according to SINTACONALEP, CONALEP's position was to make employment conditional upon the workers' rejection of the trade union, forcing the workers to sign letters of resignation which were sent to the authorities. Furthermore, many members of SINTACONALEP were dismissed, and the procedures for unjustified dismissal lodged by its members have been delayed. Lastly, according to the allegations, CONALEP continues to make its teaching staff sign documents denying the existence of an employment relationship and feigning another type of relationship, although the form, terms and conditions all correspond to an employment relationship.

Given these serious allegations of interference and discrimination by CONALEP, the Committee requests the Government to conduct an inquiry into these acts and to provide detailed and specific information.

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

(a) The Committee requests the Government to transmit the most detailed information on: (1) the manner in which an unregistered organization may defend and promote effectively the interests of its members and carry out its activities; and (2) the applicable legislation in the present case and whether it sets forth the denial of registration and on what basis.

(b) Concerning the allegations of interference and discrimination by CONALEP, the Committee requests the Government to conduct an inquiry into these acts and to provide detailed and specific information.

B. The Government's reply

689. In its communications dated 24 May 2000 the Government explains that the National College of Technical Occupational Education (CONALEP) was established on 29 December 1978 as a decentralized public body with its own legal personality and assets and that its purpose was to contribute to national development by training qualified human resources on the basis of the following activities: providing technical occupational education at the post-secondary level; promoting services and activities to establish ties with the national system of production; developing and operating employment-targeted training services for work-skills training, refresher courses and technical specialization; establishing systems to provide occupational support and advisory services to bodies in the production, public, social and private sectors; implementing technical service programmes to support the community and training and promoting the skills enhancement of technical and administrative personnel and of its teachers. CONALEP was set up to train qualified technical professionals at the post-secondary level. Graduates receive an occupational qualification registered by the Directorate of Occupations, the aim of which is to strengthen the occupational and social prestige of this level of education. They are given the necessary basic scientific training to be able to perform the tasks inherent in their line of work and the necessary abilities to organize and supervise work in accordance with their intermediate level of involvement in the production process.

690. The Government adds that CONALEP is one of the largest higher education institutions in the country, with a registered enrolment of between 200,000 and 220,000 students, an absorption rate of close to 10 per cent of secondary-school leavers nationally, a 44 per cent completion rate and an employment rate in the labour market of almost 70 per cent of its graduates in a 90-day period. In 1993 CONALEP was running 144 courses and in 1995 it was comprised of 260 institutions. The imbalance between available education and local regional requirements took a variety of forms between 1995 and 1999: courses existed for which there was no demand in the labour market, while other training requirements were not covered; 80 per cent of pupils were concentrated in ten of the 144 courses that were run up until 1994. The new teaching structure which came into operation in 1995 involved restructuring the available courses and strengthening the curriculum in order to alter the number of courses offered by the institution. From the 1996-97 school year onwards the number of courses was reduced from 144 to 63, which were grouped into 12 areas of technical occupational training.

691. The Government states that from September 1997 onwards, CONALEP offered 29 courses, grouped into two major sectors of economic activity – industrial activities and services in nine areas of occupational training.

692. The Government specifies that following its establishment the National College of Technical Occupational Education set up special bodies so that representatives from the production sector could participate directly in a variety of ways in decision-taking at the College. This liaison allows direct communication with the sectors of production, thus providing insight into the needs and expectations of students, workers and representatives of public and private bodies. This feature is the substantive basis on which the planning, management and evaluation of the College operates. The liaison is assured through the participation of bodies set up according to profession, in keeping with the principle of joint responsibility, allowing benefits and results to be shared. With the federalization of the College that began in 1998, the approach to liaison promotion and dissemination was reassessed as regards the relevance, openness and appropriateness of services, as it is the local bodies that best know the needs of the sectors that produce goods and services. For this reason representatives of the production sector participate in the board of management, CONALEP's highest management body. There are also state and institutional liaison bodies which are set up in the federative entities. The State Liaison Committee provides

support, advice and consultations for the director of the state college and the representatives, as appropriate. Similarly, to ensure the relevance of available technical and occupational training, institutional liaison committees were set up comprised of representatives from the production sections of enterprises located near the institutions. These industries provide the College with experienced and capable individuals to serve as teachers and to transmit their practical knowledge and specific experience in various areas to the pupils.

693. The Government adds that the total number of teachers in CONALEP ranges between 15,000 and 17,000, distributed throughout the 261 educational centres belonging to CONALEP across the country. Of these, approximately 6,000 cover subjects of basic training and 9,000 are responsible for occupational modules. Given the nature of the training process, the content of which is directly linked to technological advances, the teachers working at the College are preferably involved in the production sphere, being individuals interested in passing on the knowledge, expertise and skills they have acquired. Similarly, it is stipulated that the fees they are paid for their academic work should not constitute their sole or main source of income. Academic staff are contracted by semester according to the system of professional fees, as they have very specific – and duly verified – knowledge and provide their services in exchange for fees. An example of this is professionals who give courses to future air-conditioning technicians in the institutions located in areas where there are many hotels. This group of teachers clearly varies from semester to semester, as in each cycle the courses are given that the labour market of each region needs, and as Mexico covers almost 2 million km^2 it is not possible to have permanent instructors as they could not be constantly moved to the different areas where each semester-long course is to be given. For example, an air-conditioning instructor from Cancún would have to travel 4,000 kilometres to give the same course in Baja California, and then he would have to travel a further 3,500 kilometres to give the course once again in Chiapas: for this reason jobs established on the basis of an employment relationship cannot be offered.

694. Referring more specifically to the requests for information made by the Committee on Freedom of Association in its recommendations relating to this case, the Government states that the right of association exists even without the registration of the trade union or prior to it, as the ILO itself has stipulated and according to the provisions of Mexican legislation. In Mexico the right to freedom of association is established by the political Constitution, which is the supreme law. Articles 9 and 123, subparagraph XVI, establish that the right of assembly and of association is a right established as an individual guarantee. Article 9 determines that "the right of association and the right to peacefully assemble for any lawful purpose shall not be restricted". "The abovementioned guarantee relates to two types of rights: the right of assembly and the right of association." In the case of subparagraph XVI of article 123, Part A, this right is established by the provision that both workers and employers have the right to meet with each other in defence of their respective interests, forming unions, professional associations, etc. This provision is regulated by the Federal Labour Act (Title VII: "Collective Labour Relations", Chapter I, "Coalitions"), article 354 of which recognizes the right of workers and employers to form coalitions. In turn, article 355 defines a coalition as "the temporary agreement by a group of workers or employers for the defence of their common interests". Likewise, article 357 establishes that: "workers and employers have the right to establish trade unions, without the need for prior authorization".

695. As regards the registration of trade unions, the ILO indicates in its *Digest of decisions and principles of the Freedom of Association Committee* of the Governing Body of 1996 that establishing requirements in order to obtain the registration of a trade union (or any other formality to ensure the normal functioning of occupational organizations) is not contrary to Convention No. 87 as long as the guarantees contained in that Convention continue to be

protected: "In its report to the 1948 International Labour Conference, the Committee on Freedom of Association and Industrial Relations declared that 'the States would remain free to provide such formalities in their legislation as appeared appropriate to ensure the normal functioning of occupational organizations'. Consequently, the formalities prescribed by national regulations concerning the constitution and functioning of workers' and employers' organizations are compatible with the provisions of that Convention provided, of course, that the provisions in such regulations do not impair the guarantees laid down in Convention No. 87" [para. 247]. In Mexico workers also have the option of forming a coalition to defend their labour rights. It should be recalled that the coalition holds the right to strike and that one of the objectives of striking, according to article 450 of the Federal Labour Act, is to seek a balance between the factors of production in order to harmonize the rights of capital and of labour.

696. In Mexico workers may also set up organizations other than trade unions, such as civil associations, which bring together a number of individuals with a common purpose that is not prohibited by law and which is not of a predominantly economic nature. These associations are legally recognized and can interact with third parties. Thus, an organization set up as a civil association can defend and promote, validly and effectively, the interests of its members and carry out activities to achieve the purpose for which it was set up. Likewise, workers can form other types of associations to those already mentioned, such as cooperative associations, etc.

697. In the current case, CONALEP has not infringed the right of association of the complainants nor have "policies and actions contrary to freedom of association been used", as demonstrated by the fact that in October 1999 a civil association was set up comprised of other professionals who provide services in the same occupational capacity as the complainants, in accordance with the individual guarantee set forth in article 9 of the Constitution. In addition, it should be pointed out that CONALEP recognizes its workers' right to organize and has signed a collective labour agreement with a trade union of workers on the payroll of that institution. It is therefore clear that Mexican legislation is entirely in line with the spirit of Convention No. 87, as workers have the possibility to defend their rights in an organized manner, even without the need for a trade union organization to be registered with the labour authority, and even in this case, they may effectively promote and defend the interests of their members and carry out their activities.

698. As regards the information requested by the Committee concerning the applicable legislation in the present case and whether it sets forth the denial of registration and on what basis, the Government states that it is important to point out that the interpretation of legal provisions should not be carried out in an isolated manner for each article, but instead as a whole and taking into account the spirit of the law. For this reason reference should not solely be made to the provisions that deal with cases of the denial to register trade unions, but also to the legal provisions that stipulate the requirements to obtain said registration. The Federal Labour Act establishes the requirements to grant registration to a trade union; it indicates, inter alia, that the trade union should be made up of a minimum of 20 workers in active service. The article is not generic, but specific, and it does not indicate that there should simply be 20 people, but instead determines which type of people – workers in active service. The article in question reads as follows: "Article 364 – Trade unions shall be made up of 20 workers in active service or three employers, at least …". In its complaint SINTACONALEP reports that its rights of association have been infringed, alleging that it fulfils all the requirements contained in the Federal Labour Act, but basing its statement on article 366 of the same Act, which provides as follows: "Article 366 – Registration can only be denied: I. If the trade union does not intend to pursue the purpose stipulated in article 356; II. If it was not set up with the number of members established in article 364; and III. If the documents referred to in the previous article are not shown." As can be seen, article 366, part II, refers to article 364, which in turn provides the

requirements to obtain the registration of the trade union. It should also be pointed out that Convention No. 87 itself recognizes as a prerequisite the necessary status of "workers" or "employers". Article 10 of this Convention provides: "In this Convention the term 'organisation' means any organisation of workers or of employers for furthering and defending the interests of workers or of employers", and also expressly stipulates in its content the obligation to comply with the legislation of each country. In this respect Article 8 of the Convention establishes: "1. In exercising the rights provided for in this Convention workers and employers and their respective organisations, like other persons or organised collectivities, shall respect the law of the land. 2. The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention." It should be pointed out that legislation does not establish registration as a requirement to exercise said right, but as a prerequisite for the association to acquire legal personality. The Federal Labour Act includes the obligation to verify that the applicants for the registration of a trade union are active workers. For this reason, in the case before us, and also on the express request of those concerned, the General Directorate for the Registration of Associations requested the General Directorate of the Federal Labour Inspectorate to carry out the formalities for the identification of workers in 22 institutions belonging to the College. While the complainants have stated that the General Directorate for the Registration of Associations exceeded its powers when it denied registration for the reason described above, it should be borne in mind that said authority must ascertain the nature of the members in order to grant the registration in compliance with the law.

699. The labour authority acted in accordance with the Federal Public Administration Organization Act which empowers it – if not obliges it – to comply with certain legal provisions, such as to oversee the content of the Federal Labour Act, and specifically the requirements to register a trade union, and establishes that it can collect any type of evidence to achieve this, without any other restrictions than those established in the Act. It is clear from the above that the administrative authority, in this case the General Directorate for the Registration of Associations, has not exceeded its powers and has simply fulfilled the provisions of the applicable legislation.

700. Mexican legislation does not prohibit the right of association. Trade union registration is a guarantee that affords organizations' legal security; it is a requirement in order to obtain legal personality. But the ILO has also clarified the spirit of Convention No. 87 so that there is no incompatibility with national legislations such as that of Mexico.

701. The Government indicates that in Mexico the registration of a trade union is a non-jurisdictional administrative act which is only refused when the applicants do not fulfil the requirements to establish themselves as trade unions. This does not mean that if registration is denied a restriction is being placed on the right of association, given that the law does not establish registration as a requirement to be able to exercise that right, but rather as a prerequisite for the association to acquire legal personality. In other words, the legislation is entirely in accordance with the spirit of Convention No. 87. In the extreme case of registration being denied for no reason, those affected may request the protection of the federal justice system through an action for *amparo.*

702. The action for *amparo* established in the Political Constitution allows anyone to contest a legal rule or acts carried out by an authority that he considers to have violated his individual constitutional guarantees. The federal judicial power – in other words a body entirely independent of the administrative authority – has the jurisdiction to try actions for *amparo*, which is fully in accordance with the ILO's observations in this respect.

703. In the complaint submitted to the Committee on Freedom of Association the complainants referred to two actions for *amparo*; these were resolved prior to the application for reconsideration of the facts. Referring to the decision issued by the first district labour

court of the federal district, dated 22 September 1997, the Government recalls that SINTACONALEP lodged an action for *amparo* before the first district labour court (action 705/97), against the administrative decision issued on 30 April 1997 by the General Directorate for the Registration of Associations of the Department of Labour and Social Welfare in which it declared itself to be incompetent to try labour and trade union matters relating to workers in the service of the State, which was resolved, under review, in favour of the trade union organization on 22 September 1997. Part of the decision issued by the first district court (page 45) states the following: "On this same matter, and given that the notions of violation analysed are founded, the appropriate course of action is to grant the constitutional protection requested and for the responsible authority, the General Directorate for the Registration of Associations of the Department of Labour and Social Welfare, to declare void the contested decision of 30 April 1997 and to issue another one in keeping with the law in accordance with the guidelines contained in this decision." It is important to point out here that the fact that the Judiciary of the Union granted its protection to the complainants did not imply that the General Directorate for the Registration of Associations was necessarily obliged to hand down a new decision automatically granting the registration of the trade union, but simply to render the earlier decision invalid and hand down another one in keeping with the law (which turned out to be negative). Therefore, in view of the provisions of the executory judgement, the General Directorate for the Registration of Associations informed SINTACONALEP that the contested decision had been found to be invalid and that it would study and hand down a decision on the request for the registration of the trade union mentioned as it had been found to be competent to assume jurisdiction in the registration of decentralized bodies. Once the documents submitted by the persons concerned had been examined, on 22 April 1998 the General Directorate for the Registration of Associations requested SINTACONALEP to prove, in accordance with the law, that at least 20 of its members were CONALEP workers, basing its request on articles 8, 20, 354, 356, 357, 360, 364 and 365 of the Federal Labour Act, and No. 17 of the rules of procedure of the government department referred to previously in this document which indicates the need to fulfil the requirements as to substance and form required by law in this area, as for the establishment of this particular type of association the function of its members – whether as workers or employers – must be proven. As already mentioned, the members of SINTACONALEP did not prove their status as workers, but showed documents that established a relationship of a civil nature. On 1 July 1998, the first district labour court sent a procedural order to the General Directorate for the Registration of Associations in which it resolved that the responsible authority (the General Directorate for the Registration of Associations of the Department of Labour and Social Welfare) had fully complied with the provisions of the corresponding executory judgement, and ordered that the action be filed as definitively concluded.

704. The Government indicates that once the denial of registration had been issued by the General Directorate for the Registration of Associations, SINTACONALEP proceeded once again to request the protection *(amparo)* of the Judiciary of the Union (action 77/99) against said decision, which was not granted, and as a result it lodged an application for judicial review of the facts. In the case of the second action for *amparo* lodged by SINTACONALEP on 17 March 1999, the jurisdictional authority in the fourth whereas clause referred to article 366 of the Federal Labour Act, specifying that in fact an employment relationship had not been demonstrated by the current complainants as they were unable to prove to the person responsible by way of reliable documentation that there was actually an employment relationship with the National College of Technical Occupational Education; this the competent authority was able to corroborate, given that the applicants requested it to conduct an inspection in the various schools where they said they were providing their services. The decision shows that it is a procedural requirement to prove the employment relationship and this was being stipulated by a jurisdictional authority, in this particular case the district labour judge in the federal district and not an

administrative authority like the General Directorate for the Registration of Associations, amply proving that it is in accordance with Convention No. 87 and with the ILO's position on that Convention.

705. As regards the last recommendation by the Committee on Freedom of Association, concerning the allegations of interference and discrimination by CONALEP, in which the Committee requested the Government to conduct an inquiry into the acts and to provide detailed and specific information, the Government declares that the competent authorities carried out an exhaustive investigation into the cases submitted to the boards of conciliation and arbitration relating to the allegations of interference and discrimination by CONALEP against the complainants, but did not find any evidence of claims in this respect by the trade union of workers (SUTSEN) of CONALEP or by the civil association established by teachers in that institution for the purpose of reaching collective agreements. As regards the alleged delaying tactics, it must be mentioned that the procedural guidelines and terms do not depend on the wishes and deadlines indicated by the litigants, but are fixed by the authority responsible for settling them. And in this case both the corresponding authority and CONALEP adhered in terms of time and form to the procedural requirements issued by the jurisdictional authorities.

706. With respect to the accusation that CONALEP obliged the complainants to sign various documents contrary to their interests, no evidence of this has been found. At present this educational institution has approximately 17,000 teachers in its 261 centres, distributed throughout the country, and no other complaints have been made.

707. Concerning the specific characteristics of the professional profile of the teaching experts, as well as the actual nature of the institution, it is of relevance that its dynamics are governed by the country's labour demand, and that the relationship with teaching experts cannot be a permanent one. The total number of teaching academics in CONALEP ranges from 15,000 to 17,000, distributed throughout the 261 centres CONALEP runs throughout the country.

708. Given the nature of the training process, the content of which is directly related to technological advances, the teachers working at the College are preferably involved in the production sphere, being individuals interested in passing on the knowledge, skills and expertise they have acquired. Similarly, it is considered that the fees they are paid for their academic work should not constitute their sole or main source of income. Academic staff are contracted by semester according to the system of professional fees, as they are experts with very specific, and duly proven, expertise who are providing their services in exchange for fees. This group of academics varies from semester to semester as in each cycle the courses are given that the labour market of each region needs and as the territory of Mexico extends over almost 2 million km^2 it is not possible to have permanent instructors as they could not be constantly moved to the different areas where each semester-long course is to be given.

709. By way of conclusion the Government notes the following:

– In the Mexican legal system, the status of a Convention is higher than that of an Act. As a result its approval by the Senate of the Republic is a very detailed and inflexible process. The approval of Conventions presupposes that there is no contradiction with the Political Constitution or with Mexican legislation. In the present case Mexican labour legislation and the principles of Convention No. 87 have been complied with, as in the preparatory work for the actual Convention it was established that it would be left to arbitration in individual countries to establish in national law the formalities deemed appropriate to ensure the normal operation of occupational organizations, as long as these formalities did not pose a major obstacle to the exercise of the right of

association and as long as the appropriate judicial resources were available to ensure defence against the possible denial of registration.

– The trade union registration requested by SINTACONALEP was not granted because the requirements established by law were not satisfied. There was no evidence of the existence of a labour relationship, and in records issued by the General Directorate of Inspection the existence of a civil relationship was shown, based on contracts for the provision of professional services. However, the complainants applied to the corresponding jurisdictional bodies to make the appeals they considered appropriate, thereby failing to comply with the decision issued by the administrative authority. In accordance with the provisions of paragraph 246 of the *Digest of decisions and principles of the Freedom of Association Committee* of the Governing Body of the ILO on freedom of association, 4th edition, page 53, which provides, *a contrario sensu*, that recourse to a judicial authority against any refusal to register does not constitute a violation of the principles of freedom of association. Both actions for *amparo* were settled under review, in other words, another judicial authority revised the decisions handed down by the district labour courts of the federal district, in accordance with the provisions of articles 82, 83, 85 and others of Federal *Amparo* Act. It appears from the sentences that the administrative authority acted correctly in refusing to register SINTACONALEP.

– It is important to examine the Convention as a whole and not just in part in order to understand the spirit of the entire instrument. Article 2 of the Convention, for example, does not exclude the status of worker for those wishing to establish an organization, as there would be a clear contradiction with Article 10 of the same Convention, which defines the term "organization", as already mentioned above, as follows: "In this Convention the term 'organisation' means any organisation of workers or of employers for furthering and defending the interests of workers or of employers", and it would also be contrary to the very nature of the ILO. Even in this hypothesis, Mexican legislation concurs with the isolated interpretation of Article 2, as article 9 of the Mexican Constitution stipulates that anyone is entitled to the right of association, even those who are not workers. As one eminent professor pointed out, "A trade union is an association of persons, but not all persons may constitute trade unions, as these associations can only be established by workers or employers. As a result, an association of persons who do not belong to one of these two categories could be a civil or commercial association, but not a trade union" (De La Cueva, Mario: *El Nuevo Derecho Mexicano del Trabajo*, Vol. II, 8th edition, Porrúa, Mexico, D.F., 1995, page 332).

– It is important to bear in mind that the nature of CONALEP does not permit the contracting of a fixed staff of teachers. Owing to the professional experience that teachers must have, they are considered as being training experts rather than academics. And as it is a requirement that they remain involved in industry, the custom has been to contract them along the lines of the legal concept of a contract for the provision of professional services which covers all situations that could arise in connection with CONALEP, in other words it is an ad hoc concept, the contract giving rise to a relationship which is civil rather than labour in nature. At no time has CONALEP stopped its staff establishing associations as they see fit in order to conclude collective agreements, evidence of this being that they have a trade union (SUTSEN) and a civil association made up of teachers from the institution.

– Since Mexico ratified Convention No. 87 on 1 April 1950 there have been no cases of complainants alleging that in Mexico organizations are not allowed to form trade unions, which shows that there is no basis to the argument used by the complainants whereby: "The General Directorate took a negative decision as a delaying tactic,

acting in bad faith and looking for arguments to support the illegal refusal to register. Having invented one cause for incompetence which was rejected by the higher bodies, the General Directorate went on to invent further requirements, such as the need to prove the employment relationship, which is stipulated in neither the Constitution nor the Federal Labour Act" [320th Report of the Committee on Freedom of Association, p. 198], as if this were an ongoing, common and repeated practice by the Mexican authorities. As has been established in the current document, national legislation is in accordance with the content of the Convention and the General Directorate did no more than comply with Mexican legislation. In addition, the complainants had the opportunity to be heard, and as a result were defeated, by a judicial authority other than that which handed down the refusal to register. However, even in this case, the right to freedom of association still remains.

C. The Committee's conclusions

710. *The Committee notes that the questions raised by the complainant teachers' organization relate to the following: (1) the refusal to register SINTACONALEP since its establishment on 2 February 1997; and (2) acts of interference and discrimination against the members of this organization by the National College of Technical Occupational Education (CONALEP).*

711. *As regards the refusal to register SINTACONALEP since it was established on 2 February 1997, the Committee notes that according to the Government, the judgements handed down in the actions for* ***amparo*** *lodged by SINTACONALEP illustrate that the administrative authority acted in accordance with the law by refusing to register this organization. The Committee observes in this respect that it is a requirement for the registration of a trade union that it be made up of at least 20 workers and that SINTACONALEP did not prove to the General Directorate for the Registration of Associations that at least 20 of its members had the status of worker; similarly, the competent labour authority ascertained through inspections in various schools that there was no labour relationship between the members of SINTACONALEP and CONALEP but instead a relationship of a civil nature based on the provision of professional services. The Committee notes that according to the Government's declarations these contracts for the provision of services are justified: (1) as a result of imbalances between available technical teaching and local and regional requirements; (2) because different industries provide CONALEP, on the basis of its needs, with highly specialized individuals working in the sector of production, and the fees they are paid do not, in principle, constitute their sole or principal source of income; and (3) given that the staff is contracted by semester with the groups of teachers frequently varying from semester to semester on the basis of the requirements of the labour market in each region, with it not being possible to have permanent instructors.*

712. *The Committee notes that, according to the Government, at no time did CONALEP stop its staff from establishing associations as they saw fit in order to be able to conclude collective agreements, as demonstrated by the fact that they have a trade union (SUTSEN) which has signed a collective agreement and also a civil association made up of teachers from the institution. Similarly, according to the Government, nothing prevents the members of SINTACONALEP from setting up a civil association to defend and promote validly and effectively its members' interests.*

713. *The Committee considers that before formulating definitive conclusions about the allegation relating to the denial to grant trade union registration to SINTACONALEP it is necessary for the Government and the complainant to indicate specifically whether in the framework of a civil association the members of SINTACONALEP could conclude collective agreements with CONALEP, go on strike and engage in other types of action to*

enforce their claims, and whether they would have legal protection for any prejudicial acts they might carry out in defence of their economic and social interests, indicating, if so, the scope of this protection and its legal basis.

714. *Furthermore, the Committee notes that the members of SINTACONALEP carry out teaching activities for a period of at least six months and that this type of activity is performed by hundreds or even thousands of people. Although the Committee observes that, according to the Government, the persons concerned sign contracts for the provision of services, it is unable to determine as yet whether they are workers in the sense of Convention No. 87, and specifically if their status can be likened to that of workers employed on a fixed-term basis. Consequently, the Committee requests the Government and the complainant to provide further details on the content of the contracts for the provision of services, and also to send copies of such contracts together with as much information as possible on conditions of work (hours of work, paid leave, etc.), the employment relationship – if any – of the management staff of CONALEP, the application of occupational safety and health standards and social security standards, and the legal provisions regulating the termination of the contractual relationship between the parties.*

715. *Lastly, the Committee notes the Government's observations concerning the alleged acts of interference and discrimination against the members of SINTACONALEP, but it considers that it should postpone its examination until it is in a position to formulate definitive conclusions on the allegations addressed in previous paragraphs.*

The Committee's recommendations

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

(a) The Committee requests the Government and the complainant to indicate specifically whether in the framework of a civil association the members of SINTACONALEP could conclude collective agreements with CONALEP, go on strike and engage in other types of action to enforce their claims, and whether they would have legal protection for any prejudicial acts they might carry out in defence of their economic and social interests, indicating, if so, the scope of this protection and its legal basis.

(b) The Committee requests the Government and the complainant to provide further details on the content of the contracts for the provision of services, and to also send copies of such contracts together with as much information as possible on conditions of work (hours of work, paid leave, etc.), the employment relationship – if any – of the management staff of CONALEP, the application of occupational safety and health standards and social security standards, and the legal provisions regulating the termination of the contractual relationship between the parties.

(c) Lastly, while the Committee notes the Government's observations concerning the alleged acts of interference and discrimination against the members of SINTACONALEP, it considers it should postpone its examination until it is in a position to formulate definitive conclusions on the allegations concerning the refusal to register SINTACONALEP.

CASES NOS. 2092 AND 2101

INTERIM REPORT

Complaints against the Government of Nicaragua presented by
— the "José Benito Escobar" Trade Union Confederation of Workers (CST) and
— the International Textile, Garment and Leather Workers' Federation (ITGLWF)

Allegations: Employer's interference in internal affairs of trade union; wrongful dismissal of its officials and intimidation; refusal to bargain in good faith with the union

717. The complaint in Case No. 2092 is contained in a communication from the "José Benito Escobar" Trade Union Confederation of Workers (CST), which was received on 28 July 2000. The CST sent additional information in a communication dated 11 August 2000. The complaint in Case No. 2101 is contained in a communication from the International Textile, Garment and Leather Workers' Federation (ITGLWF) dated 8 September 2000.

718. The Government transmitted its reply in a communication dated 10 October 2000.

719. Nicaragua 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

720. In their communications of 28 July, 11 August and 8 September 2000, the "José Benito Escobar" Trade Union Confederation of Workers (CST) and the International Textile, Garment and Leather Workers' Federation (ITGLWF) stated that in 1996, the workers of the "Las Mercedes" export processing zones corporation began initiatives to form enterprise-level trade unions. According to them, on 22 January 1998, 72 employees of CHENTEX Garments S.A. held a general meeting with a view to establishing a trade union affiliated to the CST and appointing its executive committee. On 24 January, 21 workers at the enterprise were dismissed, including all members of the recently elected executive committee. On 26 January all the company's workers (800 at the time) came out on strike to protest the dismissal of their colleagues, who were reinstated by the company on the same day. On 13 February, the trade union obtained legal personality and was entered on the appropriate register (although not within the period of ten days stipulated in section 213 of the Labour Code in force). Nevertheless, the same month, the company renewed its anti-union campaign and again dismissed the executive committee members as well as other company employees. On 16 February, these actions led to another strike which was immediately resolved in the same way as before.

721. According to the complainant organization, two trade unions operated in the enterprise: the CHENTEX company trade union affiliated to the CST; and an autonomous union affiliated to the Nicaraguan Central Workers' Confederation (CNT), favoured by the enterprise. Indeed, one CST-affiliated union official stated that the company management had offered him money to change unions (to the CNT-affiliated union) and had dismissed him when he refused. Gradually, hundreds of workers who supported the CST-affiliated union were

forced to leave it on threats of dismissal. Recent recruits were asked to join the CNT-affiliated union, and one CST-affiliated union official was forced to resign after being blackmailed. In addition, workers employed in the export processing zone suffered attacks, including physical assaults, and the Ministry of Labour interfered in the union's activities through spies and strike-breakers. The CNT-affiliated union distributed pamphlets calling into question the integrity of the other union's officials, and despite the latter's complaints the authorities did nothing. Finally, according to a former CHENTEX employee, the Deputy Minister of Labour told the press (in May 1999) that Taiwanese investors had threatened to close down their operations in the export processing zone if the Ministry of Labour came down in favour of the CST-affiliated union.

722. In this context, the company concluded a collective agreement with both unions (in August 1998), by which it committed itself in an "instrument of accord" to review wages within a period of less than one year and to review transport and food subsidies in the light of available resources. Despite this, the head of the company on 23 June 1999 again refused to enter into talks with the CST-affiliated union, although it had undertaken to do so. On 3 August, the union therefore presented a list of demands (signed by 824 workers) to the Ministry of Labour which passed it on to the company and called the parties together on a number of occasions between 27 January and 20 March 2000. Although CHENTEX did not come to the talks, it did sign an agreement in the meantime with the autonomous CNT-affiliated union under which it agreed to review the wages of all the workers; the Conciliation Department of the Ministry of Labour rejected an application from the CST-affiliated union to declare the company in default, and indeed declared that the company had complied with the agreement, since it had offered a 10 per cent increase to 15 per cent of the workforce with effect from 1 March 2000. Under these circumstances, the CST-affiliated union on 14 April challenged the company's account of the wage increase on the grounds that it had been agreed exclusively with the CNT-affiliated union and discriminated against members of the CST-affiliated union. It then initiated the appropriate proceedings with the Ministry of Labour (under section 385 of the Labour Code) to begin strike action, but it was forced to begin again when its application was disregarded (still without success).

723. On 26 April the CST-affiliated union called a strike in protest at the refusal by CHENTEX to bargain in good faith. Although all the workers were at their posts when labour inspectors entered the plant to assess the situation, the Ministry of Labour informed the union's leaders on 2 May that the company was seeking the termination of their contracts of employment on the grounds of failure to perform their duties. Following a protest strike on the same day (in which 800 workers took part, not 32, as claimed by the Government), the company on 26 May hired a group of youths from a problem neighbourhood to cause disruption. Finally, on 27 May the Ministry of Labour authorized the dismissal of nine trade union officials who challenged the ruling in an appeal and *amparo* proceedings; a final ruling is still awaited. In this context, the company on 7 June 2000 asked the labour tribunal to dissolve the CST-affiliated union on the grounds that it had fewer members than the number required by law (following successive reviews, only one official and two ordinary members remained at the enterprise). On 29 June the company initiated criminal proceedings against ten union officials for offences punishable by up to seven years' imprisonment without any possibility of commutation. On 30 June the members of the CHENTEX union declared that they would not hold elections until these cases were resolved.

B. The Government's reply

724. In its communication of 10 October 2000, the Government states that on 22 July 1999, the administration of CHENTEX Garments S.A. petitioned the General Labour Inspectorate to apply the appropriate legal procedures to declare illegal the strike that had been called that

day by company workers. It stated that some 60 per cent of the workers supported the strike for reasons of solidarity with workers dismissed from another textile company located in the same zone, because of the alleged failure to comply with the collective agreement and in order to force the company to allow negotiations in the enterprise with the participation of a trade union representative.

725. Also on 22 July, following an on-site inspection, the enterprise was found to be paralysed and accordingly, on 23 July, the Labour Inspectorate ruled that the strike called by the union's executive committee was illegal since the latter had not complied with sections 244, 245, 248 and 249 of the Labour Code. According to these provisions, for a strike to be called, the relevant conciliation procedure with the Ministry of Labour must have been exhausted, the strike must be agreed at a general meeting of the workers and conducted in a peaceful manner by the majority of workers inside or outside the enterprise or establishment. Under the terms of the Code, striking workers were told that they would have to resume work within 48 hours of the ruling, and that the employer would terminate the employment contracts of any workers who continued to strike illegally.

726. On 9 August, the company again petitioned the Labour Inspectorate to declare illegal the strike of 20 workers of the 37 who worked in the garment pressing area, since they, too, had failed to follow the procedure set out in section 244 of the Labour Code. Workers were on strike in protest at the termination of the employment contracts of Juan Baltodano and Juan Merenco. Following an on-site inspection, labour inspectors informed the workers that the employer could rescind a contract of employment under the terms of section 45 of the Labour Code (for an indeterminate period and without giving any reason), and that they could not withdraw their labour without first exhausting the procedure established under section 244 of the Labour Code. For this reason, the stoppage was not valid; the workers were told that any employee whose contract of employment was revoked could appeal to a competent judge for a ruling as to whether or not there were grounds for reinstatement, and it was not in the power of the Ministry of Labour to order a worker's reinstatement. On 3 August 1999, the General Labour Inspectorate ruled that the strike directed by the executive committee of the CHENTEX union was illegal, and the striking workers were informed that they would have to resume work within 48 hours or their contracts of employment would be terminated by the employer in accordance with sections 244, 245, 248 and 249 of the Labour Code.

727. On 26 April 2000, the CST-affiliated union and the other trade union involved discussed the wage claims with the company administration but no agreement was reached. On 27 April, the members of the union's executive committee left their workplaces for one hour and were told by the company that they had to exhaust the available statutory procedures. On 28 April, the company administration applied for the cancellation of the employment contracts of Gladis Manzanares, Santiago Villalobos, Félix Rosales García, Harlling Bobadilla Treminio, Blanca Torrez Seas, Roberto Manzanares, Maura Parson, Zeneyda Torres and Félix Sanches. They were summoned to a hearing but did not appear, and instead called on the other workers to stop work in protest at the notice. On 2 May the strikers resorted to damaging property, intimidation and violence. On 3 May they appeared before the local labour inspectorate (agricultural and industrial department). They did not deny the claims made by the company administration, which supported its demands for dismissal with written evidence and witness statements. On 9 May they were reinstated in their posts, but the Labour Inspectorate authorized the cancellation of the contracts of employment of the nine workers. Notification was received on 26 May and the workers appealed. The Labour Inspectorate passed the case on to the Minister of Labour to allow him to appoint an ad hoc General Labour Inspector. The latter dismissed the appeal and upheld the original ruling for dismissal on the grounds that the employer had shown that there were grounds for dismissal. On 26 July the ad hoc General Labour Inspector was informed of the ruling handed down by the Constitutional Division (Region III Managua)

of the Supreme Court regarding the *amparo* proceedings initiated by Gladis Manzanares Tercero, Santiago Villalobos and others in their capacity as workers of CHENTEX Garments S.A. On 7 August the Labour Inspectorate sent the Court the report which the latter had requested and the matter is currently still pending before the Constitutional Division of the Supreme Court.

728. On 26 June the administration of CHENTEX asked the Labour Inspectorate to verify the current situation of the CST-affiliated union, given that a number of workers of the enterprise had allegedly resigned from it. It was found that of the 146 workers who had taken part in the most recent extraordinary general meeting, 33 had resigned from the company, 21 had been dismissed, three had put two signatures, two had written their names illegibly, 85 had left the union and two remained members. This clearly explains why the union is currently registered with the trade union associations directorate as "inactive", since in addition, 13 of the union officials who had formed the executive committee, only one female official remains active, the other 12 having been dismissed for contravening the terms of their contracts of employment and causing damage to the company (the company initiated legal proceedings against them on 29 June 2000 for breaches of trade freedom, freedom to work and freedom of association, extortion, rioting, incitement to violence and conspiracy).

C. The Committee's conclusions

729. *With regard to the allegation of wrongful dismissals for anti-union reasons, the Committee notes that, according to the complainants, a number of employees of the textile company CHENTEX Garments S.A. on 22 January 1998 joined forces to establish a company trade union affiliated to the "José Benito Escobar" Trade Union Confederation of Workers (CST) but that this initiative was restricted by a series of anti-union acts which began on 23 January with the dismissal without any apparent reason of 21 employees (including all the officers of the new union), which was followed by another dismissal of executive committee members, and ended in June 2000, when the company sought the dissolution of the union after the competent authority had found that only one officer and a few members remained in it. The Committee notes that, according to the complainants, the inadmissibility of the dismissals in question lies in the fact that they were associated with the establishment of the CST-affiliated union, were supposedly motivated by the strikes that had taken place, and reflected the wish of the company to liquidate the union, whose officers (except one) and many of whose members had been dismissed.*

730. *The Committee notes the arguments put forward by the complainant organization to demonstrate the anti-union nature of the dismissals, and is bound to note that during the past two years, many measures were adopted against the officials and members of the CST-affiliated union, including criminal proceedings. For this reason, in order to be able to give an opinion in full knowledge of the facts, the Committee considers that it would be very helpful for it to have the ruling given by the main Constitutional Division of the Supreme Court of Justice on the dismissals that have been challenged. It also wishes to be informed of the ruling on the criminal proceedings initiated by the company against the ten trade union officials. The Committee therefore requests the Government to supply the text of these rulings as soon as they are handed down.*

731. *With regard to the ruling that the strikes initiated by members of the CST-affiliated union were illegal, the Committee notes that, according to the Government, the ruling was based on sections 244, 245, 248 and 249 of the Labour Code. In this regard, the Committee notes that it does not consider legislation which provides for voluntary conciliation and arbitration in industrial disputes before a strike may be called as an infringement of freedom of association [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th (revised) edition, para. 500]. It would appear that, in this*

case, all the strikes called were declared illegal by the Labour Inspectorate, but the Committee must underscore that the dismissal of the trade union leaders took place before the union had obtained legal personality, that is to say, in a situation in which the exercise of trade union activities was denied. For this reason, these trade union leaders cannot be reproached for not having fulfilled the legal conditions for the strike. Taking into account all these elements, the Committee requests the Government to ensure that trade union rights can be freely exercised at CHENTEX Garments S.A. without the workers being subject to reprisals for their legitimate trade union activities.

732. *With regard to the allegations of trade union favouritism and refusal to bargain in good faith, the Committee notes, firstly, that within CHENTEX Garments S.A. two trade unions have been operating in parallel: the company union of CHENTEX (affiliated to the CST), and another union affiliated to the Nicaraguan Central Workers' Confederation (CNT). It also notes that the Government has not presented any observations on the statements made by the complainant organizations, in particular on the company's alleged indifference to appeals made by the CST (including by means of summonses from the Ministry of Labour) to comply with the collective agreement signed by both parties in August 1998. It also notes that the Government, despite the reluctance of the employer in this matter, finally declared that the employer had complied with an agreement which, according to the complainants, was concluded only with the CNT-affiliated union and discriminated against members of the CST-affiliated union. In the light of these facts, the Committee is bound to emphasize the importance of the principle that both employers and trade unions bargain in good faith and make every effort to reach an agreement [see* ***Digest****, op. cit., para. 815]. In accordance with this principle, the Committee reminds the Government that appropriate measures should be taken to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of the terms and conditions of employment by means of collective agreements [see Convention No. 98, Article 4].*

The Committee's recommendations

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

(a) In order to be able to give an opinion in full knowledge of the facts, the Committee requests the Government to supply the substance of the ruling handed down by the main Constitutional Division of the Supreme Court concerning the dismissals which were the subject of legal challenges, and of the ruling given by the criminal court dealing with the criminal proceedings initiated by the company against the ten trade union officials.

(b) The Committee requests the Government to ensure that trade union rights can be freely exercised at CHENTEX Garments S.A. without the workers being subject to reprisals for their legitimate trade union activities.

(c) The Committee is bound to emphasize the importance of the principle that both employers and trade unions bargain in good faith and make every effort to reach an agreement. In accordance with this principle, the Committee reminds the Government that appropriate measures should be taken to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of the terms and conditions of employment by means of collective agreements.

CASE NO. 2022

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

Complaint against the Government of New Zealand presented by the New Zealand Trade Union Federation (NZTUF)

Allegations: Denial of the right to bargain collectively and to strike of those required to work in order to obtain state benefits, and denial of appropriate facilities for workers' representatives

734. The New Zealand Trade Union Federation (NZTUF) presented a complaint of violations of freedom of association against the Government of New Zealand in a communication of 21 April 1999. The NZTUF forwarded additional information in communications dated 2 June and 3 August 1999. The trade union UNITE! expressed its support for the complaint in a communication of 2 June 1999.

735. The Government forwarded its response to the allegations in a communication dated 28 September 2000.

736. New Zealand has ratified neither the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), nor the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

737. In its communication of 21 April 1999, the New Zealand Trade Union Federation (NZTUF) alleges that amendments made to the Social Security Act, 1964, violate ILO standards and principles concerning freedom of association and collective bargaining. In particular, the complainant alleges that the Social Security Amendment Act, 1998, and the Social Security (Work Test) Amendment Act, 1998, result in an unemployed worker being required to perform certain work in order to claim unemployment benefits or a "community wage", while being denied the status of employee, and thus denied the right to negotiate collectively or strike, and denied access to grievance procedures and specialized employment courts. It is also alleged that while these workers may join trade unions, those unions cannot further and defend the interests of their members, and are denied the right of access to workers at their place of work and to hold meetings at work.

738. The complainant states that there is no inherent requirement in the work undertaken by community wage recipients that could justify their being denied the rights and protections of the law enjoyed by other workers, particularly those under the Employment Contracts Act, 1991, related to freedom of association, as well as legislation concerning basic employment standards such as the Holidays Act, 1987, the Minimum Wage Act, 1983, and the Wages Protection Act, 1983. The complainant contends that there is no distinctive character to the work being done by community wage recipients: it includes a wide range of activities and is only distinguished by the fact that it is community wage workers who are undertaking it. The appropriate government department need only determine that the work will provide work experience or exploration, and there is no right to appeal the decision concerning the nature of the work to be undertaken (sections 12J, 110 and 111 of the Social Security Act, 1964, as amended ("the Act")). The complainant refers to the Department of Labour policy paper concerning the relevant amendments, which states that

the aim of the community wage programme is to "keep the unemployed attached to the labour market, so that they retain their work-related skills and disciplines …". The paper states further that "Labour market attachment is enhanced by creating an environment for unemployed jobseekers that is as much as possible like paid work". In the view of the complainant, the doctrine of "labour market attachment" means that any kind of work, whether suited to the skills and training of the worker or not, may be deemed to make the person more likely to obtain a job in the open market, just as any inactivity is considered detrimental to that end.

739. The complainant also refers to the explanatory note to the Social Security (Work Test) Amendment Bill: "The Bill also replaces the existing graduated sanctions for work-test failure with a consistent set of sanctions designed to reinforce the message that 'if you don't work, you don't get paid'. This helps to create an environment for work-tested beneficiaries, which is as much like work as possible, in order to keep them attached to the labour market." In accordance with this approach, community wage workers may be disciplined and dismissed by their employer or by the Work and Income New Zealand Department, and can expect to face all the normal requirements of work performance. The only difference is that they have none of the rights to freedom of association, or other labour rights, of a worker outside the community wage programme. The complainant points to section 94 of the Act in this regard, which requires a community wage earner to sign a jobseeker contract in order to receive benefits. The contract sets out the obligations of the community wage earner, and states that sanctions can be imposed. It also states that "a signed jobseeker contract does not create or imply an employment relationship between the parties, nor does it create rights or obligations that are enforceable in any court or tribunal." The complainant states that the jobseeker contract constitutes a waiver of all rights, including rights of freedom of association, of the community wage earner.

740. According to the complainant, the Act acknowledges that the relationship between the person providing work and the community wage earner is in the nature of an employment relationship since pursuant to section 123C the protection of the Health and Safety in Employment Act, 1992, and the Human Rights Act, 1993, is extended to community wage earners and the person providing work "as if the relationship between them is that of employee and employer". These are the only labour-related statutes that apply to community wage earners. The complainant notes that the right to strike over matters of health and safety is contained in the Employment Contracts Act and not the Health and Safety in Employment Act. With respect to the reference to the Human Rights Act, the complainant states that it appears to be aimed at preventing discrimination among community wage earners in their employment.

741. With respect to the national procedures available, the complainant notes that while an employer could conceivably be charged with discriminating against community wage earners by denying them the rights and freedoms given to other employees, a remedy under the Human Rights Act would be difficult to obtain. The mere fact of agreeing to be a work provider under the community wage scheme would not likely constitute discriminatory behaviour under the legislation if the conditions are the same for all work providers. However, the submission of the Human Rights Commission on the Social Security (Work Test) Amendment Bill to the Social Services Select Committee made it clear, according to the complainant, that the amendments were in breach of the New Zealand Bill of Rights Act, 1990, because it discriminates against workers who were employed at the time they applied for the benefit or signed a jobseeker contract. The complainant cites section 17 of the Bill of Rights Act which states that "Everyone has the right to freedom of association". The complainant notes, however, that the report of the Ministry of Justice concerning the Social Security (Work Test) Amendment Bill does not consider the matter raised by the Human Rights Commission. The Ministry of Justice limited its consideration of section 17 of the Bill of Rights Act to whether it includes the right not to associate, and concluded

that if a person had views that were diametrically opposed to those of a work provider, there is scope for them to refuse the work. While the complainant does not claim that an attempt to secure rights of freedom of association for community wage earners though the application of section 17 of the Bill of Rights Act has no hope of success, it points to some of the obstacles in this regard, including that the Bill of Rights Act does not override other legislation in the case of inconsistency, and the case law on section 17 is sparse.

742. The complainant notes that although international law is not directly applicable in New Zealand, any interpretation of legislation that is consistent with that law is preferable. In this context, the complainant states that "it is highly desirable to clarify the meaning of the right to freedom of association before seeking a decision on what interpretation of the amended Social Security Act might be consistent with that right. This would give the New Zealand Parliament the opportunity to clarify its intentions in this regard …". In conclusion, the complainant requests the Committee to clarify those rights that must be guaranteed to beneficiaries required to labour in fulfilment of their "work test" obligations.

743. In its communication of 2 June 1999, the complainant forwards reports prepared for the Christchurch City Council focusing on the punitive and compulsory elements of the community wage scheme. One of the reports prepared by the local Community Services Committee concludes that: "In our opinion the real and potential negative impacts of the programme (as currently structured), on individual participants and the wider community, outweigh the benefits. The scheme has potential to undermine social well-being and accentuate divisions within society. In particular, its failure to pay the beneficiary for community work undertaken, the element of compulsion and the punitive sanctions involved in the scheme make it unacceptable and counter-productive."

744. Included with NZTUF's 2 June 1999 communication is a letter in support of the complaint from UNITE!, which is a union aiming to organize community wage workers. UNITE! asserts that through the amendments to the Social Security Act, the Government has created a new class of worker that is specifically excluded from industrial relations legislation, namely the Employment Contracts Act, as well as from other labour protection provisions concerning health and safety and accident compensation. This new class of worker consists neither of volunteers nor of those paid wages. This new class of worker is conscripted into work solely due to being unemployed, or on a sickness, domestic purposes or other benefit. UNITE! states further that while it is possible for community wage earners to join a union, there is no possibility for that union to bargain collectively with either the Government or the job provider for wages and conditions. Nor is there an opportunity for workers to bargain individually for their wages and conditions.

745. UNITE! states that it has not been able to use any industrial relations law to intervene concerning cases of abuse regarding community wage earners since community wage earners are excluded from the scope of the Employment Contracts Act. UNITE! cites three examples of situations where it has successfully intervened concerning the treatment of community wage earners, though it states that such intervention has been more that of a pressure group than of a union:

- Community wage earners were forced to clean up a local stream without adequate protective clothing or equipment. After being highlighted publicly by UNITE! through a local newspaper, the correct clothing and equipment were provided.

- A group of community wage earners were contracted by their job providing organization to a private golf club, although community wage earners are not to be employed for private gain. This practice was also stopped when brought to the attention of the appropriate government agency through newspaper publicity.

- Community wage earners were referred to a security operation in a shopping mall, where they were refused use of the toilets, money was deducted from the community wage for uniforms that were never supplied, they were forced to work extra hours on patrol for no wages as punishment for arriving a few minutes late. These practices were stopped by the appropriate government agency when exposed by UNITE!

746. UNITE! asserts that these are only a few of the many abuses concerning the community wage scheme, which began on 1 October 1998. The main problem, however, according to UNITE! is that the community wage system as a whole is an abuse and the examples illustrate the exploitation that can occur and the vulnerability of such workers when they do not have the right to freedom of association or to bargain collectively.

B. The Government's reply

747. In its communication of 28 September 2000, the Government informs the Committee that it has introduced legislation to change the community work scheme; however, due to the extensive legislative programme undertaken by the Government, the Bill to amend the Social Security Act, 1964, has only recently been introduced and is currently being considered by a Select Committee. The proposed legislation aims to increase the opportunities for social and economic participation of unemployment beneficiaries by placing less emphasis on compulsion and more on obtaining results through working with beneficiaries on an individual level. The new legislation will remove the requirement for work-tested beneficiaries to participate in unpaid community work when requested by the Department of Work and Income. The Government asserts that under the new legislation, the work activities performed by unemployment beneficiaries will clearly not constitute employment and will not be mandatory. While acknowledging that unemployment beneficiaries may perform work and are therefore entitled to the right to freedom of association, the Government states that as they are not employees, they are not in a position to bargain for wages and working conditions.

748. According to the Government, at the end of August 2000, of the 168,903 people receiving a social security benefit who were subject to the work test, 7,624 (4.5 per cent) were participating in community work projects. From October 1998 to the end of August 2000, 39,787 people had participated in community work. Community work is just one of a range of activities and is used only for individuals for whom it is identified as being appropriate. However, work-tested beneficiaries are engaged in organized activities other than community work. For example, 5,352 beneficiaries were engaged in full-time employment-related training at the end of August 2000. The Government submits that the incidence of sanctioning work-tested beneficiaries has been very low, citing for example a total of 814 people, or 0.48 per cent of beneficiaries, who were sanctioned in 1999.

749. The Government sets out the existing social security benefit scheme, noting that there is a range of benefits, there is no qualifying period of employment, and access to social security benefits is not time-limited. Provision under social security legislation includes benefits for jobseekers, people who are temporarily unable to participate in paid work due to sickness, injury or disability, invalids, sole parents, widows, carers and retired persons. The community wage is one of these benefits. From 1 October 1998, the community wage replaced a range of former benefits that were available to the working age population. The community wage is generally available to a person aged 18 years or over who is not in full-time employment, is available for full-time employment, is willing and able to undertake it, and has taken reasonable steps to find it. The community wage is also available to a person who is not in full-time employment and whose capacity to seek full-time employment is limited as a result of sickness, injury or disability.

750. The Government goes on to explain that recipients of the community wage and other specific types of social security benefits may also be subject to the work test, depending on the nature of their family responsibilities, educational status, and certain other personal circumstances such as pregnancy. The key features of the work test are as follows:

- Work-tested beneficiaries have an obligation to be available for, and take reasonable steps to obtain suitable employment and participate satisfactorily in such organized activities as required. Sanctions involving a reduction, suspension or cancellation of the benefit apply to recipients of work-tested benefits who fail without good reason or sufficient reason to meet their work-related obligations.

- There are a range of organized activities, of which community work is just one.

- The decision as to what organized activities are to be undertaken by any particular work-tested beneficiary follows a discussion between the beneficiary and his or her case manager about the beneficiary's needs and the most appropriate activities to help him or her find suitable employment.

- The organized activities form a hierarchy, with the main emphasis on self-help through job search through the initial period that a jobseeker is receiving a work-tested benefit.

- Of these activities, community work is reserved for those who are, or are considered to be, at risk of becoming long-term unemployed, and even then only when it is the most appropriate and cost-effective means of assisting the beneficiary to improve his or her prospects of obtaining paid employment.

- Beneficiaries undertaking community work receive a participation allowance, in addition to their benefit. This allowance of up to NZ$21 per week covers their participation-related expenses such as travel. If actual participation costs exceed NZ$21 per week, up to a further NZ$20 per week may be claimed in reimbursement.

- Community work occupies no more than 20 hours a week, allowing time to continue job search.

- Conditions attached to the community work activity ensure that it does not result in the dependency of the beneficiary or the project sponsor, or displace current or future paid workers.

751. In response to the specific allegations made in the complaint, the Government states that it was never intended that work-tested beneficiaries engaged in community work activities would be in an employment relationship. Legislation currently before Parliament would remove the element of compulsion associated with community work, replace the community wage with an unemployment benefit and non-work tested sickness benefit, and would replace the jobseeker contract with an individual jobseeker agreement. In the context of New Zealand employment law, the Government asserts that a detailed examination of the elements of the relationship between jobseeker and sponsor clearly shows that it is not one of employment. Work may be done in a variety of contexts which do not necessarily involve an employment relationship.

752. Regarding the status of those engaged in community work activities, the Government asserts that it was never intended that people engaged in such activities would be in an employment relationship. While the nature of the relationship between the beneficiary and the community work sponsor is not explicitly addressed in the legislation, in the Government's view it is clear both from the legislation and the nature of the jobseeker's beneficiary status that he or she is not an employee of the sponsor. The Social Security

Act, as amended, states expressly that "a signed jobseeker contract does not create or imply an employment relationship between the parties, nor does it create any rights or obligations that are enforceable in any court or tribunal" (section 94(2)). The "parties" referred to in the section are the beneficiary and the Department of Work and Income. Section 110 sets out the types of organized activities that may be determined by the chief executive of the Department of Work and Income, including interviews by or on behalf of the chief executive; work assessment; attending a job interview for suitable employment; creating an individual action plan; complying with an individual action plan; participation in a programme, seminar, scheme or specified activity (including community work); participation in a work experience or work exploration activity; participation in training; activities for a person whose capacity for work is reduced by sickness, injury or disability. Section 111 provides that the chief executive may require a work-tested beneficiary to participate in one or more particular organized activities. Pursuant to section 123C, where a person is participating in an organized activity involving work, the Health and Safety in Employment Act, 1992, and the Human Rights Act, 1993, apply to the person and the person providing work "as if" the relationship between them were one of an employee and an employer. The Government points out that if this provision did not exist, the two pieces of legislation would either not apply or only apply in a limited way.

753. The Government goes on to explain some of the provisions of the Social Security Amendment Bill, which it asserts will address the complainant's concerns regarding compulsory unpaid work. The Government states that the Bill removes the reference to "community work" and substitutes "activity in the community", which is defined as "an activity associated with a community project under the supervision of a sponsor who is contracted by the chief executive to provide that activity". The Bill also replaces the term "community wage" with "unemployment benefit" and defines "voluntary work" as "work undertaken by a person for no remuneration (other than reimbursement of direct expenses) for a non-profit community organization or other person; but does not include activities in the community or work undertaken as part of a work experience or work exploration activity". The existing section 94 is to be restated to read "a signed jobseeker agreement does not create or imply an employment relationship between the chief executive and the beneficiary, nor does it create rights or obligations that are enforceable in any court or tribunal". Section 111 will be amended to specify that the assistance that may be provided by the department, including making reasonable arrangements for beneficiaries to undertake a recognized community activity, will be subject to certain conditions, including the following: that the activity is suitable for the beneficiary to undertake, there are no other jobseeker development activities or other activities specified in the jobseeker agreement that would be more suitable for the beneficiary to undertake. Section 123C will be amended to make it clear that nothing in the relevant part of the Social Security Act creates or implies an employment relationship between the person undertaking the work and the person providing the work. It will also clarify that the Health and Safety in Employment Act, 1992, and the Human Rights Act, 1993, will apply to a beneficiary doing work as part of a jobseeker development activity or recognized community activity and the person providing work *as if* the beneficiary were the employee of the person providing work. This is intended to ensure that beneficiaries undertaking these activities are protected by the provisions of these statutes, even though they are not employees. The Government states that the Social Security Amendment Bill makes it clear that the jobseeker remains a beneficiary in all situations envisaged under the Social Security Act, including recognized community activities. The Bill, in the view of the Government, puts it beyond doubt that the beneficiary is undertaking the work voluntarily and is not in an employment relationship with either the person providing work or the Department of Work and Income.

754. The Government then sets out the legislation and case law in New Zealand relating to the establishment of an employment relationship, and concludes that not all those performing work are necessarily employees, and an employment relationship implies the existence of a

contract of service, which is lacking for participants in activity in the community. The jobseeker agreement will establish the jobseeker's responsibilities to look for work and undertake activities designed to improve his or her employment prospects. Activity in the community will be performed for the sponsor who has volunteered to provide participants with work experience, and the work will benefit the community, not the sponsor. The participant will continue to receive the benefit, and an allowance for costs, which will be paid by the Department of Work and Income, not the sponsor.

755. The application of the New Zealand Bill of Rights, 1990, is then addressed by the Government. The Bill of Rights safeguards the rights and freedoms of the general population, including all social security beneficiaries, whether work tested or not. These rights include the right to freedom of association (section 17). The right to form and join a trade union is not, therefore, confined to employees. Employment relations legislation, however, normally defines a union in terms of its responsibilities to employees. The Employment Relations Act, 2000 (which repealed and replaced the Employment Contracts Act, 1991), provides that a society is entitled to be registered as a union if the object of the society, or one of its objects, is "to promote its members' collective employment interests". A union may have other objects, and the Act specifies that it does not prevent a union from offering different classes of membership. On the basis of the general rights of freedom of association, work-tested social security beneficiaries may join a union if they choose, and some do. However, since they are not employees but rather state beneficiaries, they are unable to negotiate wages and conditions of employment.

756. The Government submits that the activity in the community scheme is part of a package of measures designed to reduce unemployment. Placements will be of a limited duration, for specific projects in the community and the voluntary sector, so limiting the displacement of ordinary employees. Present rules that ensure that employment programmes do not provide opportunities to the unemployed at the expense of those in work will continue under the amended Act. The work-tested social security beneficiary will remain on a social security benefit rather than being paid a subsidized wage, and the Government will provide an additional payment (the participation allowance) to cover work-related costs to the jobseeker. Thus the sponsor covers only the overhead costs of having the work done. Participating in activities in the community cannot, in the view of the Government, be considered "ordinary work" performed in the context of an employment agreement.

757. The Government concludes by underlining that activity in the community, together with voluntary work, will replace the type of organized activity known as community work, and is one of a range of activities designed to improve employment prospects. The fact that there is no employment relationship is supported by the statute, and the circumstances under which the work is done do not constitute employment under general New Zealand law. The terms "community work" and "community wage" which were perceived as somewhat misleading concerning the relationship are to be replaced by "activity in the community" and "unemployment benefit" respectively. In addition, the current Social Security Amendment Bill specifically removes any compulsion for work-tested beneficiaries to participate in activities that involve work, including activity in the community and voluntary work.

C. The Committee's conclusions

758. *The Committee notes that the allegations of violations of freedom of association arise from the adoption in 1998 of amendments to the Social Security Act, 1964. In particular, the Social Security Amendment* Act, *1998, and the Social Security (Work Test) Amendment Act, 1998, introduced a "work test" linked to a "community wage" scheme for unemployed jobseekers, in place of a range of unemployment benefits. According to the complainants, while unemployed workers are obliged to perform work in order to claim*

unemployment benefits or a "community wage", and this work is no different than that undertaken by employees, they are denied the status of employees, and thus denied the rights under the Employment Contracts Act, 1991 (which has since been repealed and replaced by the Employment Relations Act, 2000), including the right to negotiate collectively and the right to strike, and denied access to grievance procedures and specialized employment courts. The complainant also asserts that because community wage earners are deemed not to be employees, they are denied protection provided under basic employment standards legislation such as the Holidays Act, 1987, the Minimum Wage Act, 1983, and the Wages Protection Act, 1983. It is further alleged that although these workers may join trade unions, those unions are not legally able to further and defend their interests and are denied the right of access to workers at their place of work and to hold meetings at the workplace.

759. *The Committee notes that the Government appears to acknowledge that since community wage earners are deemed not to be employees pursuant to the terms of the Act, they are not covered by the provisions of the principal labour law, namely the Employment Relations Act, 2000. Section 18 of the Employment Relations Act states that "a union is entitled to represent its members in relation to any matter involving their collective interests* ***as employees****" (emphasis added). However, the Government points out that the right to freedom of association guaranteed under the Bill of Rights, 1990, is not confined to employees; thus community wage earners may join trade unions. The Government, however, does not address the allegations that community wage earners are denied the protection of basic employment standards and are denied access to grievance procedures and specialized employment courts. The Committee also notes the Government's statement that a Bill to amend the Social Security Act, 1964, which the Government submits would address a number of the issues raised by the complainant, has been introduced into Parliament and is being considered by a Select Committee.*

760. *The Committee notes that the Social Security Amendment Act, 1998, and the Social Security (Work Test) Amendment Act, 1998, amend the Social Security Act, 1964, to establish a "community wage" to replace the unemployment and other social security benefits. The stated purpose of Part 2 of the Social Security Act, as amended (the Act), entitled "Community Wage" is "(a) to create a community wage in place of a range of former benefits; (b) to require that all community wage earners be subject to work testing; (c) to create a statutory jobseeker contract which reinforces the obligations under the work test". "Community wage earners" are subject to the "work test", unless they obtain an exemption or deferral for such reasons as having a dependent child, bereavement or separation, or limited capacity to work (sections 103-109). Pursuant to section 102 of the Act, a work-tested beneficiary must: "(a) be available for, and take reasonable steps to obtain, suitable employment; (b) participate satisfactorily in such organized activities as the chief executive [of the Work and Income Department] requires under section 111 …". A number of "organized activities" are enumerated in section 110, including participating in community work, which is the focus of the complaint. According to the Government, from October 1998 to the end of August 2000, almost 40,000 people had been mandated to participate in community work. Section 110 also sets out other organized activities such as work assessment, attending a job interview for suitable employment, creating an individual action plan and participating in training. The chief executive may require a work-tested beneficiary to participate in one or more specified organized activities that the chief executive considers: "(a) would or is likely to assist the person to improve his or her prospects for employment; and (b) is suitable to the circumstances of that person" (section 111).*

761. *Other aspects of the Act that have been raised in the complaint include the jobseeker contract that community wage earners are required to sign, and the sanctions that may be imposed. The Committee notes that, pursuant to section 94: "(1) A jobseeker contract is a*

statutorily based agreement by a community wage earner or other work-tested beneficiary that – (a) he or she has reciprocal obligations arising from … entitlement to a community wage or other work-tested benefit ... (b) he or she is subject to the work test once payment of the community wage or other benefit commences; and (c) sanctions can be imposed for failure to comply with the work test". Section 94(2) states that: "A signed jobseeker contract does not create or imply an employment relationship between the parties, nor does it create rights or obligations that are enforceable in any court or tribunal." No person is to be paid a community wage unless he or she has signed a jobseeker contract (section 96(1)). For failure to participate in or complete an organized activity sanctions are to be applied, including suspending payment of the person's benefit, or cancelling the benefit (section 116). Where a person fails to participate in an organized activity to the satisfaction of the chief executive, the benefit is to be reduced by not more than 40 per cent (section 118). The Committee notes that the complainant and the Government refer to section 123C of the Act which provides that "where a person is participating in an organized activity that involves undertaking any work, the Health and Safety in Employment Act 1992 and the Human Rights Act 1993 apply to the person participating and to the person who provides the work as if the relationship between them is that of employee and employer".

762. *The Committee notes that according to the Government, community work is one of a range of organized activities and is reserved for those who are, or are considered to be, at risk of becoming long-term unemployed, and then only when it is the most appropriate and cost-effective means of assisting the beneficiary to improve his or her prospects of obtaining paid employment. The Committee notes further that a Bill to amend the Social Security Act is currently before Parliament which, in the view of the Government, addresses the complainant's concerns regarding compulsory unpaid work by establishing an "activity in the community" scheme to replace community work. The Government submits that the new activity in the community scheme is part of a package of measures designed to reduce unemployment, and aims to increase the opportunities for social and economic participation of unemployment beneficiaries by placing less emphasis on compulsion and more on obtaining results through working with beneficiaries on an individual basis. Placements will be of limited duration and for specific projects in the community and voluntary sector, in order to limit the displacement of ordinary employees. According to the Government, the new legislation will remove the requirement for work-tested beneficiaries to participate in unpaid community work when requested by the Department of Work and Income.*

763. *The Committee notes that under the community wage programme in its present form an unemployed person who is capable of working may be obliged to perform work in exchange for state benefits. The Committee recalls that it has in the past examined similar "workfare" programmes [see 312th Report, paras. 1-77, Case No. 1958 (Denmark); 316th Report, paras. 229-274, Case No. 1975 (Canada/Ontario)] and has established certain principles in this area. Case No. 1958 (Denmark) concerned allegations of government interference in the application of collective agreements through the imposition of an hourly wage ceiling for workers employed in subsidized jobs. The workers maintained the right to organize, but were restricted in their right to bargain collectively. In that case, noting that these programmes were aimed at combating unemployment through subsidized job offers of limited duration, without jeopardizing the posts of current employees, the Committee concluded that such jobs did not constitute ordinary work. However, the Committee emphasized that such programmes must remain limited in duration and must not be used to fill regular jobs with unemployed persons restricted in their right to bargain collectively in terms of wages.*

764. *A wider range of freedom of association issues were canvassed in Case No. 1975 (Canada/Ontario) since those obliged to undertake community participation activities in*

order to receive unemployment benefits were by statute expressly denied the rights provided under the principal labour law, namely the right to join a trade union, to have their terms and conditions determined through collective bargaining and to strike. The Committee concluded that those involved in community participation activities were not true employees of the organization that benefited from their labour and therefore could legitimately be excluded from the scope of collective agreements in force, at least in respect of wages. However, since those involved in community participation activities were undeniably performing work and providing services to the benefit of those organizations concerned, the Committee was of the view that they must enjoy certain protections in respect of their working conditions. Some protection was indeed provided since the workers concerned were covered by laws and standards relating to human rights and health and safety, as well as those governing hours of work, compulsory rest breaks, public holidays and maternity and parental leave. However, the Committee emphasized that these workers should also be entitled to the right to organize, given that they clearly had collective interests that need to be promoted and defended.

765. *Noting the complainant's request for clarification regarding the scope of freedom of association rights that should be granted to community wage earners, the Committee emphasizes the following principles, based on the above-noted cases, where persons are required to perform work or provide services in exchange for state benefits: such activities do not constitute ordinary work where they are aimed at combating unemployment, they are of limited duration, and are not used to fill regular jobs or displace current employees; where the activities do not constitute ordinary work, they may legitimately be excluded from the scope of collective agreements, at least with respect to wages; certain protections in respect of their working conditions should be provided, such as coverage under health and safety legislation as well as the protection of basic working standards; they should have the right to organize. The Committee notes further that for the right to organize to be meaningful, the relevant workers' organizations should be able to further and defend the interests of its members, including by enjoying such facilities as may be necessary for the proper exercise of their functions of workers' representatives, including access to the workplace.*

766. *The Committee notes that the Government acknowledges that unemployment beneficiaries performing work should be entitled to freedom of association; however, it does not accept that these beneficiaries should be able to bargain for wages or working conditions. The Committee also notes that a number of the concerns raised in the complaint appear to be addressed by the Social Security Amendment Bill, since the community wage programme will be altered significantly, and unemployed workers will no longer be compelled to work in order to receive state benefits. However, the Committee has not had the benefit of examining this Bill, and requests the Government to forward a copy once it has been adopted.*

767. *Since the legislation at issue is in the process of being amended, the Committee hopes that prior to the Social Security Amendment Bill being adopted, it will be the subject of consultation with appropriate workers' and employers' representatives, and that the legislation once it is adopted will comply with the freedom of association principles noted above. The Committee requests the Government to keep it informed in this regard.*

The Committee's recommendation

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

Expressing the hope that the Social Security Amendment Bill will be the subject of consultation with appropriate workers' and employers' representatives, and that the legislation once adopted will comply with the freedom of association principles set out in the conclusions, the Committee requests the Government to keep it informed in this regard and to forward a copy of the Social Security Amendment Bill once it has been adopted.

CASE NO. 1965

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

Complaint against the Government of Panama presented by the International Confederation of Free Trade Unions (ICFTU)

Allegations: Arrests and ill-treatment of trade unionists

769. The Committee examined this case at its November 1999 and June 2000 meetings and presented interim reports [see 318th and 321st Reports, paras. 372-384 and 374-384 respectively]. Further government observations were later received in communications dated 26 September and 23 October 2000.

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

A. Previous examination of the case

771. The issues pending in this case relate to a collective dispute that arose in January 1998 between the company Aribesa and the Single National Union of Workers of the Construction Industry and Related Occupations (SUNTRACS). The pending allegations relate in particular to the raid on the premises of SUNTRACS and to the ill-treatment to which some of the detained workers (subsequently released) were subjected as a result of the incidents that occurred during a demonstration held in conjunction with a strike which, according to the Government, led to acts of violence and the destruction of property that were the subject of sanctions imposed by the judicial authority. The company dismissed all the workers. At its November 1999 meeting the Committee concluded that the company's decision to dismiss all the workers seemed excessive and appealed to the Government to mediate between the parties with a view to resolving the issue of the dismissals [see 318th Report, para. 382].

772. At its June 2000 meeting the Committee made the following recommendations [see 321st Report, para. 384]:

– deploring that the Government has not provided more specific information, the Committee strongly requests the Government to provide more precise information concerning the settlement of the labour dispute between the Single National Union of Workers of the Construction Industry and Related Occupations (SUNTRACS) and the Aribesa enterprise and, more particularly, concerning whether the dismissed workers have been reinstated;

– the Committee once again urges the Government to send as soon as possible its observations concerning the raid on the premises of the SUNTRACS trade union; and

– regarding the allegations of ill-treatment suffered by certain detained workers, the Committee requests the Government to take the necessary measures to ensure that an independent inquiry is urgently carried out and, if such allegations are found to be true, to punish the guilty parties and provide compensation for any damages suffered by the detained workers concerned. It also requests the Government to keep it informed of the measures taken to this end and of the results thereof.

B. The Government's reply

773. In its communications of 26 September and 23 October 2000, the Government states that the workers dismissed by the Aribesa enterprise submitted industrial complaints to the judicial authority and that judicial settlements were agreed to by two workers, out-of-court settlements were agreed to by 12 workers, rulings were handed down in favour of four workers, one ruling was handed down in favour of the enterprise in relation to one worker and there were three withdrawals. Still pending, awaiting a new hearing date, are the actions relating to the workers Porfirio Beitia, Francisco López, Eugenio Rivas, Julio Trejos and Darío Ulate. The Government explains that the enterprise subsequently had financial problems and that the National Reinsurance Committee in June 1999 requested its forced liquidation before the courts owing to solvency problems. Given that the enterprise is in liquidation it is impossible for the Government to order the reinstatement of the workers, particularly bearing in mind that the dismissed workers failed at the appropriate time to submit an industrial complaint to the Board of Conciliation and Decision of the province of Colón (they had three months as from the date of the dismissal to do so).

774. Concerning the alleged raid on the headquarters of SUNTRACS and the alleged ill-treatment of SUNTRACS workers during their detention, the Government states that the Ministry of Labour has carried out investigations and has found nothing to substantiate these claims. Nevertheless, the Government has been in touch with the Government Prosecutor's Office, the body responsible for investigating offences, and has instructed it to carry out investigations and if the punishable conduct is found to be true, to request the corresponding penalties.

C. The Committee's conclusions

775. *The Committee notes the rulings (5), withdrawals (3), judicial settlements (2) and out-of-court settlements (12) that resulted from the judicial complaints submitted by the workers dismissed by the Aribesa enterprise. The Committee observes that four of the rulings are in favour of workers. Nevertheless, it notes that the Aribesa enterprise is facing a judicial process of forced liquidation owing to solvency problems, thus making it impossible to reinstate the workers. The Committee asks the Government to make efforts to ensure that funds are secured to compensate the dismissed workers. The Committee requests the Government to keep it informed of the results of the other judicial procedures initiated by the workers Porfirio Beitia, Francisco López, Eugenio Rivas, Julio Trejos and Darío Ulate, which are still pending.*

776. *Lastly, the Committee notes that the investigations undertaken by the Ministry of Labour into the alleged raid on SUNTRACS headquarters and into the alleged ill-treatment suffered by a number of workers during the period of their detention did not find any evidence to substantiate those claims. The Committee also notes that the Government has*

asked the Government Procurator's Office to carry out further investigations and to request the corresponding penalties be imposed if the allegations are proved to be true. The Committee requests the Government to keep it informed of the results of these investigations.

777. *The Committee expresses its deep concern that nearly three years have elapsed since the facts alleged have occurred without the allegations having been clarified. The Committee urges the Government to expedite procedures and investigations with a view to resolving the case rapidly.*

The Committee's recommendations

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

(a) The Committee requests the Government to keep it informed of the results of the judicial procedures initiated by the workers of the Aribesa enterprise Mr. Porfirio Beitia, Mr. Francisco López, Mr. Eugenio Rivas, Mr. Julio Trejos and Mr. Darío Ulate. As regards the dismissed workers for whom reinstatement is impossible, the Committee urges the Government to make efforts to ensure that funds are secured to compensate them.

(b) The Committee requests the Government to keep it informed of the results of the investigations undertaken by the Government Procurator's Office into the alleged raid on SUNTRACS headquarters and the alleged ill-treatment suffered by a number of Aribesa workers during their detention.

(c) The Committee expresses its deep concern that nearly three years have elapsed since the occurrence of the facts alleged without the allegations having been clarified. The Committee urges the Government to expedite procedures and investigations with a view to resolving the case rapidly.

CASE NO. 2036

INTERIM REPORT

Complaint against the Government of Paraguay presented by
— the Trade Union Confederation of State Employees of Paraguay (CESITEP) and
— Public Services International (PSI)

Allegations: Dismissals and transfers of trade union officials; non-compliance with a collective agreement; refusal to deduct trade union dues

779. The complaint is contained in a communication from the Trade Union Confederation of State Employees of Paraguay (CESITEP) dated 16 June 1999. CESITEP sent additional information in a communication dated 12 July 1999. Public Services International associated itself with the complaint in a communication dated 21 June 1999. The Government sent its observations in communications dated 16 June and 13 October 2000.

780. Paraguay 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

781. In its communication of 16 June 1999, the Trade Union Confederation of State Employees of Paraguay (CESITEP) alleges that the Ministry of Public Health and Social Welfare failed to comply with a collective agreement governing working conditions. That agreement was signed on 23 April 1998 between the Ministry and its workers' trade union, ratified by a commitment document and officially approved by the Ministry of Justice and Labour. To date, the Ministry of Health refuses to respond to workers' requests to comply with it, even violating Decree No. 6109 regulating the Public Health Code (the Health Act), which governs administrative careers within the Ministry of Health; it also ignores the hierarchical structure, only promoting officials in one specialized area and discriminating against others, and not allowing the trade union, despite the fact that the collective agreement so provides, to participate in the preparation of salary scale reclassifications. Moreover, considerable anti-union discrimination has recently become apparent in the Ministry of Health, which refuses to deduct the premiums for medical insurance directly from the wages of trade union members, but allow deductions from wages to be made for medical insurance premiums for private enterprises providing pre-paid medical care.

782. The complainant also alleges that the commitment document signed on 5 May 1999 between the Government, represented by the Ministry of Justice and Labour, and the Trade Union Confederation of Employees has been violated. The document essentially contains the acknowledgement of a government debt to the Institute of Medical Insurance for State Employees (ISMSTE) and establishes the form in which it is to be paid. The ISMSTE is a workers' organization that provides medical assistance to CESITEP members.

783. CESITEP also alleges acts of anti-union persecution against its officials by the Government. More specifically, it indicates that the Government is threatening reprisals, such as dissolving the organization through a "revision" of resolution No. 145/99 concerning registration and dismissing the president of the CESITEP, Mr. Barreto Medina (who in fact has not been paid since December 1998).

784. In its communication dated 12 July 1999, the Trade Union Confederation of State Employees of Paraguay (CESITEP) alleges that the Ministry of Public Health and Social Welfare has committed further acts of anti-union discrimination. These include, in particular, the following:

– the transfer of trade union officials, Ms. Magdalena Duarte and Mr. William José Ledesma Acuña, members of the executive committee of the Trade Union of the Medical Emergencies Clinic;

– the refusal by the State Administration Office to comply with arrangements for the deduction of trade union dues for the Workers' Union of the Ministry of Public Health and Social Welfare (SITRAMIS);

– the dismissal of trade union officials, Ms. Blanca Alvarez, Mr. Darío Matiauda and Mr. Rigoberto Gómez.

B. The Government's reply

785. In its communication dated 16 June 2000, the Government denies violating the collective agreement governing working conditions in the Ministry of Public Health and Social Welfare (it indicates that officials are being reclassified gradually and that medical insurance contributions are paid). It also denies violating the commitment document of 5 May 1999.

786. The Government adds that it is not true that it wishes to dismiss the president of the CESITEP, nor that he has not been paid. Mr. Barreto Medina did not claim his salary for the months of March, September, October and December 1998, nor his Christmas bonus. However, he did collect his salary for the months of January and February 1999 and then again did not claim his salary for March, April and May 1999.

787. In its communication of 13 October, the Government states with regard to the allegation concerning the deduction of trade union dues for SITRAMIS, that the Administration Office of the Ministry of Public Health and Social Welfare had deducted the trade union dues from SITRAMIS members and that the SITRAMIS representatives had received those dues. There has never been an interruption in these deductions.

788. As regards the transfer of trade union officials Ms. Magdalena Duarte and Mr. William José Ledesma from the Medical Emergencies Clinic, the Government states that, in view of the inauguration on 24 June 1999 of the Medical Emergencies Centre, "Prof. Dr. Luis María Argaña", situated in Asunción, the former First Aid Clinic, had to be moved to the new premises. This change necessarily led to the redistribution of human resources in order to optimize them in accordance with the needs of the various services. For this reason, the Director-General of the Medical Emergencies Centre made Mr. William Ledesma and Ms. Magdalena Duarte available to the General Directorate of Human Resources on 8 July 1999. Subsequently, following a decision taken on 2 August 1999, Mr. William José Ledesma Acuña was moved from the General Directorate of Human Resources to the district hospital of Lambaré, to comply with a request submitted by the management of that institution, for his services in his capacity as debt collector as it was impossible to recruit new staff with experience in that occupation and Mr. William Ledesma had already performed that function at the Medical Emergencies Clinic. Mr. Ledesma's transfer is a temporary one.

789. As regards the transfer of Ms. Magdalena Salvadora Duarte, the Government states that, bearing in mind the lack of available nursing staff, the limited recruitment budget and the high demand for such staff, she was transferred following a decision dated 9 August 1999 from the General Directorate of Human Resources to the Mother and Child Care Clinic of Santísima Trinidad as that institution was situated close to her home. It was therefore not an anti-union move but a service-related one.

790. On a general note, the Government states with regard to the alleged transfers that in 1999 the Ministry of Health was allocated very limited funds for recruitment under the national budget which obliged it to move staff around as, in a number of institutions under the Ministry, the lack of available staff was causing serious problems. These moves or secondments were not isolated, and none of the seconded persons were obliged to perform tasks of less hierarchical importance, nor was there any uprooting. This being the case, the persons concerned were not wronged as they were not prohibited from exercising their trade union activities.

791. As regards Ms. Blanca Alvarez, an official of the Ministry of Foreign Affairs, the Government states that she was the subject of an administrative inquiry at that institution and that under Decree No. 12550/96 she was dismissed from her duties (the inquiry

concluded that the official had committed serious offences – improper use of the Ministry's premises and property, irregular attendance at the Ministry and lack of respect towards and insults directed at her superiors). The judicial authority amended Decree No. 12550, ordering that the official be suspended from her work without pay for a period of 90 days. This case is currently pending before the Office of the Attorney-General of the Republic.

792. With respect to Mr. Darío Matiauda, an official of the Ministry of Public Health and Social Welfare, the Government states that he was dismissed following an inquiry and subsequently reinstated under Decree No. 4007 of 7 July 1999. Mr. Matiauda later requested leave without pay twice for a period of three months. These periods of leave were granted under resolution No. 2414 of 27 October 1999 and resolution No. 1460 of 5 June 2000.

793. As regards Mr. Rigoberto Gómez Rivas, the Government indicates that following an inquiry he was dismissed from his duties under Decree No. 1586 of 6 January 1999 for having committed the offence stipulated in article 52(10) of Act No. 200/70 (failure to observe obligations).

794. The Government states that it is untrue that it threatened to dissolve the trade union organization CESITEP through a revision of resolution No. 145/99. Concerning the alleged failure to pay medical insurance, the Government indicates that the legal office of the Treasury issued Legal Opinion No. 665 dated 1 June 1999 in respect of the CESITEP case. Following CESITEP's appeal for protection of its constitutional rights against the Treasury, the fourth circuit court of judicial protection handed down final ruling No. 362 of 15 June 1999. The legal opinion and the ruling serve to explain why medical insurance benefits are paid to state employees on an individual basis.

C. The Committee's conclusions

795. *The Committee observes that in this case the complainants allege: (i) the failure of the Ministry of Public Health and Social Welfare to comply with the obligations set forth in a collective agreement and in a commitment document; (ii) the Ministry's refusal to allow the trade union to make the deductions for the payment of medical health insurance; (iii) threats to dissolve the trade union CESITEP and to dismiss Mr. Barreto Medina, president of the CESITEP (who has allegedly not been paid since December 1998); (iv) the transfer of trade union officials, Ms. Magdalena Duarte and Mr. William José Ledesma Acuña, members of the executive committee of the Trade Union of the Medical Emergencies Clinic, and the dismissal of trade union officials, Ms. Blanca Alvarez, Mr. Darío Matiauda and Mr. Rigoberto Gómez; and (v) the refusal by the State Administration Office to comply with arrangements for the deduction of trade union dues for the Workers' Trade Union of the Ministry of Public Health and Social Welfare (SITRAMIS).*

796. *With regard to the transfer of trade union officials, Ms. Magdalena Duarte and Mr. William José Ledesma Acuña, members of the executive committee of the Trade Union of the Medical Emergencies Clinic, the Committee notes the Government's statement that: (1) in 1999 the Ministry of Health had a very limited recruitment budget and this fact forced it to transfer staff and that these particular moves were not the only ones to occur; (2) as a result of the inauguration of the Medical Emergencies Centre "Prof. Dr. Luis María Argaña", the former First Aid Clinic had to be moved to new premises and that change resulted in needing to optimize human resources through redistributing staff; (3) Mr. William José Ledesma Acuña was only transferred temporarily to the District Hospital of Lambaré in order to carry out the function of collector (duties that he was already performing), as it was impossible to recruit new staff; and (4) Ms. Magdalena Duarte was transferred to the Mother and Child Care Clinic, owing to the lack of*

available nursing staff; when ordering the transfer of Ms. Duarte account was taken of the fact that the Mother and Child Care Clinic is situated near her home. In this regard, while taking due account of the budgetary problems that may have led the Ministry of Health to carry out transfers in order to fill vacant posts, the Committee cannot fail to observe that the workers in question held trade union positions and that their transfer may have affected the exercise of their trade union activities. The Committee, therefore, requests the Government to ensure that in future, when for budgetary or financial reasons it is necessary to carry out staff transfers in the public sector, due account is taken of the status of trade union officials, and that steps are taken to avoid any negative repercussions on the performance of their trade union activities and to avoid possible discrimination against them.

797. *As regards the dismissal of trade union officials Ms. Blanca Alvarez, Mr. Darío Matiauda and Mr. Rigoberto Gómez, the Committee notes the Government's statement that: (1) Mr. Matiauda, an official of the Ministry of Public Health and Social Welfare, was removed from office following an inquiry and subsequently reinstated under a decree dated 7 July 1999; (2) Ms. Blanca Alvarez, an official of the Ministry of Foreign Affairs, was the subject of an administrative inquiry in which it was concluded that she had committed serious offences, such as improper use of the Ministry's premises and property, irregular attendance at work and lack of respect towards and insults directed at her superiors, which led to her dismissal from her post under Decree No. 12550; the judicial authority amended the decree, imposing on the official a suspension for a duration of 90 days, and the case is currently pending before the Office of the Attorney-General of the Republic; and (3) Mr. Rigoberto Gómez, an official of the Ministry of Public Health and Social Welfare, was the subject of an administrative inquiry and was dismissed from his post for having committed the offence set forth in article 52(10) of Act No. 200/70 (failure to observe obligations). The Committee requests the Government to: (1) keep it informed of the result of the appeal lodged before the Office of the Attorney-General of the Republic in respect of the transfer of Ms. Blanca Alvarez; and (2) in the proceedings of the administrative inquiry into Mr. Rigoberto Gómez's failure to observe his obligations, verify the charges made against him and, if these are related to the exercise of his trade union activities, to take the necessary measures to have him reinstated in his job.*

798. *With respect to the allegation concerning the refusal by the Ministry of Public Health and Social Welfare to allow the trade union SITRAMIS to make deductions for the payment of medical health insurance, the Committee notes the Government's information that this matter was submitted to the judicial authority which in its ruling accepted the payment of medical insurance benefits to state employees on an individual basis.*

799. *Concerning the threats to dissolve the trade union CESITEP and to dismiss Mr. Barreto Medina, president of the CESITEP (who has allegedly not been paid since December 1998), the Committee notes the Government's categoric denial of both allegations and its emphasis on the fact the Mr. Barreto Medina did not claim his salary for the months of March, September, October and December 1998 and March, April and May 1999, but that he did claim it for January and February 1999. In view of the contradictory versions presented by the complainants and the Government concerning these allegations and the lack of details in the complaint, the Committee requests the Government and the complainants to forward additional information in this regard.*

800. *In relation to the alleged refusal by the State Administration Office to accept requests for the deduction of trade union dues for the Workers' Trade Union of the Ministry of Public Health and Social Welfare (SITRAMIS), the Committee notes the Government's denial of these allegations and its statement that the Ministry of Public Health and Social Welfare has deducted the trade union dues of SITRAMIS members, that the trade union*

representatives have received those dues and that in fact there has never been an interruption in the deductions.

801. *With respect to non-compliance by the Ministry of Public Health and Social Welfare with a number of obligations set forth in a collective agreement and a commitment document, the Committee notes the Government's denial that the instruments have not been complied with (for example, it states that there has been a gradual reclassification of officials and that medical insurance contributions are paid). In this respect, the Committee stresses generally the importance it accords to the principle that "agreements should be binding on the parties" [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 1996, para. 818] and requests the Government to ensure compliance with the contractual obligations contained in the instruments in question.*

The Committee's recommendations

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

(a) The Committee requests the Government to ensure that in future, when for budgetary or financial reasons it is necessary to carry out staff transfers in the public sector, due account is taken of the status of trade union officials, and that steps are taken to avoid any negative repercussions on the performance of their trade union activities and to avoid possible discrimination against them.

(b) The Committee requests the Government: (1) to keep it informed of the result of the appeal lodged before the Office of the Attorney-General of the Republic in respect of the transfer of Ms. Blanca Alvarez; (2) in the proceedings of the administrative inquiry into Mr. Rigoberto Gómez's failure to observe his obligations, to verify the charges made against him and, if these are related to the exercise of his trade union activities, to take the necessary measures to have him reinstated in his job. In addition, the Committee requests the Government and the complainants to forward additional information with respect to the allegations concerning the threats to dissolve the trade union CESITEP and to dismiss Mr. Barreto Medina, president of CESITEP.

(c) As regards the alleged non-compliance by the Ministry of Public Health and Social Welfare with a number of obligations set forth in a collective agreement and a commitment document, the Committee stresses generally the importance it accords to the principle that agreements should be binding and requests the Government to ensure compliance with the contractual obligations contained in the instruments in question.

CASE NO. 2063

DEFINITIVE REPORT

Complaint against the Government of Paraguay presented by the Workers' Union of the National Radio of Paraguay (SINFURANP)

Allegations: Dismissal of union leaders and other acts of discrimination against the union

803. The complaint is contained in a communication from the Workers' Union of the National Radio of Paraguay (SINFURANP) dated 10 December 1999. The Government sent its observations in a communication dated 13 October 2000.

804. Paraguay 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

805. In its communication of 10 December 1999, the Workers' Union of the National Radio of Paraguay (SINFURANP) states that ever since the union was created, the authorities of the institution have refused to recognize the union and enter into dialogue with it and have carried out a series of harassment actions against its members. Specifically, the complainant organization states that in this context: (1) the Secretary-General of the union, Mr. Juan Carlos Castro, and his deputy, Mr. Walter Gómez were dismissed under a resolution made on 1 October 1999; (2) union members, Messrs. Nunila Genes, Miguel Soloaga, Carlos Rubén Ojeda, Felipe Rosana Morales and Lido Morales were transferred; and (3) the freedom of expression of union members was restricted as a number of members were forbidden to carry out their duties as radio announcers.

806. In its communication of 11 January 2000, the complainant organization states that following a strike to protest against dismissals, time cards were seized and the salaries for October, November and December 1999, and the Christmas bonus were not paid to those workers that took part in the strike.

The Government's reply

807. In its communication dated 13 October 2000, the Government states that as regards the alleged dismissal in October 1999 of the Secretary-General of the Workers' Union of the National Radio of Paraguay, Mr. Juan Carlos Castro, and his deputy, Mr. Walter Gómez, as well as the transfer of a number of union members by signed agreement in January 2000, it proposed: (1) the definitive reintegration to their previous positions and with the same conditions, of those union leaders dismissed; and (2) the reinstatement to their positions of those union members transferred (the Government attaches a copy of these documents).

808. The Government adds in relation to the other alleged incidents that: (1) union members' freedom of expression was not restricted as union members had not been forbidden to carry out their duties as radio announcers; (2) at no time were the time cards seized from the workers; (3) the salaries for October, November and December 1999, and the

Christmas bonus were paid in January 2000; the delay in payment was due to budgetary problems and not to anti-union reasons.

809. Finally, the Government states that in order to find a peaceful solution to this case it intervened in the National Radio and named a new director. Currently, management of the National Radio of Paraguay has friendly and excellent relations with all workers at the institution and applies an open policy of permanent dialogue.

C. The Committee's conclusions

810. *The Committee observes that according to the complainant organization the Secretary-General and his deputy were dismissed, a number of union members of the National Radio of Paraguay were transferred in October 1999, and other anti-union acts, such as forbidding union members to carry out their duties as radio announcers, seizing time cards and non-payment of salaries for October, November and December 1999, as well as the Christmas bonus, to workers who participated in a strike in support for those dismissed, were carried out.*

811. *In this respect, the Committee notes the information provided by the Government that: (1) under an agreement concluded in January 2000 (a copy of which is annexed to the Government's reply), union leaders who had been dismissed were finally reinstated to their former positions and union members who had been transferred were returned to their posts; (2) the non-payment of salaries for October, November and December 1999, and the Christmas bonus, was due to budgetary problems and not to anti-union discrimination, and those salaries were finally paid in January 2000; (3) at no time were union members forbidden to carry out their duties as radio announcers, nor were the time cards of workers who took part in a strike, in support of those who had been dismissed, seized; and (4) in order to find a peaceful solution to the conflict a new director was named for the National Radio and currently there is a friendly and excellent relationship between management and workers at that institution.*

812. *The Committee nevertheless observes that in this case the National Radio of Paraguay carried out dismissals and anti-union transferrals as is confirmed in the agreement of January 2000 concluded between the parties, which the Government annexed to its reply, wherein it is expressly agreed that union persecution will cease. The Committee notes these facts with regret and recalls in this respect the principle that "no person should be dismissed or prejudiced in his or her employment by reason of trade union membership or legitimate trade union activities, and it is important to forbid and penalize in practice all acts of anti-union discrimination in respect of employment" [see **Digest of decisions and principles of the Freedom of Association Committee**, 1996, para. 696]. However, the Committee welcomes the fact that the parties arrived at an agreement which allowed the conflict to be satisfactorily resolved. The Committee therefore considers that this case requires no further action.*

The Committee's recommendation

813. ***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. 2086

INTERIM REPORT

Complaint against the Government of Paraguay presented by
— the Workers' Union of the Ministry of Public Health and Social Welfare (SITRAMIS) and
— the Trade Union Confederation of State Employees of Paraguay (CESITEP)

Allegations: Anti-union dismissals and transfers – physical assault of, and criminal proceedings against a union leader

814. The complaint is contained in a communication dated 31 May 2000 from the Workers' Union of the Ministry of Public Health and Social Welfare (SITRAMIS) and the Trade Union Confederation of State Employees of Paraguay (CESITEP). CESITEP sent further information in a communication dated 12 October 2000. The Government sent its observations in a communication dated 13 October 2000.

815. Paraguay 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

816. In the communications of 31 May and 12 October 2000, the Workers' Union of the Ministry of Public Health and Social Welfare (SITRAMIS) and the Trade Union Confederation of State Employees of Paraguay (CESITEP) stated that a general strike was called for 4 May 2000 by the Trade Union Confederation of State Employees of Paraguay (CESITEP), the Single Confederation of Workers (CUT), the General Confederation of Workers (CGT), and the Paraguayan Confederation of Workers (CPT), in response to the following: (a) the fulfilment of the agreement signed by the Government within the framework of social dialogue; (b) the participation of trade unions in the reform process of the State; (c) the withdrawal of Congress from the privatization plan for public bodies; (d) the regulation and payment of medical insurance to civil servants and the fulfilment of Decree No. 6388/99; (e) the payment of the family bonus; (f) the depoliticization of the Ministries of Public Health and Social Welfare and of Education and Culture; (g) the fulfilment of the labour laws; (h) the rapidity of labour cases brought before the court and the resolution of cases taking into account the standards of the ILO; and (i) the end of union persecution. The complainant organizations indicate that in reaction to the proposed strike the Ministry of Public Health and Social Welfare carried out a persistent, stubborn, unjustified and immoral persecution of a number of civil servants who were active union members, including Mr. Christian Weiler, the Secretary-General of the Workers' Union of LACIMET and Ms. Marcia Rivas de Gómez, who were transferred, and Ms. Florinda Insaurralde, who was dismissed, solely on the basis of their involvement in the labour claims and their defence of the rights of other colleagues.

817. The complainant organizations state that the strike was temporarily called off when the Government promised to look into the claims of the trade unions. However, the Minister of Public Health and Social Welfare arranged for the arbitrary transfer of the Chairperson of the Decentralized Council of SITRAMIS of Itapúa, Ms. Marcia Rivas de Gómez, from the

city of Encarnación to the small community of San Juan del Paraná. In response to this, a day of protest in front of the regional hospital of the city of Encarnación was planned for 12 May 2000 where an incident took place between the police and the civil servants who were protesting peacefully, wherein the police attacked Dr. Reinaldo Barreto Medina, the Chairperson of SITRAMIS and CESITEP, who was detained.

818. The complainant organizations state that the prosecutors involved brought a suit of "alleged punishable offence against the public administration" (resisting the authorities) against Dr. Reinaldo Barreto Medina, under which he was detained. This detention order was reversed by the court, and Dr. Barreto Medina was released through lack of evidence. CESITEP attaches a copy of the records of the case during which it appears that the Ministry of Public Health and Social Welfare and Dr. Reinaldo Barreto Medina agreed, within the framework of the trial, to request conditional suspension of proceedings based on the fact that the accused agreed to provide dental services at a hospital every Saturday morning for one year. The judge ruled to accept the agreed request.

B. The Government's reply

819. In its communication of 13 October 2000, the Government states that the alleged transfer of Mr. Christian Weiler, was ordered (temporary transferral) under Resolution D.G.R.H. No. 1208 of 12 July 1999 by Health Centre Central Laboratory No. 8, in the XVIII Sanitary Region. This transfer took place as part of the reorganization of the Ministry, which, owing to a budgetary shortfall for that year, was forced to redistribute human resources in order to carry out changes in the new administration and to reorganize services. As Mr. Weiler was an experienced civil servant, particularly in the area of national resources, he was sent to Health Centre No. 8 to organize the area and thus implement such services and take inventory of the institution. Subsequently, Mr. Weiler turned up at Health Centre No. 8 only once to work and then did not appear in the workplace again. An administrative inquiry was initiated and copies of the institution's timesheets showed absence from work and therefore presumed abandonment of his post. Following the conclusions of the administrative inquiry, Mr. Weiler was dismissed from his post by Decree No. 7332 of 31 January 2000. The Government emphasizes that according to the report of the chief of the section on collective relations and union membership, to be found in the records of the case, Mr. Weiler did not have union protection.

820. As regards Ms. Florinda Insaurralde, the Government states that she was disciplined by dismissal under Decree No. 7081 of 10 January 2000 as the result of an administrative inquiry begun in July 1999 in which she was accused of problems in her working relationships with her superiors and work colleagues (interfering in duties other than her own, using the telephone at work for personal matters, threatening her work colleagues, etc.).

821. As regards Ms. Marcia Rivas de Gómez, the Government states that she was transferred to the Health Centre in San Juan del Paraná, two kilometres from her home, on 12 May 2000 as part of a national immunization day. Taking into account this event, the management of the VII Sanitary Region asked for the transfer of Ms. Marcia Rivas de Gómez from the regional hospital of Encarnación to the Health Centre in San Juan del Paraná, belonging to the same Sanitary Region, until 31 May 2000. This transfer was ordered under Resolution D.G.R.H. No. 1154 of 12 May 2000, taking into account article 2 *in fine* of Resolution S.G. No. 159, Decree No. 21376 that authorizes the Ministry of Public Health and Social Welfare to exercise general administration of the institution and be responsible for human resources, and article 32, subsection (E), of Law No. 200/70 "The Civil Servant's Statute". Furthermore, the sanitary region of Itapúa had asked for Ms. Marcia Rivas de Gómez to be transferred to San Juan del Paraná as it was impossible to recruit people to conduct the

national immunization day because of lack of funds for contracts and, due to this, a lack of human resources. Furthermore, the Government indicates that the size of the sanitary region of Itapúa, where there are a number of health centres and clinics that lack the human resources to achieve a 100 per cent rate of immunization, should be taken into account.

822. As regards the assault and detention of Mr. Reinaldo Barreto Medina, Chairperson of CESITEP, the Government indicates that according to the police this union leader physically attacked the chief police superintendent, Rogelio Benítez Nuñez (chief of public order and security), for which he was temporarily detained, for an alleged punishable offence against public administration, as laid down in article 296, subsection 1, of the Penal Code. Mr. Barreto Medina was released under A.I. No. 224 of 12 May 2000 by the judge of the criminal court of the third judicial district of Paraguay.

C. The Committee's conclusions

823. *The Committee notes that in the present case, the complainant organizations have alleged that following a call to strike for 4 May 2000, the authorities of the Ministry of Public Health and Social Welfare started an anti-union persecution of civil servants who were active union members, transferring Mr. Christian Weiler, Secretary-General of the Workers' Union of LACIMET and Vice-President of SITRAMIS, Ms. Marcia Rivas de Gómez, Chairperson of the Decentralized Council of SITRAMIS of Itapúa, and dismissing Ms. Florinda Insaurralde. The Committee also notes that the complainant organizations have alleged physical assault, detention and prosecution of Mr. Reinaldo Barreto Medina, Chairperson of SITRAMIS, during a protest carried out on 12 May 2000.*

824. *As regards the transfer of Mr. Christian Weiler, Secretary-General of the Workers' Union of LACIMET and Vice-President of SITRAMIS, the Committee notes that the Government has indicated that: (1) Mr. Weiler was sent (temporary transfer) to the Health Centre Central Laboratory No. 8 on 12 July 1999; (2) his transfer took place within the framework of the reorganization of the Ministry as a result of a budgetary shortfall and with the aim of reorganizing services; (3) Mr. Weiler turned up only once to work at the Health Centre No. 8 and an administrative inquiry was initiated, which indicated his non-appearance and his abandonment of his duties; and (4) Mr. Weiler was dismissed from his duties under a resolution made in January 2000 following the conclusion of the case. In this respect, the Committee notes that although the transfer in question occurred long before the conflict reported in this case, Mr. Weiler held two union positions and the Committee does not exclude the fact that the transfer in question might have affected his ability to carry out his activities as a leader. In these circumstances, the Committee emphasizes that "one of the fundamental principles of freedom of association is that workers should enjoy adequate protection against all acts of anti-union discrimination in respect of their employment, such as dismissal, demotion, transfer or other prejudicial measures. This protection is particularly desirable in the case of trade union officials because, in order to be able to perform their trade union duties in full independence, they should have a guarantee that they will not be prejudiced on account of the mandate which they hold from their trade unions. The Committee has considered that the guarantee of such protection in the case of trade union officials is also necessary in order to ensure that effect is given to the fundamental principle that workers' organizations shall have the right to elect their representatives in full freedom." [See* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, paragraph 724]. The Committee requests the Government to ensure that this principle is respected.*

825. *As regards the transfer of Ms. Marcia Rivas de Gómez, Chairperson of the Decentralized Council of SITRAMIS of Itapúa, the Committee notes that the versions presented by the complainant organizations and by the Government are contradictory. The complainant organizations indicate that the transfer was an act of anti-union persecution following the*

call to strike on 4 May 2000; the Government indicates that the union leader in question was transferred from the city of Encarnación to the Health Centre of San Juan del Paraná in the framework of the national immunization day of 12 May 2000 because it was impossible to hire personnel to help organize that day and the health clinic lacked personnel. In these circumstances, although the transfer took place eight days after the call to strike, the Committee does not have sufficient information to confirm that the transfer in question occurred for anti-union reasons, particularly in light of the fact that according to the Government the union leader in question was transferred back to her original position in the city of Encarnación on 10 July 2000.

826. *As regards the physical assault, detention and prosecution of Mr. Reinaldo Barreto Medina, Chairperson of SITRAMIS, during the protest of 12 May 2000, the Committee notes that according to the Government the union leader in question assaulted a police authority (the chief police superintendent), for which he was temporarily detained and released on 12 May 2000. In this respect, the Committee notes that according to the records of the case against Dr. Barreto Medina for resistance to authority, a copy of which the complainant organizations have attached, the Ministry of Public Health and the accused agreed to request the judge for a conditional suspension of proceedings in exchange for the accused providing dental services at a hospital on Saturday mornings for a period of one year, and the judge agreed to this request. Under these circumstances, the Committee will not pursue its examination of this allegation.*

827. *As regards the dismissal of Ms. Florinda Insaurralde, the Committee notes that according to the Government she was dismissed from her job following the conclusions of an inquiry which began in July 1999 in which she was accused of interfering in duties other than her own, using the institution's telephone for personal matters and threatening her colleagues. In these circumstances, taking into account that the worker in question was dismissed for reasons which took place long before the conflict reported in this case and that the complainant organizations did not indicate whether the person involved held a union position, the Committee requests the Government and the complainants to forward additional information in order to clarify this matter.*

The Committee's recommendations

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

(a) The Committee requests the Government to ensure that it respects the principle that workers should enjoy adequate protection against all acts of anti-union discrimination in respect of their employment, such as dismissal, demotion, transfer or other prejudicial measures, and that this protection is particularly desirable in the case of trade union officials because, in order to be able to perform their trade union duties in full independence, they should have a guarantee that they will not be prejudiced on account of the mandate which they hold from their trade unions, and that such a guarantee of such protection in the case of trade union officials is also necessary in order to ensure that effect is given to the fundamental principle that workers' organizations shall have the right to elect their representatives in full freedom.

(b) Concerning the dismissal of Ms. Florinda Insaurralde, the Committee requests the Government and the complainants to forward additional information in order to clarify this matter.

CASE NO. 1880

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

Complaint against the Government of Peru presented by the Federation of Peruvian Light and Power Workers (FTLFP)

Allegations: Various acts of anti-union discrimination and interference, obstruction of collective bargaining

829. The Committee last examined this case at its March 1999 meeting and on that occasion presented an interim report to the Governing Body [see 313th Report, paras. 151-168, approved by the Governing Body at its 274th Session in March 1999]. The FTLFP sent additional information and new allegations in its communications of 6 April, 22 June, 5 July, 5 August, 29 September and 20 October 1999.

830. The Government sent partial observations in communications dated 8 and 10 February, 28 August 2000 and 18 January 2001.

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

A. Previous examination of the case

832. At the Committee's March 1999 meeting, a number of allegations remained pending concerning various acts of anti-union discrimination and interference by the enterprises Electro Ucayali SA, Servicio Público de Electricidad del Oriente SA, Electro Sur Este SA and Electrosur SA, which continued to occur and dated back to 1997:

– various acts of anti-union discrimination and interference against the Ucayali SA branch of the Light and Power Workers' Union, calculated to eliminate and cause the disappearance of trade union activity, including obstruction of collective bargaining, anti-union dismissals, coercion and threats against workers belonging to the Electro Ucayali SA trade union branch;

– the Electro Ucayali SA enterprise making the granting of open-ended contracts of employment conditional on workers belonging to the Ucayali SA branch of the Light and Power Workers' Union giving up their membership;

– the transfer of the majority of workers belonging to the above trade union to places other than those specified in their contracts of employment, under the control of the Electrocentro SA enterprise;

– hostility towards and obstruction of trade union activity, interference in the internal affairs of the abovementioned union, intimidation of union officials and hinting at the creation of another trade union organization to evade their obligations under prior collective agreements;

– the collective dismissal of 19 unionized workers and coercion by the Ucayali SA enterprise of workers to give up their union membership, threatening to include them in the collective dismissal if they refuse (as a result, recognition of the trade union

was cancelled as the number of members was reduced to fewer than 20, the legal minimum);

– unfair dismissal of trade union officer Mr. Jaime Tuesta Linares by the Eastern Regional Public Electricity Supply Company;

– a systematic campaign of threatened dismissal and harassment against trade union officers and unionized workers in the Electro Sur Este SA enterprise, which has caused serious problems for the workers' union branch in Electro Sur Este Abancay; specifically: (1) trade union officer Mr. Moisés Zegarra Ancalla was transferred; (2) the Electro Sur Este SA enterprise (Puno subregion) threatened trade union officer Mr. Adriel Villafuerte Collado with dismissal and suspended him for 30 days without pay;

– threats of sanctions and dismissals against trade union officers at the Tacna and district branch of the Light and Power Workers' Union by the Electro Sur SA Company, which considered that the trade union officers were guilty of serious misconduct for not having dropped their action to enforce a court order in favour of the workers concerning salary increments due to 111 workers [see 313th Report, para. 164].

833. In this regard, the Committee made the following recommendations [see 313th Report, para. 168]:

– Concerning the allegations of anti-union discrimination and interference in the Electro Ucayali SA, Eastern Regional Public Electricity Supply Company and Electro Sur Este SA enterprises, the Committee regrets that the Government has not carried out an investigation and is merely relying on the existence of legislation against acts of anti-union discrimination and interference and the possibility that the victims have of lodging judicial appeals, and once again urges the Government to carry out an investigation without delay into the allegations and to take all the necessary measures to remedy these serious acts of anti-union discrimination if they are proved. The Committee requests the Government to keep it informed in this respect.

– Concerning the dismissal of trade union officer Mr. Walter Linares Sanz (Electro Sur SA enterprise) and the suspension of the trade union allowance paid to trade union officer Mr. Guillermo Barrueta Gómez since 30 June 1992 by the Electro Sur Este SA enterprise, the Committee requests the Government to keep it informed regarding the outcome of the proceedings under way.

B. New allegations of the complainant

834. In its communication of 6 April 2000, the Federation of Peruvian Light and Power Workers (FTLFP) alleges that Mr. Adriel Grispin Villafuerte Collado, General Secretary of the Single Trade Union of Workers of Electro Sur Este SA Puno and a member of the FTLFP National Executive Committee, was dismissed on 11 December 1998; the reasons given for the dismissal were: failure to comply with technical standards, unfair competition, misappropriation and giving false information to the employer. The complainant denies these accusations and maintains that the dismissal was motivated by the fact that Mr. Villafuerte Collado occupied an official union position and participated in trade union activities. The complainant also alleges that the trade union official in question has initiated legal proceedings for annulment of the dismissal and reinstatement, and that on 3 March 2000 a judicial conciliation hearing took place but the parties were unable to reach an agreement. The complainant emphasizes that on a previous occasion in this case it

had been alleged that the union official in question had been threatened with dismissal and had been suspended without pay for a period of 30 days for anti-union reasons.

835. In its communication of 22 June 1999, the complainant states that there is no collective bargaining at national level in the electricity sector, owing to the restrictions imposed by the Collective Labour Relations Act. Before this Act came into force, wages policy with regard to unionized electricity sector workers was determined through enterprise-level agreements between representatives of the trade union organizations and the enterprises. However, under the terms of the recent Emergency Decree No. 011 and Ministerial Decision No. 075-99-EF of 1 April 1999, electricity sector enterprises during 1999 must base their wages policies on the award of a single lump-sum productivity payment within the framework of collective talks; that payment may not have a remunerative character (it must be only a one-off payment), and is conditional on prior performance appraisal, simplification of the system of remuneration and, above all, on the availability of the necessary budget resources and approval thereof by the Office for State Institutions and Bodies (OIOE). For such bonuses to be paid, three fundamental conditions must be met, namely: (a) workers must undergo performance appraisal; (b) the system of remuneration must be simplified and/or comprehensive pay agreements must be concluded; and (c) the bonus must be proposed and awarded only during collective talks. Once those conditions have been met, the directors of the state electricity companies must apply to the Office for State Institutions and Bodies (OIOE) for approval of the agreement with the trade unions; this allegedly violates the right of collective autonomy of the parties.

836. The complainant also alleges that, apart from the restrictions on free collective bargaining imposed by the above provisions, and given that the new round of talks for 1999-2000 was due to begin in June, the privatized electricity companies (Electronoroeste SA, Electro Norte SA and Electrocentro SA and, in the month of October, Electronorte Medio-Hidrandina SA) from April 1999 onwards launched an anti-union campaign aimed at cancelling the trade union registration of those company trade unions with fewer than the minimum number of 20 members required under section 20 of Legislative Decree No. 25593 (the Collective Labour Relations Act). Specifically, the enterprise Electrocentro SA since April 1999 has submitted applications for such cancellations of union registration to the labour authorities of Cerro de Pasco, Huánuco, Tingo María, Chanchamayo, Huancavelica and Ayacucho. The purpose of this was to cancel the trade union registrations of at least six of the company's eight trade union organizations, namely: the Single Trade Union of Light and Power Workers and Allied Workers of Cerro de Pasco; the Single Trade Union of Light and Power Workers and Allied Workers of Electro Centro Huánuco; the Single Trade Union of Light and Power Workers and Allied Workers of Selva Central; the Single Trade Union of Light and Power Workers and Allied Workers of Huancavelica; and the Single Trade Union of Light and Power Workers and Allied Workers of Ayacucho. According to the complainant, as a result of this anti-union action, the labour authorities of Cerro de Pasco on 28 April 1999 cancelled the trade union registration of the Single Trade Union of Light and Power Workers and Allied Workers of Cerro de Pasco; and the labour authorities of Tingo María on 12 May 1999 cancelled the registration of the Single Trade Union of Light and Power Workers and Allied Workers of Tingo María. Similarly, the labour authorities of Chanchamayo on 14 May 1999 cancelled the registration of the Single Trade Union of Light and Power Workers and Allied Workers of Selva Central; the labour authorities of Huancavelica on 20 May 1999 cancelled the registration of the Single Trade Union of Light and Power Workers and Allied Workers of Ayacucho. Only the Single Trade Union of Light and Power Workers and Allied Workers of Electro Centro Huánuco lodged an appeal on 21 May 1999 before the Huánuco labour authority against the order cancelling their registration, and is now awaiting a ruling on the matter from the Regional Labour Directorate. There is also the danger that the other trade union organizations of Electro Centro SA (the Single Trade Union of Light and Power Workers and Allied Workers of Electro Centro Huancayo and the Single Trade Union of

Light and Power Workers and Allied Workers of Tarma) may be involved in proceedings to cancel their union registration at the company's request, despite the fact that each of these organizations has more than 20 members, the aim of this being to de-rail talks on unions' claims for 1999-2000.

837. In its communications of 5 July, 29 September and 20 October 1999, the complainant records that at its March 1999 meeting, the Committee recommended to the Government that it inform the Committee of the outcome of proceedings initiated by the Electrosur Este SA enterprise in the Constitutional and Social Division of the Supreme Court of Justice against the ruling of the Second Civil Division of the Cuzco Superior Court of Justice, which had ruled in favour of the trade union official, Mr. Guillermo Barrueta Gómez, in his action against the enterprise for failure to comply with a collective agreement and an arbitration ruling concerning the payment of his trade union allowances. In this regard, the complainant states that the Constitutional and Social Division of the Supreme Court of Justice on 25 June 1998 ruled that the appeal by the Electrosur Este SA enterprise was without foundation and consequently restored the entitlement of the worker and trade union official in question to payment of the trade union allowances owed to him since 1992. The complainant also adds that on 26 April 1999, the Supreme Court notified both parties of the contents of the ruling and immediately referred the case back to the original court (in the city of Cuzco) for execution of the ruling. The complainant states that the labour court judge in Cuzco, in clear and open contravention of the law, ruled that the payment of the trade union allowances owed to Mr. Guillermo Barrueta Gómez between September 1995 and September 1999 was inadmissible, and ordered payment only of the 11,221 new soles owed up to 30 August 1995. According to the complainant, the ruling of the Cuzco labour court that the payment of the accrued trade union allowances was inadmissible is a clear indication of a blatantly discriminatory and anti-union attitude towards the trade union official in question.

838. The complainant also alleges that a communication of 31 August 1999 accused Mr. Guillermo Barrueta Gómez of serious misconduct in that he insulted, slandered and libelled officials of the Electrosur Este SA enterprise, and that in the end he was dismissed by a communication dated 9 September 1999. The complainant argues that he was in fact dismissed for giving voice to demands and views consistent with his trade union mandate, and that this constitutes anti-union discrimination.

839. In its communication of 5 August 1999, the complainant states that as of 16 July 1999, the first session of direct talks for 1999-2000 took place between executive managers of Electrosur Este SA and members of the negotiating committee representing the company's trade unions. The complainant alleges that a group of Electrosur Este SA officials, acting outside the collective talks, passed on information to trade union officials according to which Electrosur Este SA was planning staff cuts, mainly affecting unionized workers including trade union officials, following the creation of the new enterprise ELECTROPUNO SA within the Department of Puno; this would involve reducing staff currently employed at the Cuzco headquarters and replacing them with staff currently employed in the Puno jurisdiction. The officials in question also indicated that such a decision would be taken more rapidly if the members of the negotiating committee did not accept the company's offer of a non-remunerative one-off productivity payment for all employees during 1999. According to the complainant, all the unionized workers and their representatives feel threatened with regard to their stability of employment and restricted in the exercise of their right to free collective bargaining and freedom of association.

840. The complainant also alleges that, apart from these threats, there have also been recent acts of harassment and intimidation by the general manager of the Machupicchu Electricity-Generating Enterprise SA (EGEMSA) against the General Secretary of the Single Trade Union of Workers of Electrosur Este Cuzco and the regional General Secretary for the

south-eastern region of the federation, Mr. Nazario Arellano Choque, following his statements published in the *República del Gran Sur* according to which EGEMSA had appointed five of its unionized employees to new positions of trust, which meant that the number of members of the Single Trade Union of Workers of the Machupicchu Power Plant SUTEM (of EGEMSA) had been reduced to 17, thereby triggering the cancellation of the trade union's registration. To justify its attitude, the company, in a letter dated 19 April 1999 addressed to the trade union official in question, accused him of slander and threatened legal action if he refused to withdraw statements which, in the company's view, contributed to an adverse climate and damaged the company's public image.

C. The Government's reply

841. In its communications of 8 and 10 February, 28 August 2000 and 18 January 2001, the Government states, with regard to the allegations, that the Government makes it a condition of concluding collective agreements that they be officially approved and comply with Act No. 27012 (the Public Sector Budget Act) and with the directives contained in Ministerial Decision No. 075-99-EF, that in accordance with article 28 of the political Constitution of Peru, the State recognizes the rights to organize, engage in collective bargaining and strike, by safeguarding the democratic exercise of those rights and promoting collective talks aimed at achieving a peaceful solution to labour disputes. To that end, the Government of Peru, in deference to the international conventions in this area, has established constitutional protection of workers' fundamental rights. Under the terms of section 11 of Emergency Decree No. 11-99 of 14 March 1999, state-owned enterprises during the 1999 budget exercise would base their wages policies for all their staff (whether covered by collective talks or not) on the award of a one-off productivity bonus (BUP) which was not of a remunerative character and would be governed by a Decision of the Minister of Economics and Finance. On 10 April 1999, Ministerial Decision No. 075-99-EF was promulgated and established a number of conditions for granting the BUP. In the case of enterprises covered by collective bargaining, those requirements are as follows: (a) prior assessment of workers for the award of the BUP; (b) simplification of the remuneration system and/or conclusion of comprehensive wages agreements; and (c) the bonus should be proposed and awarded only within the context of collective talks. Once these conditions are met, the agreement in question must be submitted to the OIOE for approval, in accordance with Act No. 27012 (the Public Sector Budget Act) and Ministerial Decision No. 075-99-EF. In this regard, the Government states that these requirements are not intended in any way to be an obstacle or an illegal or unreasonable bureaucratic hindrance to the free exercise of workers' constitutional rights in such enterprises, but seek to establish reasonable principles for administering these benefits. To that end, the provisions referred to here seek to complement, rather than restrict, the scope of those benefits.

842. With regard to the allegation that de-registration of trade unions with fewer than 20 members was made a condition for collective bargaining, the Government states that, in accordance with sections 14 and 20 of Legislative Decree No. 25593 (the Collective Labour Relations Act), a trade union's registration is cancelled if it ceases to meet any of the conditions for its establishment and continued existence. Under the terms of the provisions in question, in the case of company trade unions such as the organizations involved in this case, they must have at least 20 members in order to continue operating. Having verified that those requirements were no longer met, the companies' response – which was to apply to the labour authority for de-registration – was consonant with the regulations in force. It should also be noted that the labour authority will have to verify compliance with the established conditions for cancellation of registration before approving the application. The Government states that, through the Ministry of Labour and Social Promotion, it is attempting to promote and develop the principles established in the international conventions and in current national legislation on protection of workers'

rights, and that it is developing policies aimed at providing mechanisms to protect workers' fundamental rights, as provided for in its own laws and in accordance with international conventions. The Government therefore flatly denies that there is any campaign by the labour authorities to put the trade unions out of action.

843. With regard to the allegation concerning the unilateral suspension of the trade union allowances owed to Mr. Guillermo Barrueta Gómez, the Government states that the failure by the Electrosur Este SA enterprise to comply with the collective agreements of 5 December 1980, 8 March 1982 and 28 September 1987 by unilaterally suspending (from 30 June 1992 onwards) the trade union allowances in question could have been challenged under existing labour law. From the facts set out by the complainant, it would appear that payment of the allowances in question was legally recognized in a ruling given on 5 July 1999 by the Constitutional and Social Division of the Supreme Court of Justice. However, the entitlement of the trade union official in question was recognized only with regard to trade union allowances payable up to 30 August 1995. These aspects are purely procedural and do not come within the remit of the executive branch, given that under the country's political Constitution the judiciary is autonomous. Similarly, Supreme Decree No. 017-93-JUS (single text of the Organic Law on the Judiciary) guarantees that autonomy, which allows the courts complete independence in their rulings, and the Ministry of Labour and Social Promotion may therefore not intervene in any way. The right of the trade union official Mr. Guillermo Barrueta Gómez to apply to the labour court to enforce the ruling of the Constitutional and Social Division of the Supreme Court of Justice is legally protected, and information is currently awaited on the execution of the ruling. Clearly, procedural labour law provides the mechanisms needed to implement judicial rulings.

844. As regards the allegation concerning the dismissal by the Electrosur Este SA enterprise of the trade union official Mr. Guillermo Barrueta Gómez, the Government states that in an official letter, No. 9974, dated 17 August 1999 from the company, the union official in question was accused of grave misconduct within the meaning of section 25(f) of Supreme Decree No. 003-97-TR (the Act respecting labour productivity and competitivity), in particular, that he had insulted and libelled company officials, as evidenced by a circular sent by the Federation of Peruvian Light and Power Workers containing accusations that were injurious to the honour and good name of those officials and prejudicial to the company's public image. The Government states that the law provides for mechanisms to ensure that trade union officials are not dismissed for engaging in activities of this type. In this regard, Legislative Decree No. 25593, which governs labour relations of workers in the private sector, guarantees trade union immunity, which means that certain workers may not be dismissed or transferred to other establishments at the same enterprise without just cause being duly demonstrated or without the workers' consent. The Government adds that it is bound to point out that the exercise of trade union activities does not include serious misconduct; the legitimacy of activities involving such misconduct is questionable, even if the mechanisms referred to previously for protecting workers or trade union members are not. The Government states with regard to the "insulting" nature of the statements made by the trade union official Mr. Guillermo Barrueta Gómez, which led to his dismissal, that the right to present petitions, as he has done, is a legitimate activity for trade union organizations which is in conformity with the provisions of Decision No. 447. However, in the specific case in question, it was not simply a question of a petition presented by the trade union official. The decision to dismiss him followed the break-up of Electrosur Este SA and the establishment of ELECTROPUNO. Serious misconduct is regarded as just cause for dismissal, and under the terms of section 26 of the instrument in question, the nature of any serious misconduct must be examined in accordance with established procedure. To that end, national labour law provides a protective mechanism which enables workers who believe they have been unfairly dismissed to seek redress through judicial channels. On the other hand, national law also provides mechanisms to protect those who believe they may have been harmed by false statements. According to the

Government, the allegation of discrimination made by the complainant is offset against the arguments put forward by the Electrosur Este SA enterprise for the dismissal of the trade union official in question. However, the law also provides mechanisms to protect the rights of workers, whether or not they are trade union officials, which shows that the Government complies with the international labour Conventions on freedom of association which it has signed.

845. With regard to the allegation concerning acts of discrimination at the Electrosur Este SA enterprise, in particular against trade union officials, the Government states that the alleged policy of intimidation and harassment by the complainant is based on nothing more than speculation. Nevertheless, the Government states that the law provides all the mechanisms needed to prevent abuses by the Electrosur Este SA that are detrimental to the rights of trade union members at that company. At the constitutional level, trade union members, whether holders of trade union office or not, are protected by article 28 of the Constitution, by Legislative Decree No. 25593 and by Legislative Decree No. 728. The Government states that, with regard to the alleged threat to employment stability, section 29(a) of Supreme Decree No. 003-97-TR (single text of Legislative Decree No. 728, the Act respecting labour productivity and competitivity) stipulates expressly that a dismissal motivated by membership of a trade union or participation in union activities is null and void. Trade union members, whether or not they hold union office, need not feel threatened by dismissal on those grounds. The law in question provides two options to a worker whose claim is upheld. The first is reinstatement, and the second is compensation for arbitrary dismissal amounting to one-and-a-half times the worker's monthly wages for each completed year of service, up to a maximum total sum of 12 times the worker's monthly wages. As regards the statements made by Nazario Arellano Choque, General Secretary of the Single Trade Union of Workers of Electrosur Este Cuzco and regional General Secretary (south-east region) of the federation, the Government states that the statements in question refer to the reduction in the membership of the Single Trade Union of Workers of the Machupicchu Power Plant SUTEM (of EGEMSA) to 17 following the appointment of five trade union members to positions of trust. The Government states that the complainant considered that this was intended to bring about the de-registration of the trade union, given that under the terms of section 14 of Legislative Decree No. 25593 the continued existence of a trade union depends on it having at least 20 members; however, the trade union here is focusing narrowly on a supposed attempt to bring about cancellation of its registration and disregarding the potential benefits to the workers concerned of their new appointments.

846. As regards the allegation concerning the dismissal by the Electrosur Este SA enterprise of Adriel Crispín Villafuerte Collado, the Government states that the official letter, No. 571-98, dated 25 November 1998 that was sent by the company's head of administration and finance accused the General Secretary of the Single Trade Union of Workers of Electrosur Este SA Puno of serious misconduct of the type referred to in section 25 of Supreme Decree No. 003-97-TR (single text of Legislative Decree No. 728). In December 1998, the company dismissed the worker in question for failure to comply with technical standards, unfair competition, misappropriation and giving false information to the employer. The Government states that the protection given by legislation to workers, whether trade union officials or not, was clear and effective. Allegations of harassment are being investigated by the courts which, under the political Constitution, are autonomous. It is thus the judicial branch that will determine whether or not the dismissal was justified, and if it was not, the worker's claims will be upheld and he will be reinstated.

847. As regards the dismissal of the trade union official, Walter Linares Sanz, the Government states that the official letter of the Supreme Court's Interim Division of Constitutional and Social Law (No. 066 of 16 June 2000), this case, No. 581-99, was to be heard on 10 July

2000 and the outcome of the hearing will be communicated as soon as the court's ruling is available.

848. As regards the allegation that resignation from the Single Trade Union of Light and Power Workers of Ucayali SA was made a condition of obtaining an open-ended contract of employment, the Government states that the complainant has failed to support this assertion with evidence and that resignation from the union is a matter for the workers to decide, in accordance with section 3 of Act No. 25593 (the Collective Labour Relations Act). Similarly, under section 4 of that Act, the State, employers and the representatives of both are required to refrain from committing any acts limiting, restricting or impairing in any way the workers' right to organize, and from interfering in any way in the establishment, administration or maintenance of the trade union organizations set up by the workers. If the complainant provides evidence to support its assertion, the employer will be liable to legal action for violation of Act No. 25593 (the Collective Labour Relations Act), which is itself based on the constitutionally recognized right to freedom of association (article 28 of the political Constitution).

849. With regard to the alleged transfers to workplaces other than those indicated in the contracts of employment of workers belonging to the Single Trade Union of Light and Power Workers of Ucayali SA, the Government states that it requires supporting evidence from the complainant to ensure that effective use is made of the protective mechanism established under section 30 of Act No. 25593 (the Collective Labour Relations Act), which, among other guarantees of trade union immunity, states that certain workers may not be dismissed or transferred to other establishments of the same enterprise without just cause being duly demonstrated or without the workers' consent, the purpose of this being to safeguard the exercise of their trade union rights. The Government also points out that, if the alleged transfer of workers to another establishment is shown to have taken place, then under the terms of section 30 of the single text of the Act respecting labour productivity and competitivity, approved by Supreme Decree No. 003-97-TR, such transfers could be regarded as acts of harassment against the workers concerned. As can be seen, the aforementioned provisions are intended as effective sanctions for any act of anti-union discrimination by the employer which threatens the collective rights of workers. However, the effective enforcement of those rights requires that evidence be provided in support of the complainant's allegations, and it is on the basis of such evidence that the employer may be liable to sanctions imposed by the courts.

D. The Committee's conclusions

850. *The Committee notes that the allegations that had remained pending in the present case refer to numerous cases of anti-union discrimination and interference dating from 1997 in the enterprises Electro Ucayali SA, Electro Centro SA, Electricidad de Oriente SA and Electro Sur Este SA (Puno subregion). In this regard, the Committee notes that the complainant has presented new allegations of anti-union discrimination (dismissals and threats of dismissal), attempts to obstruct collective bargaining and cancellation of trade union registration in a number of companies in the electricity sector; some of these companies were mentioned in the allegations presented in the original complaint.*

851. *First, the Committee notes with deep concern the large number of allegations concerning anti-union discrimination in enterprises in the country's electricity sector, even after this complaint was originally presented.*

852. *With regard to the allegations which had remained pending during the previous examination of the case, and which had concerned the following various acts of anti-union discrimination and interference against the Ucayali SA branch of the Light and Power Workers' Union, calculated to eliminate trade union activity, including obstruction of*

collective bargaining, anti-union dismissals, coercion and threats against workers belonging to the Electro Ucayali SA trade union branch:

(1) hostility towards and obstruction of trade union activity, interference in the internal affairs of the abovementioned union, intimidation of union officials and hinting at the creation of another trade union organization to evade their obligations under prior collective agreements;

(2) the collective dismissal of 19 unionized workers and coercion by the Ucayali SA enterprise of workers to give up their union membership, threatening to include them in the collective dismissal if they refuse (as a result, recognition of the trade union was cancelled as the number of members was reduced to fewer than 20, the legal minimum);

(3) unfair dismissal of trade union officer Mr. Jaime Tuesta Linares by the Eastern Regional Public Electricity Supply Company;

(4) a systematic campaign of threatened dismissal and harassment against trade union officers and unionized workers in the Electro Sur Este SA enterprise, which has caused serious problems for the workers' union branch in Electro Sur Este Abancay; specifically: (i) trade union officer Mr. Moisés Zegarra Ancalla was transferred; and (ii) the Electro Sur Este SA enterprise (Puno subregion) threatened trade union officer Mr. Adriel Villafuerte Collado with dismissal and suspended him for 30 days without pay;

(5) threats of sanctions and dismissals against trade union officers at the Tacna and district branch of the Light and Power Workers' Union by the Electro Sur SA Company, which considered that the trade union officers were guilty of serious misconduct for not having dropped their action to enforce a court order in favour of the workers concerning salary increments due to 111 workers [see 313th Report, para. 164],

the Committee deeply regrets that, once again, the Government has communicated only its observations concerning the first two allegations, and reiterates its previous comments, i.e. that the complainant had not provided evidence to support its allegations, and that there exist legal provisions and judicial proceedings that the latter had not used. Furthermore, the Government states that the complainant has not made the inquiries requested from it. Under these circumstances, the Committee urges the Government to take immediate measures to begin investigations into all these allegations, which go back more than three years, and to keep the Committee informed of the outcome of those investigations. The Committee requests the Government, in the event that the allegations are found to be true, to take steps to rectify the acts of discrimination that have been committed and to punish those responsible for them. In this regard, the Committee recalls that: "No person should be dismissed or prejudiced in his or her employment by reason of trade union membership or legitimate trade union activities, and it is important to forbid and penalize in practice all acts of anti-union discrimination in respect of employment" [see ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 696]. Under these circumstances, the Committee requests the Government to ensure that this principle is fully respected by enterprises in the electricity sector.*

853. *As regards the allegation regarding the dismissal on 11 December 1998 of the General Secretary of the Single Trade Union of Workers of Electro Sur Este SA Puno, Mr. Adriel Grispin Villafuerte Collado, the Committee notes that the Government and the complainant have given contradictory accounts. While the Government maintains that the company dismissed the worker in question for failure to comply with technical standards, unfair competition, misappropriation and giving false information to the employer, the*

complainant alleges that he was dismissed for being a trade union official and for participating in legitimate trade union activities. In this regard, the Committee notes that both parties indicate that the union official in question has begun legal proceedings in relation to his dismissal. Under these circumstances, the Committee hopes that the judicial authorities will rapidly hand down their decision and that this decision will be in full conformity with the principles of freedom of association. The Committee urges the Government, if this decision concludes that there have been acts of anti-union discrimination, to take the necessary measures to ensure that the trade union official is reinstated in his post. The Committee requests the Government to keep it informed in this regard and of the final ruling handed down by the courts.

854. *With regard to the allegation concerning the suspension of trade union allowances owed to the trade union official, Mr. Guillermo Barrueta Gómez, by the Elecro Sur Este SA enterprise, the Committee notes the Government's statements to the effect that: (1) the allowances in question were legally recognized by the Supreme Court of Justice on 5 July 1999, but that the entitlements of the official in question were recognized only in respect of trade union allowances payable up to 30 August 1995; (2) the right of the trade union official in question to apply to the labour court for an order enforcing the Supreme Court ruling is legally protected; and (3) information is awaited on the implementation of the ruling. In this regard, the Committee notes the allegation of the complainant that the Supreme Court ordered payment of the trade union allowances in question from 1992 until the present, but that the Cuzco labour court ordered the payment only of those allowances that were owed up to 30 August 1995. Under those circumstances, the Committee regrets the delay in the payment of the allowances owed to Mr. Guillermo Barrueta Gómez for eight years, and requests the Government to ensure full compliance with the court ruling ordering payment of those allowances.*

855. *With regard to the alleged dismissal of the trade union official, Mr. Guillermo Barrueta Gómez, by the Electro Sur Este SA enterprise on 9 September 1999, the Committee notes that the accounts given by the Government and by the complainant concerning the motives for the dismissal contradict one another. According to the Government, the official in question was dismissed for signing a circular containing accusations which were detrimental to the honour and good name of company officials and the company's public image; the complainant alleges that he was dismissed for putting forward demands and opinions consistent with his trade union mandate. Under the circumstances, the Committee requests the Government to take steps to undertake an investigation with the purpose of ascertaining the real motives for the dismissal of the trade union official in question and, in the event that it is confirmed that the dismissal was of an anti-union nature, to reinstate Mr. Barrueta Gómez in his post. The Committee requests the Government to keep it informed of the final outcome of that inquiry.*

856. *With regard to Emergency Decree No. 011 and Ministerial Decision No. 075-99-EF of 1 April 1999, which have been challenged by the complainant on the grounds that they violate the right to collective bargaining by making collective agreements subject to the approval of the Office for State Institutions and Bodies (OIOE), the Committee notes that this allegation is already being examined in the context of another complaint presented against the Government of Peru (Case No. 2049). Under these circumstances, the Committee refers to its conclusions and recommendations in that case.*

857. *With regard to the alleged anti-union campaign which is said to have been launched by companies in the electricity sector at the start of the 1999-2000 round of collective talks, a campaign which involved the de-registration of trade unions with fewer than the minimum required number of 20 members (the complainant gives the names of four trade unions whose registration was cancelled in this way), the Committee notes the Government's statements to the effect that: (1) under the terms of the Collective Labour Relations Act,*

*de-registration takes place when trade union organizations no longer meet one of the basic requirements for their establishment and continued existence, and that in the case of company trade unions, they must have at least 20 members; (2) where it is found that this requirement is no longer met, the company in question applies to the labour authority in accordance with the law and the labour authority is required to verify that the conditions for de-registration are met; and (3) it flatly denies the allegation concerning a campaign by the administrative authorities to put the trade unions out of action. In this regard, the Committee draws the Government's attention to the fact that "The administrative dissolution of trade union organizations constitutes a clear violation of Article 4 of Convention No. 87" and that "Cancellation of a trade union's registration should only be possible through judicial channels" [see **Digest**, op. cit., paras. 665 and 670]. In this context, noting that the complainant has been alleging within the context of this case since 1997 that there has been a campaign of anti-union harassment and of anti-union dismissals in companies in the electricity sector, the Committee cannot rule out the possibility that the membership of trade unions whose registration has been cancelled has declined as a consequence of those actions. Under these circumstances, the Committee requests the Government to take steps to ensure that decisions to cancel the registration of all the trade union organizations referred to by the complainant are suspended until such time as a court ruling is given. The Committee requests the Government to keep it informed of any measures adopted in this regard.*

858. *With regard to the allegation of threats made by the administration of the Electro Sur Este SA enterprise during the 1999-2000 collective talks to cut staff – mainly unionized workers – if workers did not accept the company's offer of a productivity bonus, the Committee notes the Government's statements to the effect that the allegations are mere speculation and that legal provisions are available to provide protection to trade union officials and workers who are dismissed for anti-union reasons. In this respect, taking into account that within the context of this case there have already been allegations concerning anti-union transfers and dismissals at the company in question, the Committee requests the Government to take steps to undertake an immediate investigation into the allegations and, if they are found to be true, to apply the sanctions provided for in the law.*

859. *With regard to the allegation concerning threats against the General Secretary of the Single Trade Union of Workers of Electro Sur Este Cuzco, Mr. Nazario Arellano Choque, (which referred to an accusation of libel following statements made in La República concerning the reduction in membership of the Single Trade Union of Workers of the Machupicchu Power Plant to 17 members following the appointment of five unionized workers to positions of trust with the aim of cancelling the union's registration), the Committee notes with regret that the Government confines itself to stating that the complainant has sought to focus on an alleged intention to cancel the union's registration rather than on the potential advantages to the workers concerned of their new appointments. In this respect, noting that the Government acknowledges that the statement made by the trade union official in question drew attention to the reduction in a trade union's membership, which is a part of legitimate trade union activity, the Committee requests the Government to ensure that Mr. Nazario Arellano Choque does not face legal proceedings for having made such a statement. Similarly, the Committee requests the Government to ensure that the registration of the Single Trade Union of Workers of the Machupicchu Power Plant is not cancelled by administrative authority because of the fall in the union's membership as a result of the appointment of five of the union members to positions of trust, and recalls that an excessively broad interpretation of the concept of "worker of confidence", which denies such workers their right of association, may seriously limit trade union rights [see **Digest**, op. cit., para. 233].*

860. *With regard to the proceedings now under way concerning the dismissal of the trade union official, Mr. Walter Linares Sanz, from the Electro Sur SA enterprise, the Committee notes*

that the case was referred to the Supreme Court on 10 July 2000 and that as soon as the outcome of that hearing is known it will be communicated to the Committee. In this regard, the Committee hopes that the judicial authorities will give a ruling in the near future, and urges the Government to keep it informed of any ruling handed down.

The Committee's recommendations

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

(a) Noting with deep concern the large number of allegations of anti-union discrimination in the country's electricity sector, the Committee recalls that no person should be dismissed or prejudiced in his or her 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; the Committee requests the Government to ensure that this principle is fully respected by the enterprises in the electricity sector.

(b) As regards the allegations that had remained pending at the previous examination of the case in March 1999 and was set out in the foregoing conclusions, the Committee urges the Government to take immediate steps to conduct investigations into all the allegations which go back more than three years and to keep it informed of the outcome of those investigations. The Committee requests the Government, if the allegations are found to be true, to take measures to rectify the acts of discrimination that have been committed and punish those responsible.

(c) As concerns the dismissal of the trade union official Mr. Adriel Grispin Villafuerte Collado at the Electro Sur Este SA Puno enterprise, the Committee hopes that the judicial authorities will rapidly hand down their decision and that this decision will be in full conformity with the principles of freedom of association. The Committee urges the Government, if this decision concludes that there have been acts of anti-union discrimination, to take the necessary measures to ensure that the trade union official is reinstated in his post. The Committee requests the Government to keep it informed in this regard and to keep it informed of the final ruling handed down by the judicial authority.

(d) The Committee requests the Government to ensure full compliance with the law by ordering the payment of the trade union allowances owed to the union official Mr. Guillermo Barrueta Gómez.

(e) The Committee requests the Government to take the necessary measures to ensure that an investigation is carried out into the motives for the dismissal of the trade union official Mr. Barrueta Gómez and, if they are found to have an anti-union character, to reinstate him in his post. The Committee requests the Government to keep it informed of the outcome of this investigation.

(f) The Committee requests the Government to take steps to ensure that the decisions to cancel the registration of all the trade union organizations

mentioned by the complainant are suspended until the courts give a ruling on the matter. The Committee requests the Government to keep it informed of any measures adopted in this regard.

(g) The Committee requests the Government to ensure that Mr. Nazario Arellano Choque does not face legal proceedings as a result of statements that he made concerning the reduction in the membership of the Single Trade Union of Workers of the Machupicchu Power Plant. Similarly, the Committee requests the Government to ensure that the registration of the trade union in question is not cancelled by the administrative authority as a result of the fall in its membership following the appointment of five of its members to positions of trust.

(h) With regard to the allegation of threats by the administration of the Electro Sur Este SA enterprise during the 1999-2000 round of collective talks to dismiss workers – mainly unionized workers – if they did not accept the company's offer of a productivity bonus, the Committee requests the Government to take steps to undertake an investigation into this matter and, if the allegation is found to be true, to ensure that the sanctions provided for in the law be applied.

(i) The Committee expresses the hope that the judicial authorities will give a ruling in the near future on the dismissal of the trade union official Mr. Walter Linares Sanz, and requests the Government to keep it informed of the final ruling.

CASE NO. 2076

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

Complaint against the Government of Peru presented by the General Confederation of Workers of Peru (CGTP)

Allegations: Anti-union dismissals

862. The complaint is contained in a communication dated 9 February 2000 from the General Confederation of Workers of Peru (CGTP). The CGTP subsequently sent new allegations in a communications dated 17 May 2000. The Government sent observations in communications dated 9 May, 17 August, 3 November 2000 and 2 March 2001.

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

A. The complainant's allegations

864. In its communication of 9 February 2000, the General Confederation of Workers of Peru (CGTP) states that the Compañia Peruana de Radiodifusión S.A. is a private radio and television company which has 23 subsidiaries throughout Peru. The following workers of the company were elected to trade union office for the period 1998-2000, were recognized

as trade union officials by the labour administration authorities and represented workers in the 1999 collective talks: Mr. Sixto M. Olivos León, National General Secretary; Mr. Heraldo Z. Torres Osnayo, National Organization Secretary; Mr. Juan D. Ayulo Petzoldt, National Economics Secretary; and Mr. Luis Santiago Puertas, National Legal Defence and Human Rights Secretary. Furthermore, these officials enjoyed protection under the terms of trade union privilege, which in accordance with Act No. 25593 respecting collective labour relations and its regulations D.S. 011-92-TR protected them against dismissal.

865. The complainant alleges that on 31 December 1999, the Compañia Peruana de Radiodifusión S.A. sent letters of dismissal to the four trade union officials in question, alleging that they had committed serious misdemeanours by exercising their right of collective representation to complain about the withholding of trade union membership dues and failure to pay workers' wages for May and June 1999. The complainant reports that the dismissals in question have given rise to applications to the courts to revoke them on the grounds that the reasons given for them by the company are only a pretext, the real purpose being to eliminate the union's leadership and ultimately the union itself. The complainant states that the company's specific intention is to eliminate the trade union and establish in its place a system of arbitration which would circumvent collective bargaining involving the union.

866. The CGTP states that: (1) in accordance with its fundamental obligation to ensure that the rule of law applies in labour relations, it sent a letter to the company requesting that it revoke the dismissals, but received no reply; and (2) in all cases, the workers with official trade union posts have applied to the courts to revoke the dismissals, reinstate them at work and pay their back wages. Although the applications have been ruled to be admissible and the cases should soon be at the stage of presentation of evidence before rulings are given, there is a danger in this case, as in so many others, that the proceedings will drag on for some time, without any guarantee that justice will be done swiftly, which would be prejudicial to the rights of the trade unions officials and their families.

867. In its communication of 17 May 2000 the CGTP states that the company Schogang Hierro Perú is a private mining and metallurgy company, and that the employees Mr. Rey Fernández Patiño and Mr. Adriel Vargas Caritas – the General Secretary and Legal Defence Secretary, respectively, of the Mine Workers' Trade Union at the company – were elected to their union posts for the period 1999-2000, were recognized as union officials by the labour administration authority and represented workers in the 1999 collective talks. Furthermore, they enjoyed protection under the terms of trade union privilege, which in accordance with Act No. 25593 respecting collective labour relations and its regulations D.S. 011-92-TR protected them against dismissal.

868. The complainant alleges that on 22 September 1999 the company sent out official letters of dismissal to the trade union officials alleging that they had committed serious misdemeanours by exercising their right of collective representation to complain about alleged abuses by the company against a section of the union (orders had allegedly been given to guards to break into workers' private lockers, an action which gave rise to a formal complaint to the prosecution authorities). This complaint was filed about seven months later without any further action being taken. The company took advantage of this outcome to dismiss the trade union officials. The latter appealed to the courts to revoke the dismissals on the grounds that the reasons given by the company were only a pretext, the real reason being to punish them for their persistence in defending collective bargaining in accordance with the mandate given to them by their members as trade union officials. The CGTP alleges that the company was motivated by the desire to impose collective talks which would not address the real needs of the workers, and the dismissals are particularly serious given that the dismissed trade union officials were members of the negotiating

committee responsible for holding talks on the union's latest set of claims; the company's intention was to curtail the union's activities and foment psychological unease among the workforce in order to impose terms which would be based solely on the wishes of management, without any genuine collective bargaining. The CGTP states that in accordance with its fundamental obligation to ensure that the rule of law applies in labour relations, it sent a letter to the company Schogang Hierro Perú S.A. requesting that the dismissals be revoked, but this met with no response whatsoever, which was a clear snub to the union.

B. The Government's reply

869. In its communications of 9 May, 17 August 2000 and 2 March 2001, the Government states the following with regard to the judicial proceedings initiated by the trade union officials Sixto M. Olivos León, Heraldo Z. Torres Osnayo, Juan D. Ayulo Petzoldt and Luis Santiago Puertas:

– Regarding the court proceedings initiated by Juan D. Ayulo Petzoldt to revoke his dismissal: as indicated in Decision No. 183412-2000-00023-0 of 28 January this year, the Twelfth Labour Court of Lima gave a ruling, No. 01, according to which the application is admissible and a copy of the application was sent to the other party. Subsequently, on 11 April, a hearing took place but failed to achieve any agreement between the parties, and the matter of revoking the dismissal was established as the matter in dispute.

– As regards the judicial proceedings initiated by Luis Santiago Puertas: according to Decision No. 183410-2000-00020-0 of 23 February this year, the application was ruled to be admissible. Subsequently a hearing was arranged for 6 June.

– As regards the court proceedings initiated by Sixto M. Olivos León: according to Decision No. 183404-2000-00014-0 of 24 January this year, the application was ruled to be admissible and a copy of the application sent to the other party. Subsequently a hearing was arranged for 26 April. No agreement was reached between the parties and the matter of revoking the dismissal was established as the matter in dispute.

– As regards the proceedings initiated by Heraldo Z. Torres Osnayo, Decision No. 183408-2000-00019-0 indicates that once the application was allowed to proceed, a hearing took place. No agreement was reached between the parties and the revocation of the dismissal was established as the matter in dispute.

870. The Government adds that under Peruvian law, the right of association is guaranteed (article 28 of the Constitution) and that Act No. 25593 provides for trade union privilege under the terms of which certain workers cannot be dismissed or transferred within a company without a good reason or without their consent. At the same time, labour legislation safeguards the rights of trade union officials by providing appropriate mechanisms: article 29 of Legislative Decree No. 728 (Act respecting labour productivity and competitiveness) invalidates any dismissal motivated by a worker's trade union membership or activities. Furthermore, a worker who initiates judicial proceedings and obtains a favourable ruling is entitled to reinstatement in his or her post, or alternatively can choose to accept the compensation available in cases of arbitrary dismissal. The Government adds that Peruvian labour legislation safeguards the workers' rights cited by the complainant which has referred to certain specific legislative provisions. Indeed, following the alleged infringements of trade union rights, the allegedly wronged parties initiated judicial proceedings to enforce their rights. The Government also states that while it was not possible in any of the cases in question to achieve conciliation between the parties, the matter of possible revocation of the dismissals will be examined during the

judicial proceedings in question; it is too early to submit a complaint as long as applications to revoke the dismissals are still before the courts, particularly given that the workers concerned have themselves chosen this course of action. It must also be noted that under the terms of article 139 of Peru's Constitution, the judiciary is completely independent and the Ministry of Labour has no power to intervene. Lastly, the Government states that it must be clearly understood that national legislation provides mechanisms for enforcing workers' rights; this is clear from the fact that the aggrieved parties have applied for revocation of the dismissals and have themselves chosen to seek a resolution to the dispute by applying to the courts whose independence is guaranteed under the Constitution. The Government indicates that it has approached the judicial authorities so as to be able to inform the Committee on the status of the judicial proceedings.

871. In its communication of 3 November 2000, the Government indicates the Civil Superior Court held that the dismissals of Messrs. Rey Fernández Patiño and Adriel Vargas Caritas were null and void, and ordered that these trade union leaders be reinstated and fully compensated as regards back pay, legal interests and court costs (the Government annexes the texts of the judgement).

C. The Committee's conclusions

872. *The Committee notes that in the present case the complainant alleges the dismissals of four trade union officials (Sixto M. Olivos León, Heraldo Z. Torres Osnayo, Juan D. Ayulo Petzoldt and Luis Santiago Puertas) at the Compañia Peruana de Radiodifusión S.A. after they complained about the withholding of trade union dues by the company and its failure to pay the wages of the workforce for May and June 1999, and the dismissal of the General Secretary and Legal Defence Secretary (Rey Fernández Patiño and Adriel Vargas Caritas, respectively) of the Mine Workers' Trade Union at the company Schogang Hierro Perú S.A. after they complained that the company had given orders to break into workers' lockers.*

873. *As regards the allegation concerning the dismissals on 31 December 1999 of the four trade union officials at the Compañia Peruana de Radiodifusión S.A. after they complained about the withholding by the company of trade union membership dues and its failure to pay the wages of the workforce for May and June 1999, the Committee notes the legislative provisions protecting trade union officials from acts of anti-union discrimination. The Committee notes the statements by the complainant and the Government to the effect that the trade union officials in question have initiated judicial proceedings which are currently under way. The Committee notes in this regard the Government's statement to the effect that a complaint is premature as long as applications to revoke the dismissals are still pending following voluntary applications by the officials concerned. The Committee recalls in this regard that the use of internal legal procedures, whatever the outcome, is undoubtedly a factor to be taken into consideration; however, the Committee has always considered that, in view of its responsibilities, its competence to examine allegations is not subject to the exhaustion of national procedures. The Committee expects that the judicial authorities will rapidly hand down their decisions and that these decisions will be in full conformity with the principles of freedom of association. The Committee urges the Government, if these decisions conclude that there have been acts of anti-union discrimination, to take the necessary measures to ensure that the trade union officials are reinstated in their posts, and requests the Government to keep it informed of the decision issued by the courts concerning the dismissals of these trade union officials (Sixto M. Olivos León, Heraldo Z. Torres Osnayo, Juan D. Ayulo Petzoldt and Luis Santiago Puertas).*

874. *As regards the alleged dismissal on 22 September 1999 of the General Secretary and Legal Defence Secretary (Rey Fernández Patiño and Adriel Vargas Caritas, respectively)*

of the Mine Workers' Trade Union at the company Schogang Hierro Perú S.A. after they complained that the company had given orders to break into workers' private lockers, the Committee notes that the Civil Superior Court overturned these dismissals, and ordered that these two trade union leaders be reinstated with full compensation as regards back pay, legal interest and court costs. The Committee requests the Government to confirm whether these trade union leaders have in fact been reinstated with full compensation, as ordered by the Court.

The Committee's recommendations

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

(a) Concerning the dismissal of the trade union officials Sixto M. Olivos León, Heraldo Z. Torres Osnayo, Juan D. Ayulo Petzoldt and Luis Santiago Puertas at the Compañia Peruana de Radiodifusión S.A., the Committee expects that the judicial authorities will rapidly hand down their decisions and that these decisions will be in full conformity with the principles of freedom of association. The Committee urges the Government, if these decisions conclude that there have been acts of anti-union discrimination, to take the necessary measures to ensure that the trade union officials are reinstated in their posts. The Committee requests the Government to keep it informed of the judgements handed down in this respect.

(b) The Committee requests the Government to confirm whether the trade union leaders Mr. Rey Fernández Patiño and Adriel Vargas Caritas, have in fact been reinstated in their posts with full compensation, as ordered by the Court.

CASE NO. 2091

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

Complaint against the Government of Romania presented by — the National Trade Union Bloc (BNS) and — the National Federation of Dock Workers' Unions (FNSP)

Allegations: Acts of interference by an employer in a trade union's management and activities; sanctioning of trade union leaders

876. This complaint is contained in a communication dated 6 June 2000 from the National Trade Union Bloc (BNS) acting on behalf of its affiliate, the National Federation of Dock Workers' Unions (FNSP). The Government of Romania responded by letter of 21 August 2000.

877. Romania has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Workers' Representatives Convention, 1971 (No. 135), and the Collective Bargaining Convention, 1981 (154).

A. The complainants' allegations

878. In its communication of 6 June 2000, BNS, the complainant organization, alleges, on behalf of FNSP, its affiliate, that there are violations of ILO Conventions Nos. 87, 98, 135 and 154 in Romania on account of the arbitrary and biased application of the law regarding the settlement of industrial disputes by tribunals which have declared strikes unlawful in 85 per cent of cases brought before them. Although the relevant legislation has been improved, in particular following recommendations made by the Committee on Freedom of Association and the Committee of Experts, certain provisions remain problematic, especially article 54 of Act No. 168/1999 which entered into force on 1 January 2000 (to replace article 29 of Act No. 15/1991). In accordance with this legislation, whenever a strike is declared unlawful, the employer may apply administrative sanctions, including the termination of an individual contract of employment, both against the organizers of the strike (in most cases, trade union representatives) and striking workers. The complainant organization emphasizes that, in practice, the tribunals have confirmed the validity of all administrative sanctions of this kind applied by employers. The result is a climate of fear amongst workers who live under the threat of sanctions, including dismissal, if they take part in union protest action.

879. According to the complainant organization, the events associated with a strike held in August 1999 in a private company, S.C. Minmetal SA, at the port of Constanta, are a good example of the situation created by such measures. The Constanta court of first instance ruled that the strike was unlawful on two grounds. Firstly, failure to observe the negotiating schedule before resorting to strike action; in this regard, the complainants allege that the tribunal committed a serious factual error in its calculation of the applicable deadline. Secondly, the tribunal considered an FNSP communication to the Constanta regional port management as an attempt to halt the activity of workers who had not joined the strike. The complainant adds that, given that Minmetal SA was not the sole, nor even the principal enterprise handling the raw materials (minerals and coal) necessary for the smooth functioning of the Sidex Galati metalworking plant, any suspension of the strike was unjustified.

880. Over the same period, the management of Minmetal SA took various anti-union measures:

– several circulars were distributed to company employees, with announcements of the administrative measures taken against trade union leaders;

– the management called upon the company's various operational units to designate other union representatives with a view to conducting unit-level collective bargaining, in violation of article 14 of Act No. 130/1996 on collective bargaining and counter to judgement No. 27/03.03.1997 handed down by the court of Constanta, which acknowledged the representative status of the dockworkers' trade union;

– the company's Director-General declined to accept the union-appointed representatives for collective bargaining purposes; moreover, the company threatened the members of the bargaining team with administrative sanctions as compensation for the strike-incurred disruption amounting to an estimated US$100,000 (at present, this matter is sub judice before the Constanta court of first instance);

– the company filed criminal proceedings against Messrs. Ion Mihale, union leader, as well as Costel Petre and Gheorghe Caraiani, FNSP President and Secretary-General, respectively, accusing them of inflicting damage upon the national economy, occupational misconduct prejudicial to the public interest, publicly fomenting delinquency, fraud and false statements in official documents. However, the Constanta Public Prosecutor's Office decided not to pursue action in respect of such

accusations, given that the inquiry indicated that the allegations presented by Minmetal SA were unfounded.

881. All of these measures resulted in the termination of Mr. Ion Mihale's contract of employment on the grounds that he had organized a strike which the court subsequently judged to be unlawful.

882. Given the subjective interpretation formulated by the tribunals and which runs counter to ILO Conventions and principles regarding the promotion and protection of trade union rights, present legislation actually encourages the anti-trade union attitude of certain managers. Romanian workers, in general, and those of Minmetal SA in particular, live in a state of latent fear. Their confidence in the effectiveness of trade union action as a means of promoting and defending their occupational interests has been seriously undermined. The complainant organization attaches to its complaint a record of the events associated with the industrial dispute in Minmetal SA.

B. The Government's reply

883. In its reply dated 21 August 2000, the Government states that the strike held in August 1999 had been judged unlawful by the Constanta court of first instance on the following grounds:

– violation of article 22 of Act No. 15/1991 stipulating, inter alia, that strike action may not be called for as long as all possibilities of resolving the conflict by conciliation have not been exhausted; the court judged that the union representatives had not made all possible endeavours to resolve the conflict because they had not taken account of the company's financial situation (which had been explained to them at a conciliation meeting held on 29 July 1999) and, more particularly, had not put the management's offer to the workforce (a 22 per cent wage rise and the acceptance of the trade union's other claims);

– violation of article 26(3) of Act No. 15/1991 which prohibits strikers from taking any form of action likely to hinder the activity of workers not having joined the strike; in this respect, the court judged that a letter dated 10 August addressed by FNSP to the management of the port of Constanta was designed to paralyse Minmetal SA, whereas the 314 workers (out of a total of 702 employees) declining to join the strike action would have been capable of upholding operations;

– violation of article 21 of Act No. 15/1991 stipulating that the organizers of a strike shall, when it is declared, indicate its duration.

884. The Government rejects the allegation that the court of first instance committed a factual error in its calculation of the time frame and emphasizes that, for this purpose, the court had referred to the record of another collective bargaining session which had been concluded on 29 July. Its judgement was thus legitimate.

885. On 9 August 1999, Minmetal SA applied to the Supreme Court for suspension of the strike which had commenced that very day; its grounds were that the company was a major supplier of national steel plants and that a strike could cause major material and contractual damages, highly prejudicial to the national economy as well as to humanitarian interests. Given that the strike came to a close on 13 August, the Supreme Court considered that the company's request for a ruling no longer applied. Nevertheless, the strike did continue for two days after the Constanta court of first instance had declared it unlawful on 11 August 1999.

886. The Government also mentions that Minmetal SA states that it has taken no anti-trade union measures and presents its version of the facts in respect of these allegations:

– the company's management simply informed the workforce on 11 August that the strike had been judged unlawful;

– it informed the workforce that it was prepared to grant a 22 per cent increase and maintain the entirety of the former collective agreement which had expired on 30 June 1999; as the majority of workers had agreed with these proposals, it considered that the strike was no longer justified;

– the company also alleges the trade union representatives' bad faith in that they did not communicate its offer to the workforce;

– the company neither issued threats nor did it abusively dismiss workers; judgement No. 272/24.12.1999 terminated the contract of Mr. Ion Mihale as per 1 January 2000, in accordance with articles 100 and 130(I) of the Labour Code (judgement), which relate to disciplinary dismissals. In this instance, the court judged that Mr. Mihale was responsible for having launched an unlawful strike which caused major damage; it also noted that this was not his first offence and that he had twice been sanctioned in the past in the form of a 10 per cent wage reduction.

887. The company acknowledges the workers' loss of confidence in the effectiveness of trade union action as a means of promoting and defending workers' interests, but considers that it is attributable to the trade union, whose unlawful action has proved largely undesirable.

888. Conscious of its obligations ensuing from the ratification of international Conventions, the Government maintains that it has constantly endeavoured to improve the legislation applicable in this field and, following consultations with the social partners, it has adopted a new law on the settlement of industrial disputes (Act No. 168/1999), taking into account the recommendations made by the ILO Committee of Experts.

C. The Committee's conclusions

889. *The Committee notes that this complaint concerns: (a) allegations of anti-trade union interference and disciplinary sanctions against a trade union leader in connection with a strike called during the collective bargaining process; and (b) allegations relating to the non-conformity of Romanian legislation with the Conventions and principles of freedom of association, in the light of their application in practice by the courts.*

890. *With regard to the events that took place at Minmetal SA during the negotiations to renew the collective agreement, the Committee observes that, in general, any collective bargaining naturally gives rise to the emergence of positions on both sides, which are dictated by the respective bargaining strategies and which, as in this case, sometimes lead to mutual accusations of bargaining in bad faith or of anti-trade union attitudes. In this respect, the Committee recalls that the issue of whether or not one party adopts an amenable or uncompromising attitude towards the other party is a matter for negotiation between the parties [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 817], and that the prime concern is the obligation to negotiate in good faith for the maintenance of the harmonious development of labour relations [see* ***Digest****, op. cit., para. 814].*

891. *However, the Committee notes with concern that the principal reason for the dismissal of Mr. Ion Mihale was the fact that the court judged the strike unlawful, by concluding that there had been a breach of articles 21, 22 and 26(3) of Act No. 15/1991. Hence, in this*

instance the decisive factor in any analysis rests on whether the strike is lawful or not. Without taking a position as to whether the interpretation of these provisions as rendered by the court is founded in light of the particular circumstances, the Committee emphasizes that, whereas the right to strike is not an absolute right and must be exercised in observance of national legislation, the legal provisions must also conform to the principles of freedom of association. Regarding the obligation which, according to the Government and the relevant jurisprudence, ensues from article 21 (that trade union leaders shall give indication of the duration of a strike at the time it is called), the Committee considers that such a ***general and unspecific*** *restriction is not compatible with the right of workers and their organizations freely to determine their action programme and exercise their right to strike. With regard to the arguments based upon a violation of article 22 (alleged refusal by trade unionists to settle the dispute in good faith before resorting to strike action), the Committee does not consider the decision issued by the court to be compatible with the provisions of Convention No. 98. Finally, in respect of the argument based upon an alleged violation of article 26(3) (attempt to hinder the activity of workers not having joined the strike), the Committee is in no position, on the basis of the details supplied, to draw any informed conclusions. In any event, the Committee deems it appropriate to place this conflict in its context, i.e. a short strike in support of wage claims, in an enterprise which is neither the sole nor the largest operator in a sector which is not an essential one.*

892. *Furthermore, the Committee emphasizes that trade union leaders and shop stewards, by the very nature of their functions, are particularly vulnerable to reprisals in labour disputes, and it recalls some relevant principles:*

– *adequate protection against dismissal or other prejudicial measures is particularly desirable in the case of trade union officials for them to be able to perform their trade union duties in full independence, such protection being also necessary in order to ensure that effect is given to the fundamental principle that workers' organizations shall have the right to elect their representatives in full freedom [see* ***Digest****, op. cit., para. 724];*

– *although the holder of trade union office does not, by virtue of his position, have the right to transgress legal provisions in force, these provisions should not infringe the basic guarantees of freedom of association, nor should they sanction activities which, in accordance with the principles of freedom of association, should be considered as legitimate trade union activities [see* ***Digest****, op. cit., para. 726];*

– *with regard to the reasons for dismissal, 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****, op. cit., para. 731].*

893. *Finally, the Committee recalls the Workers' Representatives Convention (No. 135), ratified by Romania, and the accompanying Recommendation (No. 143), which specifically states that workers' representatives in the undertaking shall enjoy effective protection against any act prejudicial to them, including dismissal, based on their status or activities as a workers' representative or on union membership or participation in union activities, in so far as they act in conformity with existing laws or collective agreements or other jointly agreed arrangements (Article 1 of Convention No. 135) [see* ***Digest****, op. cit., para. 732].*

894. *Given all of the circumstances, the Committee considers that, in this instance, the dismissal of Mr. Ion Mihale is a breach of the provisions of Conventions Nos. 87 and 98 and, if it is upheld, would not be conducive to constructive and harmonious industrial relations in this enterprise in the future. Hence, the Committee invites the Government, after consultation with the concerned parties regarding the appropriate practical*

conditions, to take the required measures to secure the prompt reinstatement of Mr. Ion Mihale in his duties, and to keep it informed of developments in this situation.

895. *With regard to the more general allegation presented by the complainant organization, i.e. that Romanian legislation does not conform to the Conventions and principles of freedom of association, in the light of its practical application by the courts, the Committee notes that the relevant events occurred in 1999 and were thus still governed by Act No. 15/1991 which had been commented upon both by this Committee and the Committee of Experts. At its December 2000 session, the latter did examine the new legislation regarding the settlement of industrial disputes (Act No. 168/1999), which entered into force on 1 January 2000, and noted with satisfaction that the new legislation introduced provisions which respond to several of the concerns previously expressed. The Committee draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to the legislative aspects of this case, particularly as regards the issue of sanctions for illegal strikes.*

The Committee's recommendations

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

(a) The Committee invites the Government, after consultation with the concerned parties regarding the appropriate practical details, to take the required measures to secure the prompt reinstatement of Mr. Ion Mihale in his duties, and to keep it informed of developments in this situation.

(b) The Committee draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to the legislative aspects of this case, particularly the issue of sanctions as regards illegal strikes.

CASE NO. 2012

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

Complaint against the Government of the Russian Federation presented by the Trade Union of Workers of the All Russian State Television and Radio Company (VGTRK)

Allegations: Violations of the right to bargain collectively, refusal to deduct union dues, withdrawal of facilities for workers' representatives

897. The Committee examined this case during its November 1999 meeting and presented an interim report to the Governing Body [see 318th Report, paras. 405-430, approved by the Governing Body at its 276th Session (November 1999)].

898. The Government sent additional observations in a communication dated 22 August 2000.

899. The Russian Federation has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 48), 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

900. The Committee's previous examination of the case addressed violations of the right to bargain collectively of the trade union of workers of the All Russian State Television and Radio Company (VGTRK). It also covered allegations of VGTRK's interference with the trade union's activities by, inter alia, withdrawing facilities for workers' representatives.

901. In November 1999, the Committee formulated the following recommendations [see 319th Report, para. 430]:

(a) Noting that the national legislation provides avenues for facilitating collective bargaining, including access to information, the Committee requests the Government to ensure that the legislation is applied in practice and to take measures to ensure that VGTRK [All Russian State Television and Radio Company] negotiates in good faith with the complainant and to provide information relevant to collective bargaining.

(b) The Committee requests the Government to make the necessary modifications to the legislation, keeping in mind the principles in Convention No. 135 and Recommendation No. 143, and to keep it informed of the measures taken in this respect.

(c) The Committee requests the Government to ensure that the facilities necessary for its proper functioning are granted to the complainant trade union.

(d) The Committee requests the Government to take measures to ensure that VGTRK allows trade union dues to be deducted and transferred to the complainant when expressly requested by members, and to provide information concerning the deductions that have been withheld or suspended.

B. The Government's reply

902. In its communication of 22 August 2000, the Government indicates that, at the request of the Russian Federation Ministry of Labour and Social Development, the Federal Labour Inspectorate carried out further investigations, including on-site inspections. These additional verifications revealed that an agreement was concluded in 1999 between VGTRK and the Central Committee of the All Russian Trade Union of Communications Workers of the Russian Federation; it included lump sum benefits, bonuses and incentives for VGTRK workers, the last of these having been agreed with the All Russian Trade Union of Communications Workers of the Russian Federation and the Russian Trade Union of Cultural Workers to which the complainant is affiliated. Both the Russian Trade Union of Cultural Workers and the All Russian Trade Union of Communications Workers of the Russian Federation are affiliated to the Federation of Independent Trade Unions of Russia (FNPR).

903. The Government adds that five primary trade union organizations are actually represented within the VGTRK, including the complainant whose chairperson is Ms. I.L. Zuyeva. The fact that an agreement was concluded between the All Russian Trade Union of Communications Workers, which, according to the Government, represents the majority of VGTRK's workers, does not prevent the other four unions represented within the company from holding collective discussions on joining the communication workers' union, from reaching a separate agreement with the VGTRK or from taking other action to settle disputes that have arisen in accordance with international standards and Russian law. The Government also recognizes that, for some considerable time, Ms. Zuyeva has been asking

the VGTRK administration for collective bargaining with a view to concluding a separate collective agreement. As the dispute between the parties on this matter had not been resolved, the Government recalls that Ms. Zuyeva has referred to a number of bodies, including the Public Prosecution Authority, the Federal Labour Inspectorate, the judiciary and the ILO.

904. More precisely, as regards the Committee's interim conclusions, the Government reiterates the observations that it has provided it with in its communication of August 1999. With regard to the complainant's allegations concerning violations of the right to bargain collectively, the Government states that, in accordance with sections 2(3), 4 and 7 of the Law on Collective Agreements and Accords, only duly authorized parties' representatives (including the relevant bodies of the trade unions and their associations) should take part in collective bargaining; it is therefore quite legitimate for the Government to verify that representatives who wish to enter into the process are "duly authorized". With regard to the complainant's allegations of interference in trade union affairs, the Government states that, according to section 28(1) and (3) of the Federal Law on Trade Unions, Their Rights and Safeguards for Their Activities, "employers are to provide trade unions functioning in the enterprise, free of charge, with the facilities, premises, transport and means of communication needed for their activities, in accordance with the relevant collective agreement". The same principles apply to monthly deductions from wages of trade union membership dues that are made free of charge, subject to the written request of workers. The Government asserts that the company bears no legal obligation if the relevant collective agreement does not include such provisions or if there is no collective agreement in force.

C. The Committee's conclusions

905. *The Committee notes that this case concerns allegations of violations by the All Russian State Television and Radio Company (VGTRK) of the right to bargain collectively of the Trade Union of Workers of the All Russian State Television and Radio Company as well as allegations of interference in trade union activities which includes the withdrawal of facilities to workers' representatives.*

906. *Generally, the Committee regrets that, in its last communication, the Government has not provided any information on the recommendations it has addressed to it in its last interim report, even though the Government states that it carried out additional investigations, including on-site inspections at VGTRK's premises.*

Collective bargaining

907. *The Committee notes that, in its last communication, the Government insists once again on the necessity to verify under national legislation whether workers' representatives have been duly authorized to conduct collective bargaining and disputes the complainant's chairperson's authority to proceed in this regard. On this issue, however, the Committee would like to recall that the Government has not contested the fact that the complainant is a representative trade union within VGTRK nor that since 1993 the complainant has unsuccessfully tried to enter into collective bargaining with the enterprise's administration. In addition, the Committee recalls that both the Public Prosecutor and the Labour Inspectorate of the Russian Federation concluded that VGTRK had infringed its obligations by refusing to take part in collective bargaining. It is not useless to recall that the Public Prosecutor considered that "... through the management's fault, negotiations still have not begun ... Such behaviour on the part of the management of VGTRK is nothing other than a refusal to engage in collective bargaining with a view to concluding a collective agreement" (letter dated 17 April 1998 mentioned in paragraph 409 of the*

Committee's 318th Report). To this conclusion, the Public Prosecutor added that VGTRK's management "regularly interferes in the activities of the trade union, for example by repeated demands that the trade union committee produce various documents, including its constituent documents, in order to check up on the legality of the trade union's activities" (letter dated 24 April 1998 mentioned in the same paragraph of the report). On its part, the Federal Labour Inspectorate corroborated the Prosecution's conclusions. It is true that the question of the authority of the complainant's chairperson was also raised in the context of the law suit before the Moscow Municipal Court. However, no decision on the merit of the matter had been rendered on that occasion by the Court.

908. *In these circumstances, the Committee can only reiterate its previous findings according to which VGTRK was not acting in good faith by consistently refusing to bargain collectively with the complainant's representative since 1993 and therefore requests once again the Government to take measures to ensure that VGTRK negotiates in good faith with the complainant and makes use of national legislative avenues in order to provide the complainant with information relevant to collective bargaining. The Committee requests the Government to keep it informed in this regard.*

Interference with trade union activities

909. *The Government argues that, because there was no collective agreement, the employer was under no legal obligation to provide necessary facilities nor to deduct trade union membership dues from wages, subject to the written request of the workers. In other words, by evading collective bargaining, the Committee understands that the employer can, in accordance with national legislation, deny access to facilities necessary for the proper functioning of trade unions. The Committee had previously concluded that the absence of a collective agreement in this case followed from the VGTRK's hostile attitude to the commencement of negotiations and had already considered that this absence of an agreement was not a sufficient justification to deny facilities to the trade union, including check-off facilities [see 318th Report, para. 427]. At its last examination of the case, the Committee therefore requested the Government to ensure that the facilities necessary for its proper functioning were granted to the complainant trade union. On this issue, the Committee also noted the deficiency of the legislation and requested the Government to make the necessary modifications to it, keeping in mind the principle that facilities in the undertaking shall be afforded to workers' representatives as may be appropriate to enable them to carry out their functions promptly and efficiently. The Committee also requested the Government to keep it informed of the measures taken in this respect. In the light of the Government's last observations, the Committee cannot but reiterate all of the abovementioned recommendations.*

910. *Finally, the Committee wishes to recall that it has previously noted with deep regret that VGTRK had on various occasions deducted dues without remitting them to the complainant or suspended deductions and requested the Government to provide it with information in this regard. Unfortunately, the Government did not address this issue in its last communication. Recalling that the withdrawal of check-off facilities could lead to serious problems for the trade union and should, for this very reason, be avoided, the Committee urges the Government to take measures to ensure that VGTRK allows trade union dues to be deducted and transferred to the complainant when expressly requested by members. The Committee also requests once again the Government to provide information concerning the deductions that have been withheld or suspended.*

The Committee's recommendations

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

(a) The Committee requests once again the Government to take measures to ensure that VGTRK negotiates in good faith with the complainant and makes use of national legislative avenues in order to provide the complainant with information relevant to collective bargaining. The Committee requests the Government to keep it informed in this regard.

(b) The Committee requests the Government to ensure that the facilities necessary for its proper functioning are granted to the complainant trade union.

(c) The Committee reiterates its request to the Government to make the necessary modifications to the legislation, keeping in mind the principle that facilities in the undertaking shall be afforded to workers' representatives as may be appropriate to enable them to carry out their functions promptly and efficiently, and to keep it informed of the measures taken in this respect.

(d) The Committee urges the Government to take measures to ensure that VGTRK allows trade union dues to be deducted and transferred to the complainant when expressly requested by members. The Committee also requests once again to the Government to provide information concerning the deductions that have been withheld or suspended.

CASE NO. 2014

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

Complaint against the Government of Uruguay presented by the Association of Workers and Employees of CONAPROLE (AOEC)

Allegations: Anti-union measures during collective bargaining; disciplinary measures against trade union officials and workers

912. The Committee last examined this case at its March 2000 meeting, when it submitted an interim report to the Governing Body [see 320th Report, paras. 802-817].

913. The Government had sent observations in communications dated 15 December 1999 and 25 January 2000; however, as these did not cover all the allegations, the Committee was forced to postpone its examination of this case until its meeting in May/June 2000. The Government sent further observations in a communication dated 19 September 2000.

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

A. Previous examination of the case

915. The pending allegations relate to a series of anti-union measures (disciplinary measures against three trade union officials for holding information meetings; the fact that company representatives of CONAPROLE had stated that any claims on the part of workers, even through the labour courts, would result in a loss of trust in the workers concerned or be regarded as an act of bad faith; workers being prohibited from holding meetings; and trade union officials being barred from entering places of work, breaking with the established custom of more than 30 years) arising from the actions taken by the AOEC during a collective dispute which took place at the CONAPROLE company with the support of the employees who wished to achieve a new collective agreement. In its March 2000 meeting the Committee formulated the following conclusions and recommendations [see 320th Report, para. 817]:

> With regard to the complainant's allegations that (1) three trade union officials were disciplined following information meetings, and (2) CONAPROLE representatives have indicated that any claims by workers, even through the labour courts, would result in a loss of trust in the worker concerned or be regarded as an act of bad faith, while meetings have been prohibited and trade union officials have been barred from entering places of work, breaking with the established custom of more than 30 years, the Committee points out that the Government has not sent its observations on the matter and requests it to do so.

B. The Government's reply

916. As regards the pending allegations, the Government states in its communication of 19 September 2000 that labour relations at the CONAPROLE company are in the process of constructive dialogue, with specific agreements between the parties encouraging efforts for "decent work". The Government attaches copies of these agreements.

917. On 9 January 1999 a hearing took place at the Ministry of Labour and Social Security to tackle the crisis confronting the company due to difficulties in exporting to Brazil. Although the trade union did not initially accept the proposals for a possible postponement of wage increases and that workers draw unemployment benefits, on 27 January 1999, after several meetings, it signed a record of agreement on mechanisms for workers to draw unemployment benefits. However, in relation to the latter, it should be pointed out that the AOEC did not accept to postpone the wage increase for 1 February 1999, although it did agree to this possibility being discussed at a meeting of the workers. Neither did the AOEC accept multiskilling, although it did accept to examine possible changes in production processes with representatives of CONAPROLE, keeping in mind the agreements already reached. The parties also agreed to establish a bipartite committee immediately to oversee the analysis of this issue. They also agreed to establish a commission to examine developments in the situation in February 1999 and to set the criteria for workers to draw unemployment benefits in future months, if necessary. CONAPROLE undertook to provide the commission with the list of those to be laid off in the months to come. Finally, the trade union agreed to workers being put on unemployment benefits from 1 February 1999, so long as all those who had been laid off for the month of February were reintegrated on 1 March 1999. With regard to the remaining cases, the commission undertook to examine the possibility of extending unemployment benefits.

918. On 11 June 1999 a dispute arose over the hiring of staff from outside CONAPROLE while there were staff already receiving unemployment benefits. Following mediation by the Ministry of Labour and Social Security, the dispute ended on 17 June 1999 with a bipartite agreement in which it was agreed that communication would take place prior to hiring staff from outside the company and labour relations would be flexible. Under the agreement of

9 August 1999 a commission was set up within the company's labour relations commission to support reinstatement.

919. On 17 August 1999 a process of negotiation to restructure the warehouse and dispatch area of CONAPROLE was begun. The parties reached an agreement on this restructuring on 23 September 1999.

920. On 27 April 2000 the Ministry of Labour and Social Security intervened in the restructuring of plant No. 5 of CONAPROLE, and this resulted in the signing of an agreement between representatives of AOEC and the management of CONAPROLE on 14 July 2000. Under this collective agreement CONAPROLE will contribute the cost of the land for those workers who agree to be transferred and will support the construction of homes for those workers with a special compensation scheme.

C. The Committee's conclusions

921. *The Committee notes that the pending allegations from the previous examination of the case centre around the fact that three trade union officials were disciplined following information meetings; that CONAPROLE representatives indicated that any claims by workers, even through the labour courts, would result in a loss of trust in the worker concerned or would be regarded as an act of bad faith, while meetings were prohibited and trade union officials were barred from entering places of work, breaking with the established custom of more than 30 years.*

922. *In this respect, the Committee notes that the Government did not send any observations, and confined itself to indicating that the CONAPROLE enterprise was currently in the process of constructive dialogue in which the adoption of specific agreements between the parties to encourage efforts for "decent work" was proposed (the Government attached photocopies of the various agreements and contracts signed by the company and the employees to that effect).*

923. *In this respect, the Committee emphasizes the right of occupational organizations to hold meetings in their premises to discuss occupational questions, without prior authorization and interference by the authorities [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 130]. Furthermore, the Committee highlights that one of the fundamental principles of freedom of association is that workers should enjoy adequate protection against all acts of anti-union discrimination in respect of their employment, such as dismissal, demotion, transfer or other prejudicial measures, and that this protection is particularly desirable in the case of trade union officials because, in order to be able to perform their trade union duties in full independence, they should have a guarantee that they will not be prejudiced on account of the mandate which they hold from their trade unions [see **Digest**, op. cit., para. 724].*

924. *As the Government did not submit observations, the Committee requests it to ensure that the disciplinary measures against the three trade union officials for holding information meetings are immediately revoked, and that trade union officials are allowed reasonable access to the workplace so that they may, in their abovementioned capacity, effectively fulfil their mandate unhindered to further and defend the interests of workers [see Article 10 of Convention No. 87].*

925. *As regards the freedom of workers of CONAPROLE to express their dissatisfaction, without being intimidated or subject to reprisals by their employer, the Committee emphasizes that the full exercise of trade union rights calls for a free flow of information, opinions and ideas, and that to this end workers, employers and their organizations should enjoy freedom of opinion and expression at their meetings, in their publications and in the*

*course of other trade union activities [see **Digest**, op. cit., para. 152]. Finally, the Committee requests the Government to inform it of the steps taken to comply with the abovementioned rights, in the light of the principles of freedom of association.*

The Committee's recommendation

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

> ***The Committee requests the Government to ensure that the disciplinary measures against the three trade union officials for holding information meetings are immediately revoked, that the trade union officials are allowed reasonable access to the workplace and, in their abovementioned capacity, to effectively carry out their mandate unhindered to further and defend the interests of workers, and that the workers of CONAPROLE are allowed freely to express their opinions, without fear of intimidation or risk of reprisal by their employers. The Committee also requests the Government to keep it informed of the steps taken to carry out this recommendation.***

CASE NO. 1986

INTERIM REPORT

Complaint against the Government of Venezuela presented by the Single Union of Workers of FUNDARTE (SINTRAFUNDARTE)

Allegations: Dismissals and other anti-union acts

927. The Committee examined this case at its November 1999 meeting and presented an interim report to the Governing Body [see 318th Report, paras. 534-567, approved by the Governing Body at its 276th Session in November 1999]. The Government subsequently sent new observations in communications dated 16 May and 24 November 2000, and 8 and 16 February 2001.

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

A. Previous examination of the case

929. With regard to the questions still pending, the complainant had alleged that, following its registration with the Labour Inspectorate, the Federal District Foundation for Culture and the Arts (FUNDARTE) began a campaign of anti-union discrimination against its members. Specifically, the complainant alleges the following: (1) the dismissal of 41 trade unionists, including 30 with trade union immunity in October 1997 and 11 others in February 1998, and delays on the part of the administrative authority in resolving a petition for the reinstatement of the 30 workers with trade union immunity and the subsequent suspension of the reinstatements ordered by the administrative authority following legal action by the employer; (2) changes in the payment procedures and reduction of the wages of the members of the SINTRAFUNDARTE executive committee, the transfer of the SINTRAFUNDARTE secretary-general; and (3) refusal on the part of the employer to

engage in talks with the executive committee in the context of favouritism towards another trade union organization, attempts to obstruct written communications from the executive committee to workers and threats of reprisals against workers who communicate with members of said executive committee [see 318th Report, para. 558].

930. The Committee formulated the following recommendations [see 318th Report, para. 567]:

- In respect of the allegations concerning the dismissal in October 1997 of 30 unionists protected by trade union immunity and the subsequent suspension of their reintegration ordered by the administrative headquarters as a result of the judicial action taken by the employer, the Committee deplores the delay in the handling of this case and requests the Government to take steps to ensure the reinstatement in their posts of these 30 workers without loss of pay at least until the judicial authorities have made a definitive pronouncement on the subject. The Committee requests the Government to keep it informed of developments in that respect.

- In respect of the allegations concerning the changes to the conditions of payment (by cheque and not as done traditionally by means of a deposit in the bank account) and the cut in wages of the members of the executive committee of SINTRAFUNDARTE, the Committee expresses the hope that the petition made by the complainant to the administrative authorities in this respect will be resolved in the very near future and requests the Government to keep it informed of the results of this petition.

- As concerns the allegations of the transfer of the secretary-general of SINTRAFUNDARTE (Iván Polanco), the Committee expresses the hope that the petition made by the complainant before the administrative authorities in this respect will be resolved in the very near future and requests the Government to keep it informed of the results of this petition.

- The Committee requests the Government to carry out an investigation into the allegations concerning the refusal of FUNDARTE to discuss with the executive board of SINTRAFUNDARTE within the context of favouritism towards another trade union and to keep the Committee informed in this regard.

- The Committee urges the Government immediately to communicate its observations concerning the following allegations: (1) the dismissal of 11 SINTRAFUNDARTE members in February 1998; (2) the obstructing of written communications between the executive committee of SINTRAFUNDARTE and the workers; and (3) the threats of reprisals against workers communicating with the members of the executive committee of SINTRAFUNDARTE.

B. The Government's reply

931. In its communications of 16 May and 24 November 2000 and 8 and 16 February 2001, the Government states that the Ninth Labour Tribunal of First Instance of the Caracas Metropolitan Area on 25 June 1999 handed down a definitive ruling on the appeal for annulment brought by FUNDARTE against the administrative ruling of the Labour Inspectorate dated 19 May 1998 (No. 19-98). The administrative ruling in question had ordered FUNDARTE to reinstate a number of workers and pay the back wages owed to them. The Tribunal's ruling upholds the annulment of the administrative ruling and declares void all measures subsequent to 2 April 1998, in particular the administrative labour proceedings for reinstatement and payment of back wages, and orders that the proceedings should revert to the stage of presentation of evidence. There were 27 such

dismissals, not 30, as claimed by the complainant. Since the on-site inspection ordered by the ruling was carried out subsequently, and other action was taken in the proceedings in question, on 26 September 2000 the Labour Inspectorate of Libertador Municipality (Federal District) issued an administrative ruling which dismisses the petitions for reinstatement and payment of wages on behalf of 14 former employees, on the grounds that nothing had been done to prove their claim of immunity. At the same time, the ruling upholds the petitions presented on behalf of 13 other workers, ordering FUNDARTE to reinstate them and pay the wage arrears owed to them. The Government attaches copies of the court ruling and administrative ruling in question. It also attaches two copies of the agreement on reinstatement and payment of wage arrears (166,397,452.39 bolivars) of 20 October 2000 which was signed between FUNDARTE and the said workers, in accordance with the administrative ruling mentioned above. According to FUNDARTE, the dismissals occurred in the context of a restructuring process from March 1996 onwards.

932. At the same time, in a communication dated 25 February 2000, which the Government supplies, FUNDARTE claims that the allegation concerning the dismissal in February 1998 of 11 trade unionists is false and no legal proceedings have been initiated in connection with them.

933. As regards the complaint by SINTRAFUNDARTE concerning the transfer of a trade union official, irregular payment of wages by cheque and non-payment of a pay increase owed to seven trade union officials (despite the increase granted to other workers), the Government supplies a copy of the administrative ruling of 17 February 2000, ordering FUNDARTE immediately to reinstate seven workers (trade union officials) in their previous posts and under the same conditions, with consequent payment of the wages owed to them from the time they suffered loss until their definitive reinstatement. However, the Government explains that it has not been possible to inform the employer of the administrative rulings in question, since the employer refuses to receive them.

934. As regards the alleged refusal of FUNDARTE to enter into discussions with SINTRAFUNDARTE in the context of favouritism towards another trade union organization, the Government supplies an administrative ruling of 4 February 1998 according to which FUNDARTE was not obliged to discuss the collective agreement proposed by SINTRAFUNDARTE, since the previous collective agreement signed by another trade union in 1997 for a period of two years had not expired. According to FUNDARTE, the union SINTRAFUNDARTE enjoys the support of only 20 per cent of FUNDARTE workers and most of the workers belong to the other trade union, which has represented workers for the last five collective agreements since 1980.

C. The Committee's conclusions

Allegations concerning dismissals of trade unionists

935. *The Committee takes note of the administrative ruling of 26 September 2000 – fully applied – concerning the dismissal of 27 workers of FUNDARTE (not 30, as the complainant had claimed), which orders the reinstatement of 13 workers with payment of wage arrears and overrules the reinstatement of another 14 workers on the grounds that they have not shown that they enjoyed immunity. As regards the dismissal of 11 trade unionists in February 1998, the Committee notes that the company FUNDARTE claims that the allegation is not true and no legal proceedings have been started in connection with it. The Committee invites the complainant to formulate observations on this statement.*

Allegations concerning the transfer of a union official and the deterioration in the working conditions of certain trade union officials

936. *The Committee notes with interest the administrative ruling of 17 February 2000 which gives effect to the claims of the seven trade union officials (whose conditions of work had worsened), including those relating to wage arrears and payment into bank accounts. The Committee also notes that the administrative authority resolved the question of the transfer of a trade union official in the manner desired by said official. However, the Committee notes with concern the Government's statements to the effect that it has not been possible to inform the employer of the administrative rulings referred to in the previous paragraph because the employer refuses to receive them. In this regard, the Committee deplores this attitude and urges the Government to ensure that the company receives the administrative rulings in question and complies with them.*

Allegations concerning the refusal by FUNDARTE to enter into talks with SINTRAFUNDARTE officials

937. *The Committee notes that according to the Government, this question arose in connection with the presentation by SINTRAFUNDARTE of a proposed collective agreement, and that the administrative authority in an administrative ruling of 4 February 1998 decided that the company FUNDARTE was not obliged to discuss the proposed collective agreement since the previous two-year collective agreement had not expired. The Committee also notes that according to FUNDARTE, the other trade union organization, which concluded the collective agreement, represents a majority of workers, whilst SINTRAFUNDARTE enjoys the support of only 20 per cent of the workers.*

Other allegations

938. *The Committee regrets that the Government has not answered the allegations concerning: (1) attempts by FUNDARTE to obstruct written communications from the executive committee of SINTRAFUNDARTE to workers; and (2) the threats made by FUNDARTE against workers who communicate with the executive committee of SINTRAFUNDARTE. The Committee urges the Government to send its observations on these allegations without delay.*

The Committee's recommendations

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

(a) The Committee invites the complainant to comment on the statement by FUNDARTE in which it denies the dismissal of 11 trade unionists in February 1998.

(b) Deploring the attitude of FUNDARTE in refusing to receive notification of the administrative rulings ordering payment into the bank accounts of seven trade union officials instead of payment by cheque and payment of wage arrears as a result of deterioration in their conditions of work, and overruling the transfer of a trade union official, the Committee urges the Government to ensure that the company receives the administrative rulings in question and complies with them.

(c) The Committee regrets that the Government has not answered the allegations concerning: (1) attempts by FUNDARTE to obstruct written communications from the executive committee of SINTRAFUNDARTE to workers; and (2) the threats made by FUNDARTE against workers who communicate with members of the SINTRAFUNDARTE executive committee. The Committee urges the Government to send its observations on these allegations without delay.

CASE NO. 2067

INTERIM REPORT

Complaints against the Government of Venezuela presented by
— the International Confederation of Free Trade Unions (ICFTU)
— the Venezuelan Workers' Confederation (CTV)
— the Latin American Central of Workers (CLAT)
— the Trade Union Federation of Communications Workers of Venezuela (FETRACOMUNICACIONES)
— the Trade Union of National Assembly Legislative Workers (SINOLAN) and
— other organizations

Allegations: Anti-union legislation, suspension of collective bargaining following a decision by the authorities, convening of a national referendum to replace the trade union movement by an organization allied to the Government

940. The complaint is contained in communications from the International Confederation of Free Trade Unions (ICFTU) (3 February, 29 August and 7 and 13 December 2000), the Venezuelan Workers' Confederation (CTV) (22 August, 19 September and 17 November 2000), the Trade Union of National Assembly Legislative Workers (SINOLAN) (9 November 2000) and the Trade Union Federation of Communications Workers of Venezuela (FETRACOMUNICACIONES) (22 November 2000). The Latin American Central of Workers (CLAT) supported the CTV's complaint. The Government sent its observations in communications dated 16 May 2000, 10 January and 8 February 2001.

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

A. The complainants' allegations

942. In its communication of 3 February 2000 the International Confederation of Free Trade Unions (ICFTU) expresses its concern about the passing by the National Assembly of a number of Decrees allegedly intended to guarantee freedom of association; ICFTU indicates that the situation of emergency in the country which was declared by the National Assembly, was used as the grounds for it to legislate a series of measures that flagrantly violate ILO Conventions Nos. 87 and 98. The ICFTU expresses its sincere appreciation for the ILO's efforts to resolve this situation by immediately sending a mission which was able to appoint a joint committee responsible for reaching agreement on the terms of the

Decrees under preparation. Regrettably, the agreements were not respected and the Decrees passed are not compatible with the rights contained in Conventions Nos. 87 and 98.

943. In its communication of 22 August 2000, the Venezuelan Workers' Confederation (CTV) alleges that on 28 June 1999 the Federation of Oil, Chemical and Allied Workers of Venezuela (FEDEPETROL), affiliated to the CTV, and the Venezuelan Federation of Workers of Hydrocarbons and their Derivatives (FETRAHIDROCARBUROS) presented the Ministry of Labour with a draft collective agreement to be negotiated with PDVSA Petróleo y Gas S.A., a public trading company which acts as the Venezuelan industrial parent or holding oil company. The negotiations were initiated on 20 September 1999 at the Ministry of Labour. In addition to the trade unions that had signed the draft agreement, the meeting was also attended by the National Trade Union of Petroleum Industry and Allied Workers (SINTRAIP). On 4 October 1999 at the offices of PDVSA Petróleo y Gas S.A., the trade union organizations (FEDEPETROL, FETRAHIDROCARBUROS and SINTRAIP) agreed to join forces in the negotiation of the collective agreement. Subsequently, on 5, 6, 13, 14, 18, 19, 26, 27 and 28 October 1999; 1, 2, 8, 10, 18, 22, 23, 25 and 29 November 1999; 1, 7 and 8 December 1999; and, lastly, 11, 18 and 24 January 2000, at the offices of the PDVSA, negotiations were conducted and agreement reached on the draft agreement which gave rise to the process. On 17 November, at the Ministry of Labour, the parties signed an agreement relating to aspects that had been controversial during the negotiations, more specifically the system of social benefits and the scope and implementation of the provisions of the collective agreement to employees of contractors.

944. The complainant goes on to state that, despite this agreement, on 30 January 2000 a Decree was approved by the National Assembly and published in *Official Gazette* No. 36,904 of 2 March 2000, ordering the suspension of discussions of collective recruitment by Petróleos de Venezuela S.A. and authorized the National Executive to establish the conditions to govern collective recruitment in the National Public Administration. On 24 January 2000, PDVSA Petróleo y Gas S.A. unilaterally and in apparent compliance with the contested Decree, which was not published on the date it was passed (30.1.2000), suspended negotiations. The complainant specifies that the Decree in question has the following objectives: (1) to bring the industrial relations framework into conformity with prevailing constitutional provisions; (2) to maintain and gradually improve the standard of living of workers; and (3) to respond to the emergency situation prevailing in the country declared by the National Assembly. Section 1 of the Decree suspends negotiations on the basis of the alleged emergency declared by the National Assembly. However, no reference is made to the regulatory instrument in which this declaration was issued and consequently the Decree was based on a false supposition which constitutes sufficient grounds for it to be declared entirely invalid, which is in fact what was requested in the actions of unconstitutionality lodged with the Supreme Court of Venezuela, copies of which were attached to the complaint. To date, no decision has been handed down concerning these actions, nor on the interim protective measures requested of the court in both cases to make it immediately possible to exercise the right to bargain collectively and to freedom of association.

945. In effect, the suspension of the right to bargain collectively, being an essential and inalienable element of a fundamental human right – freedom of association – and one of the specific and appropriate ways to improve workers' living conditions, could only have as a material cause an event of the magnitude of a declaration of emergency, which presupposes a serious economic crisis and the material impossibility of the Republic to provide the basic fundamental needs of its workers. This hypothesis did not occur and the Decree had repercussions on a constitutional right on the basis of false and non-existent grounds. Also, section 3 of the Decree authorizes "the National Executive to establish the conditions to govern the collective recruitment of the National Public Administration, both

centralized and decentralized, including state enterprises in accordance with prevailing constitutional provisions". In this way, the Decree:

– assumes and determines that the negotiation of the collective agreement that will govern the conditions of work of national petroleum industry workers is suspended following a decision by a public authority agency, in violation of the right to collective autonomy enjoyed by the parties and, in addition, of the principle of non-interference which governs the fundamental human right of freedom of association;

– weakens the right to collectively bargain working conditions in the National Public Administration, both centralized and decentralized, and grants the National Executive the authority to "establish the conditions to govern collective recruitment", including in state enterprises governed by private law;

– lastly, it revokes "all the legal and regulatory provisions that are contrary to this Decree" (section 6) meaning that it ceases to apply or revokes, as appropriate, the entire collective bargaining system established in the Labour Code in keeping with the Constitution and the international Conventions validly signed by the Republic on the right to the voluntary collective bargaining of working conditions.

946. The complainant explains that the Decree issued by the National Assembly is dated 30 January 2000 but was published in the *Official Gazette* on 2 March 2000, that is over one month later when, as is publicly and widely known, a dispute resulting in a strike of oil workers broke out. Another Decree of the same date approved the "measures to guarantee freedom of association". The legal basis of the Decree in question is derived from (according to its heading) section 1 of the Statutes Governing the Operation of the National Assembly on the one hand, and on the other, by the only section in the Decree which pronounces the reorganization of all the public authority agencies, passed on 12 August 1999 and published in *Official Gazette* No. 36,764 of 13 August 1999. The introductory clauses to the Decree specify as follows:

(a) "that Venezuela is a founding member of the International Labour Organization (ILO), and as such has accepted the principles and rights set forth in its Constitution and has committed itself to making every effort to achieve the general objectives of that Organization" (No. 2);

(b) that freedom of association is one of the fundamental rights established in the national Constitution and that our country has ratified ILO Conventions Nos. 87 and 98 "which contain, inter alia, guarantees of the right of workers to establish without previous authorization, organizations of their own choosing, to join or to leave them and to elect their representatives, without interference from the public authorities (…)" (No. 3);

(c) "that article 23 of the Constitution of Venezuela confers constitutional status on treaties, covenants and conventions concerning human rights ratified by Venezuela and declares them to have priority application (…)" (No. 4);

(d) "that the emancipation of workers should be through their own efforts and therefore it is for them to decide to eliminate flaws and bring about a radical change of attitudes, conduct and behaviour that will lead to a new culture of trade union action" (No. 6);

(e) "that the progress and well-being of workers is linked to the strength of their trade union organizations, to the honesty and legitimacy of their leaders and to the level of independence that these organizations have from the State, from the employers and from political organizations" (No. 7).

947. Nevertheless, in contravention of the above clauses, of standards with constitutional status, of international Conventions relating to the fundamental human right of freedom of association which has constitutional status in Venezuela, and of the Labour Code, the amendment of which is not the responsibility of the National Assembly, the Decree in question:

– provided for the constitution of a "National Trade Union Electoral Commission made up of four representatives from each of the national workers' confederations: the Venezuelan Workers' Confederation (CTV), the General Confederation of Labour (CGT) and the Single Confederation of Workers of Venezuela (CUTV), four from non-affiliated trade unions, four from the New Trade Unionism (NS) and four from the Workers' Constituent Front (FCT). This Commission will guarantee that free, democratic, universal, direct and secret elections are conducted to elect the executive officers of workers' organizations" (section 1) [the complainant states that the Confederation of Autonomous Trade Unions (CODESA), a legal trade union confederation, is not included in the Decree, with no justification offered. In addition, two organizations not registered with the Ministry of Labour, as is obligatory, as trade union confederations or third-level organizations, namely "the New Trade Unionism" (NS) and "the Workers' Constituent Front" (FCT), are given the same representation rights as the registered trade union confederations, particularly the Venezuelan Workers' Confederation (CTV), whose status as the most representative trade union confederation has been accredited by the national Government to the Conference of the International Labour Organization (ILO) in an uninterrupted fashion];

– granted the Commission the authority to call a referendum to allow the workers to decide on trade union unity, making it clear in the same provision that "if any trade union decides to remain on the margin of the process of trade union unification, it will automatically be excluded from the National Trade Union Electoral Commission" (section 3);

– "The National Trade Union Electoral Commission will set the date for the elections, will notify the workers, will set up the polling stations which will be at their workplaces, except for cases of *force majeure*, will count the votes and will announce the names of those elected. Each list of candidates will have at least one witness for all electoral proceedings" (section 4);

– "The electoral list or roll is made up of all active workers, retired and pensioned workers, employees, rural workers, professionals, scientists and intellectuals affiliated to trade union organizations, and the workers who become affiliated to them within a judicious period of time as determined by the National Trade Union Electoral Commission, which will resolve any refusal to become affiliated concerning its workers and trade union organizations (…)" (section 5);

– "The National Trade Union Electoral Commission will strictly comply with the provisions of article 95 of the Constitution of Venezuela. With regard to the sworn financial declaration, this must be submitted by the person concerned when he or she stands as a candidate for trade union representation or executive position and at the end of his or her term of office. In this connection, periodic reports must be presented to the workers about the administration of the property and resources of the organization and severe sanctions should be established against all unethical acts in the exercise of trade union duties" (section 6);

– "The National Assembly will appoint three of its members, together with one member appointed by the National Electoral Council, to be responsible for the entire process

of democratization and reunification of the Venezuelan trade union movement" (section 7).

948. The complainant considers that the Decrees referred to expressly and directly violate ILO Conventions Nos. 87 and 89 and the Constitution of Venezuela:

> Article 95. All workers, without distinction whatsoever, and without the need for prior authorization, have the right freely to form trade unions that they consider to be appropriate in order to best defend their rights and interests, and to join or refuse to join these organizations, in conformity with the law. These organizations are not subject to administrative intervention, suspension or dissolution. These workers are protected against all acts of discrimination or interference contrary to the exercise of these rights. The officers and officials of the trade union organizations shall enjoy immunity in the exercise of their functions during the period of their mandate.
>
> For the exercise of trade union democracy, the by-laws and rules of trade unions shall include provision for alternation of officials and officers through a direct and secret ballot of all the members. The officials and officers who abuse the benefits associated with freedom of association for their personal wealth or interest will be punished in accordance with the law. The officers are required to submit a sworn statement of their financial holdings.
>
> Article 96. All workers, in the public and private sector have the right to voluntary collective bargaining and to conclude collective agreements with no further requirements than those established by law. The State shall guarantee their development and will take the necessary measures to promote collective relations and to resolve labour disputes. The collective agreements will protect all active workers, at the time of their signature and those who join subsequently.

949. The Decrees also violate article 8.1(a) and (c) of the International Covenant on Economic, Social and Cultural Rights (1966), ratified by Venezuela, which reads:

> The States Parties to the present Covenant undertake to ensure:
>
> (a) the right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
>
> …
>
> (c) the right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others.

950. The CTV emphasizes that the constitutional status of the provisions quoted is the result of article 23 of the Constitution of Venezuela, which stipulates that: "Human rights treaties, covenants and conventions, signed and ratified by Venezuela, shall have constitutional status and take precedence over internal legislation, to the extent that they contain standards that are more favourable than those established in the Constitution and national legislation. These treaties, covenants and conventions shall have immediate effect and are to be applied directly by the courts and other public bodies".

951. In its communication of 29 August 2000, the ICFTU provides information regarding the intention of the top management of the enterprise Petróleos de Venezuela S.A. (PDVSA), to refuse to recognize the collective bargaining process it is conducting with its workers. Following the Decree issued by the former National Assembly in which the process of collective bargaining was suspended between PDVSA and the sector's trade union organizations, the Federation of Oil, Chemical and Allied Workers of Venezuela (FEDEPETROL) lodged an action for constitutional protection before the Supreme Court and a number of trade union organizations, including the ICFTU, presented a complaint against the Venezuelan Government to the ILO Committee on Freedom of Association for the violation of ILO Conventions Nos. 87 and 98. Given that the period fixed in the Decree to resume negotiations on the agreement is about to end, the ICFTU notes that the conducting of trade union elections in the industry, one of the conditions mentioned in the Decree, has not been carried out. It should be specified that this election process, to which the trade union federations have at no time expressed any opposition, did not take place for reasons unrelated to actual trade union dynamics and even to the actual industry. Nevertheless, the top management of the enterprise, without the participation of the trade unions, nor of the Ministry of Labour, and without the supervision of the National Electoral Council (the only body authorized to carry out such assessments) undertook a "consultation" of its workers on a "modern agreement" which would replace the one currently under negotiation.

952. The ICFTU indicates that the results of the consultation were announced and, according to the companies' officials, its proposal was approved by 56 per cent of participants, on the basis of which it is preparing to negotiate the new contract with its workers. However, the trade unions allege that the consultation was fraudulent. In addition, the legality and legitimacy of that consultation have even been questioned by the Ministry of Labour. For these reasons, the ICFTU rejects the use by the PDVSA of mechanisms which weaken the right to collective bargaining of its workers and the representativeness and legality of its trade union organizations.

953. With its communication of 19 September 2000, the CTV attaches some documents containing information of an aggressive and hostile nature from the authorities against the CTV, collected by various print media of Venezuela, as documentary proof in support of their complaint. This information indicates the participation of the President of the Republic in the activities of an allied organization, the Bolivarian Workers' Force, where he criticized the CTV.

954. In their communications of 17 and 22 November 2000, the CTV and the Trade Union Federation of Communications Workers of Venezuela (FETRACOMUNICACIONES) criticize the fact that the National Electoral Council prohibited for a third consecutive time the holding of trade union elections, the calling of a referendum of all the country's voters on whether to unify and re-legitimize trade union executive officers, the convening of a workers' constituent assembly (something that does not exist in legislation) and the first discussion approval by the National Assembly of a draft Bill for the protection of trade union freedoms and guarantees, which constitutes a flagrant violation of Convention No. 87.

955. With its communication of 7 December 2000, the ICFTU sent copies of letters from various trade union organizations (submitting complaints to the ILO) about acts which violate Conventions Nos. 87 and 98. These are summarized below:

– The Workers' Federation of the State of Yaracuy (FETRAYARACUY), alleges that the National Electoral Council, made up of trained activists of President Chávez, for the third consecutive time prohibited the holding of trade union elections on the basis of regulations absolutely contrary to Convention No. 87, to legislation and the

Constitution. The National Assembly, the overwhelming majority of which is controlled by the President of the Republic, called a referendum, the objective of which is to consult all the country's voters, including employers, students, housewives, the military, the unemployed, etc., on whether to modify, restructure, democratize and re-legitimize trade union executive committees and on the convening of a constituent assembly of workers, something which is non-existent in the country's legislation. In addition, the National Assembly, dominated by the coalition of President Hugo Chávez, approved following its first discussion the Bill for the protection of trade union freedoms and guarantees, and threatens to remove the existing trade unions and federations and replace them by a pseudo trade union body formed according to the image and usage of the Government and the President. This constitutes an offence against freedom of association, against the country's principal trade union confederation, the CTV, and against the entire Venezuelan democratic trade union leadership, who are being called bandits and corrupt, although to date no trade union leaders have been accused before the courts of justice or sent to prison. The CTV is a confederation which has been developing, introducing far-reaching changes in its organization, and which has achieved significant democratic advances and modernization in recent years. It is important to stress the severity of the situation, particularly the abuse of power and interference of the Government of President Chávez in the operation of trade union organizations and the control they have over the National Electoral Council, the National Legislative Assembly and the Supreme Court entities appointed through personal contacts.

– The Union of Telecommunications Workers and Employees of the State of Yaracuy claims that Venezuela is experiencing a crisis of democratic values, manifestly designed to eliminate any institution or individual which disagrees with the opinion of the President of the Republic. The elimination of trade union structures is not exempt in this regard: with considerable difficulty they have become one of the very few strongholds to resist the merciless attacks of the political regime which is today oppressing the people, and the workers in particular. Interference in the affairs of workers and trade unions by this Government is simply unacceptable, and it is trying, by way of an unconstitutional referendum, to take possession of the executive committees of the trade unions and to undermine the rights to affiliation and to establish their own statutes; it is an insult to the respect of the most elementary human rights. The people, particularly the working class, suffer constant harassment intended deliberately to intimidate them so that they will not take to the streets to defend their sacred rights, leaving the trade union executive committees virtually isolated at this critical juncture.

– The Trade Union of Workers in the Service of the Regional Executive of the State of Yaracuy rejects the acts of aggression and the impositions suffered by Venezuelan workers at the hands of the Government of President Hugo Chávez. With the authority given to it by the majority of the constituents of the National Assembly, the Government approved a trade union referendum to be conducted on 3 December 2000 concerning a question that would invalidate all trade union organizations, from the CTV to the most humble trade union, and in which non-unionized citizens would also be entitled to vote. Furthermore, currently (at the end of 2000) the National Assembly is in the process of discussing a draft Bill for the protection of trade union guarantees and freedoms, sections 23 and 24 of which clearly establish the suspension of all trade union executive officers whose periods of office have been completed, as well as the fact that they may not be re-elected or occupy other positions within the organizations. This would invalidate all trade union executive committees (on three occasions, by way of resolutions issued by the National Electoral Council, the inspection body for all electoral processes, the head of which is appointed by the Chávez Government, the electoral processes were suspended for all workers'

organizations). The aim of President Chávez is to eliminate the current trade union leaders and replace them with leaders attached to the Government; this is the objective of the referendum and of the passing of the abovementioned Bill, together with an orchestrated smear campaign directed by the President of the Republic himself, who has branded the CTV leaders as corrupt and dishonest.

– The Trade Union of Civil Servants of the Government of the State of Yaracuy (SEPGEY) states that it is incomprehensible and unheard of for the Government of President Hugo Chávez to seek to conduct elections, including a referendum, to oblige the general public to give their views on a matter that only concerns workers, who are the ones who know the organization to which they belong; this violates the provisions of the statutes of each trade union organization, and also the Labour Code, as a worker must be affiliated to be entitled to vote. Furthermore, the political slant the Government has given to this referendum is clear, and this constitutes nothing less than a violation of all the standards, laws and constitutions that the country has had.

– The Single Trade Union of Agricultural, RN (National Resources), National Park, Garden and Allied Workers of the State of Yaracuy indicates that the President of the Republic is calling a trade union referendum in which it wants all those registered on the standing electoral register to vote, thus violating the international agreements signed by Venezuela. This organization is not opposed to trade unions being made more democratic and brought up to date, as long as it is the actual organized workers themselves who appoint their own representatives.

956. In its communication of 9 November 2000, the Trade Union of National Assembly Legislative Workers (SINOLAN) alleges transfers of its leaders in violation of the prevailing collective agreement.

957. In its communication of 13 December 2000 the ICFTU alleges that the referendum of 3 December 2000 imposed on the Venezuelan people by the Government of President Chávez is intended as a direct attack on the trade union movement elected according to the statutes and to do away with its leadership in order to make room for another movement more favourably disposed to the Government. On 29 November 2000 an international trade union delegation began a mission in Caracas in a desperate attempt to persuade President Hugo Chávez to stop his plans to dismantle his country's trade union movement. The ICFTU explains that President Hugo Chávez is organizing this referendum – which will not be free and independent – in conjunction with the local elections, with the aim of dissolving the four principal trade unions of Venezuela and replacing them by a made-to-measure puppet organization to serve the Government's interests. The principal target is the Venezuelan Workers' Confederation (CTV), which is the country's largest trade union confederation and which is affiliated to the ICFTU. Mr. Javier Elechiguerra, the Public Prosecutor of Venezuela, yesterday asked the country's highest court, the Supreme Court, to suspend the referendum of 3 December 2000 on the grounds of unconstitutionality. He considers that the referendum "is an attack on freedom of association and the right of citizens to participate in national affairs, as recognized in articles 70 and 71 of the Constitution of Venezuela". The ICFTU fears that if President Chávez achieves his objectives, his actions will serve as inspiration for other anti-union governments. Recently, the President publicly attacked the leaders of the CTV, but as early as the beginning of August 1999, President Chávez made known his plans with respect to the Venezuelan trade union movement, threatening to dismantle it – by way of legislation promulgated by the Assembly – and to dismiss all trade union leaders. The announcement led to an overwhelming protest by trade union confederations all over the world and caused the ILO to send its first mission to the country. On that occasion the draft legislation was abandoned, but President Chávez's plans resurfaced once again at the beginning of 2000.

958. The ICFTU considers that the referendum – which will be conducted in conjunction with the municipal elections – is contrary to the international Conventions ratified by Venezuela. In a declaration published in Caracas at the end of its visit to Venezuela, the members of an ICFTU international trade union delegation considered that the authoritarian actions of the Venezuelan Government "constituted a serious threat to democracy".

B. The Government's reply

959. In its communications of 16 May 2000 and 10 January 2001 the Government states with regard to the national trade union referendum that international Conventions are instruments which create legal obligations when they are ratified. In accordance with article 19(5)(d), of the ILO Constitution, a State that ratifies a Convention commits itself to taking such action as may be necessary to make effective the provisions of the Convention. The obligation does not consist only of incorporating the Convention into national legislation, but also involves the need to ensure its application in practice. In accordance with Venezuela's constitutional provisions, ratified Conventions acquire the force of national law. The Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), adopted by the International Labour Conference at its 31st Session in San Francisco on 17 June 1948, ratified by Venezuela on 20 September 1982, published in *Official Gazette* No. 3,011, extraordinary edition, dated 3 September 1982, is contained in article 95 of the Constitution of Venezuela.

960. In the text submitted for the national trade union referendum in Venezuela on 3 December 2000, the Government asked:

> Are you in agreement with the renewal of trade union executive officers over the next 180 days under the special statute developed by the electoral authority in accordance with the principles of alternation and universal, direct and secret elections, contained in article 95 of the Constitution of Venezuela, and that during this time the leaders of the trade union confederations, federations and central organizations established in the country be suspended from their duties?

961. The Government indicates that, according to the provisions of clause 2 of article 71 of the Constitution of Venezuela, a popular referendum can be conducted as this is a matter of national importance. Articles 2, 3, 4 and 8 of Convention No. 87 specify the rights of workers to establish trade union organizations, to join them, to draw up their own regulations and stipulate that their rights shall not be ignored, infringed upon or revoked by any law or administrative instrument. However, none of this is intended to disregard or infringe upon any agency of the Venezuelan public authorities, but rather seeks to ensure that these provisions are complied with in practice by establishing real freedom of association, which must be obtained by consulting the sovereign people, since the traditional trade union leadership has taken hold and strengthened itself in such a way as to prevent its removal through the ordinary channels of the exercise of the rights of the workers themselves. It is the duty of the Venezuelan Government to safeguard workers' rights and in particular to ensure that they can organize themselves freely without falling victim to freedom of association restrictions.

962. The Government indicates that true freedom of association has not existed in Venezuela, because during the Fourth Republic the trade union movement was (and still is) monopolized by a leadership comprising senior officials from the parties that dominated the political scene in an authoritarian, exclusive and hegemonic manner, who imposed the rules of the game, making trade unionists instruments of the party leadership. This trade union leadership managed the Venezuelan Workers' Confederation (CTV) as it pleased,

shunned the true essence of trade union activities, turned its back on the interests of the working class and enriched itself illegally at the expense of that class, without international institutions and bodies taking an interest in condemning such wickedness and maintaining – on the contrary – a complicit silence. The aim of the referendum is for the Venezuelan people, the sole masters of their destiny, to decide whether this leadership remains or should make way for the establishment of democracy in the labour sphere of the country and to allow authentic, freely chosen leaders to assume the leadership of the organized working class. There is no intention to replace one trade union monopoly by another; the objective is to institute authentic freedom of association which, directed along organizational channels, will strengthen the workers, which will in turn serve as a guarantee of social peace for employers with social awareness, with the resulting increase in investment.

963. The Government adds that it respects compliance with the international obligations contracted by the Republic but it is also the jealous guardian of sovereignty and the executor of the legitimately expressed will of the people. The referendum planned to decide the fate of the trade union leadership in Venezuela does not contravene the obligations contracted under international Conventions with the ILO nor any provisions of the prevailing national Constitution.

964. In its communication dated 8 February 2001, the Government states that, during the last 30 years, the trade union movement has acted against the interests of its members: misuse of trade union interests in favour of individual and partisan interests; ignoring democracy in the trade union; signing collective agreements knowing that they could not respect them, in particular in the public sector; high trade union density in the public service, with workers signing up for the sole objective of being admitted to the public administration; partisan treatment and collusion with the public authorities; enormous accumulation of debt that has not been acknowledged in the previously signed collective agreements (from 1975 to 1998, the State owed its employees approximately $13 million); in the private sector trade union membership is almost non-existent (3 per cent); 25,000 members of grass-roots level trade unions and national unions are not affiliated to a trade union of a higher level due to the absence of the minimum conditions required of credibility, autonomy and independence in the face of individual interests, as well as a lack of suitability. For 30 years, the leaders of the CTV have benefited from millions of bolivars of financing from the administration, while leading twice towards the collapse of the Workers' Bank of Venezuela and other trade union enterprises, without ever considering the costs. Furthermore, the leaders of the CTV accepted amendments to the labour laws to the detriment of the working class, for example, with respect to compensation for termination of employment at the initiative of the employer, or concerning a shameful private social security system, which is contrary to ILO principles and to human rights in general. The CTV has distorted the reality before the ILO, leaving it to be believed that there is persecution in the absence of any proof (there has been no trade union leader persecuted, put under house arrest, or assassinated and no trade union has been made illegal). CTV also provided false information before the ILO's Fourteenth Regional Meeting of the Americas (Lima, August 1999).

965. The Government also states that in the communication of 3 February 2000, the ICFTU did not include the Decrees of the National Assembly and did not show that there is little respect for the agreement between the parties, and therefore has not proved a violation of freedom of association. In addition, the Government did not receive a copy of the ILO's request to the ICFTU to provide additional information and is not aware of any response provided further to that request.

966. The Government indicates that in January 2000 it presented a number of draft Decrees to the National Assembly on the issue of trade unions, which referred to earlier drafts

concerning free trade union elections, democratization, and trade union unity, which were modified following discussions with workers. On this occasion, the transitional standards committee of the National Assembly had intervened to facilitate dialogue, while respecting the decisions of the trade unions, freedom of association and human rights.

967. The Government provides details of the election process for the National Assembly and of the approval of a new draft Constitution in a referendum of 15 December 1999. The Government cites the following provisions concerning human rights and freedom of association:

> Article 23. Human rights treaties, covenants and conventions, signed and ratified by Venezuela shall have constitutional status and take precedence over internal law to the extent that they contain standards that are more favourable than those in the Constitution and national legislation. These treaties and conventions have immediate effect and are to be applied directly by the courts and other public bodies.
>
> Article 31. Every person has the right by virtue of these human rights treaties, covenants and conventions ratified by the Republic, to file a complaint before the competent international body in order to ensure that the rights are respected.
>
> Pursuant to the procedures established in this Constitution and in the laws, the State shall adopt the measures necessary to give effect to the decisions of the international bodies referred to in this Article.
>
> Article 95. Workers, without distinction whatsoever, and without the need for prior authorization, have the right freely to form trade unions that they consider to be appropriate in order to best defend their rights and interests, and to join or refuse to join these organizations, in conformity with the law. These organizations are not subject to administrative intervention, suspension or dissolution. These workers are protected against all acts of anti-union discrimination or interference contrary to the exercise of their rights. Officers and officials of the trade union shall enjoy immunity in the exercise of their functions during the period of their mandate.
>
> For the exercise of trade union democracy, the by-laws and rules of trade unions shall include provision for the alternation of officials and officers, through a direct and secret ballot of all the members. Officials and officers who abuse the benefits associated with freedom of association for their personal wealth or interests, will be punished in conformity with the law. Officers are required to submit a sworn statement of their financial holdings.

968. The abovementioned articles of the Constitution (articles 23, 31 and 95), as well as the limits imposed by the National Assembly by the provisions approved through the national referendum of 25 April 1999, constitute a guarantee that the National Assembly cannot act contrary to international Conventions that have been ratified by Venezuela, under threat of such acts being declared null. In addition, in the spirit of participation, dialogue and consensus, the National Assembly had been invited to propose and adopt the Decree on the measures to guarantee freedom of association.

969. According to this Decree, the Government states that the transitional standards committee of the National Assembly launched a process of consultation on 25 January 2000 with representative organizations of workers, namely the Venezuelan Workers' Confederation (CTV), the General Confederation of Labour (CGT), the Confederation of Autonomous Trade Unions (CODESA), and the Single Confederation of Workers of Venezuela (CUTV). Also demonstrating respect for pluralism, participation and representativeness, without any favouritism, and in a true expression of democracy, full rights to participate in

the deliberations and the decision-making process (accepted by CTV, CGT, CUTV, CODESA) were given to the representatives of New Trade Unionism (NS) and the Workers' Constituent Front (FCT), as well as to representatives of unions that were not affiliated to the confederations, the latter having a degree of independence compared to the traditional confederations, and giving an indication of the diversity and the degree of complexity of the Venezuelan trade union movement in the last 30 years.

970. The transitional standards committee committed itself to guaranteeing free and democratic elections, by direct and secret ballots of all the members in order to elect new trade union leaders.

971. The objective of the National Assembly, which was agreed by all the workers' representatives concerned, and has been demonstrated since all these representatives participated fully and without pressure from the Government or the National Assembly, established agreements based on democracy and credibility of the trade union movement.

972. In order to expand the dialogue, the transitional standards committee of the National Assembly invited the ILO multidisciplinary team based in Lima to provide comments on the draft Decree concerning the democratization of the trade union movement. During the meeting of 25 January 2000, the trade unions present and a number of important constituents laid the foundations for an agreement. The parties reached an agreement on 26 January 2000, after discussing the process of democratizing the trade union movement, which involved the CTV, CGT, NS and FCT, laying the foundations for a Decree on the democratization of the trade union movement: measures to guarantee freedom of association, adopted by the National Assembly on 28 January 2000 and published in *Official Gazette* No. 36,904 on 2 March 2000.

973. A comparison of the draft Decree sent to the ILO by the transitional standards committee, which was commented upon by experts from the International Labour Standards Department, and the Decree adopted and published on 2 March, illustrates that the differences in the version published in the *Gazette* were motivated by the process of dialogue and the agreement signed 26 January 2000 between the various trade union organizations. This agreement sought to incorporate the advice of the ILO in order to avoid foreseeable interventions by the supervisory bodies and to initiate consultations with the most representative workers' organizations.

974. The Government indicates that, as a result of an error of the secretariat, CTV was entitled to have three of its representatives as members of the Electoral Council, while the rest of the trade unions were allotted four members, due to section 1 of a Decree adopted by the National Assembly but which was not published in the *Official Gazette*. In the context of the continual pressure being exerted on the Government of Venezuela by the international organizations, due to unfounded allegations of violations of freedom of association against the National Assembly and the Government, the Director-General of the ILO, Mr. Juan Somavia, contacted the Minister of Labour, Mr. Lino Antonio Martínez Salazar, to express his concern regarding the abovementioned Decrees which could violate the principles of freedom of association. As a result of this contact, the Minister immediately had an inquiry undertaken in an attempt to find solutions through dialogue, in conformity with international obligations assumed by the Republic through the abovementioned Conventions, and in accordance with the policy of the present Government which has been in power since 2 February 1999. Thus the decision was taken to suspend immediately the publication in the *Official Gazette* of all Decrees, and not to publish the Decree on trade union matters in order to determine whether there were any elements of the agreement concluded on 25 and 26 January 2000 between the various trade unions that had not been incorporated.

975. As additional evidence of the Government's goodwill, and of its concern for the CTV, a meeting took place between the representatives of the CTV, the Director of the National Legislative Committee, the Minister of Labour and former members of the National Assembly on 5 February, with various working groups seeking alternatives to bring about a consensus regarding the problematic provisions of the Decree that had been approved by the National Assembly. The ICFTU had previously submitted the complaint to the ILO (Case No. 2067). In this context, the Secretary-General of the CTV expressed his satisfaction with the suspension of the said Decrees as well as the amendment to section 1 of the Bill on the measures to guarantee freedom of association, elaborated in conformity with the consensus reached between all the trade unions on 26 January 2000. This illustrates unequivocally that the consensus was accepted by the representatives of CTV, CGT, CUTV, NS and FCT, as well as other trade unions not affiliated to these federations.

976. On 15 and 16 February, following the request of the Director-General of the ILO and with the consent of the Government, a mission to the country was undertaken, consisting of Mr. Victor Tockman, Director of the ILO Regional Office for the Americas, Mr. Daniel Martínez, Director of the ILO Andean Multidisciplinary Advisory Team and Mr. Horcio Guido, Freedom of Association Specialist of the International Labour Standards Department based in Geneva. The mission had constructive meetings with the Minister of Labour and other competent authorities, reiterating at every opportunity their intention to find appropriate solutions within the framework of the widest possible dialogue, as was the case in the formulation of the 350 articles of the Constitution. During these meetings, the authorities sought to place the Decree on the measures to guarantee freedom of association in its proper context and the legislative and executive authorities reaffirmed that the publication of this Decree would justly reflect the process of democratization and re-legitimization of the public and social sectors, having no precedent in the history of the Republic, and from which the trade union movement, as an important sector of society, should not be excluded; the Decree would facilitate respect for pluralism and national and universal standards and democracy, through the process of direct participation of the country's workers. Due to the wide consensus reflected in the document signed on behalf of all the sectors on 26 January 2000, the said Decree would open the way for a new legitimization of the trade union movement and mark the beginning of true democracy for the movement.

977. It is odd that the ICFTU submitted a complaint on 3 February 2000 against the Government of Venezuela alleging violations of freedom of association while meeting in Europe with the President of the CTV, Mr. Federico Ramírez León, which was why he was not involved in the agreements of 25 and 26 January. Eight days prior to the ICFTU submitting the complaint to the ILO, representatives of CTV, namely Mr. Carlos Navarro, Secretary-General, Mr. Emil Guevara, Director of Human and Trade Union Rights, Mr. Pablo Castro, Executive Committee member, and Mr. Freddy Iriarte, Director of Hiring and Disputes, signed the framework agreement.

978. Even more striking is the support on 22 August 2000 of Mr. Carlos Navarro, Secretary-General and Pablo Castro, Executive Committee member of CTV, thus involving CTV in the complaint, after a delay of five months, but more significantly, after these persons had signed the framework agreement that led to the National Assembly adopting the Decree on measures to guarantee freedom of association.

979. As undeniable proof of the consensus reached between the trade unions on 25 January and signed on the 26th of the same month, resulting in the Decree on the measures to guarantee freedom of association, the Government points to the most significant paragraphs of the opinions given by the representatives of CTV, CUTV, CGT, NS, FCT, CODESA and the document read by the Vice-President of the National Assembly leading up to the debate

and the adoption of the trade union agreement signed on behalf of CTV, CGT, NS and FCT on 26 January 2000.

980. As can be drawn from the documentation submitted by the Government, in the context of the issuance of the National Assembly's Decree on the measures to guarantee freedom of association, there were various national trade union federations that were not in agreement with the imposition of a single trade union confederation. Some indicated that there was a need for more ethical trade unionism; others were of the view that the process of reform should be led by the affiliates and not by the entirety of the workers, reaching an agreement through a nationwide consensus. One organization objected to the carrying out of a single electoral process. A new trade union federation was extremely critical of CTV and of the fact that the same trade union leaders have been holding power for 30-40 years, amassing fortunes unjustly (at least one federation was of the view that there should be an investigation into these matters). There is consensus among all the federations as to the need for trade union reform, democratization, modernization and more ethical trade unionism. One federation has advocated for the inclusion of unorganized workers in the process. The federations requested technical assistance and logistical support from the National Electoral Council. The Government asserts that the trade union federations signed an agreement and that CODESA abstained from signing the approved draft Decree. The Government adds that everything previously indicated was not carried out due to the lack of agreement on the part of the various trade unions concerned after the Decree was adopted. This failure was also due to the acute interest of the trade unions in putting individual partisan concerns ahead of the interests of the working class, despite the efforts of the National Assembly and the Government. As a result, and as desired by the trade union movement, the Decree on the measures to guarantee freedom of association, which was adopted by the National Assembly on 28 January and published in *Official Gazette* No. 36,904 of 2 March 2000, has never been, nor will it ever be, applied due to the disagreement among and conduct of the trade union organizations concerned.

981. The Government states that on 21 October 2000 the collective agreement for the petroleum sector was filed, due to the conciliation efforts of the Ministry of Labour following a dispute, including a strike, which ended in the signing of an agreement on 14 October 2000. The Government emphasizes its intention to comply with Conventions Nos. 87 and 98.

C. The Committee's conclusions

982. *The Committee notes with grave concern the severity of the allegations submitted in this case: (1) the enactment of Decrees and regulations which, according to the complainants, violate Conventions Nos. 87 and 98 and the existence of Bills which seriously restrict the rights contained in those Conventions; (2) the convening and conducting of a referendum by the authorities to impose trade union unity, remove all trade union leaders and replace the existing trade union confederations by an organization more favourably disposed to the Government, in the establishment of which the latter has played a major role; (3) the conducting of a campaign by the authorities to harass, discredit, injure and intimidate the Venezuelan Workers' Confederation (CTV), the most representative trade union confederation, with the intention of destroying it as well as the other confederations; (4) the prohibition to hold trade union elections for the third consecutive time; (5) the suspension of collective bargaining in the oil sector and the carrying out of "consultations" directly targeting workers about working conditions with the aim of concluding a "modern agreement"; (6) the granting of powers to the executive authority to establish the conditions to govern collective recruitment in the public sector; (7) the transfer of trade union leaders from SINOLAN in violation of the collective agreement.*

983. *The Committee must firstly deplore the fact that the Government has not replied to all the allegations.*

984. *The Committee notes the Government's declarations that: (1) the trade union movement continues to be monopolized by a leadership comprised of senior officials of the parties that dominated the political scene in an authoritarian, exclusive and hegemoneous manner, who made sure that the trade unions were the instruments of the party leadership; (2) this trade union leadership managed the Venezuelan Workers' Confederation (CTV) to suit its purposes, shunned the true essence of trade union activities, turned its back on the interests of the working class and enriched itself illegally at the expense of that class; (3) it is for the Venezuelan people (and this is the purpose of the referendum) to decide whether this leadership should stay or go; (4) there is no wish to replace one trade union movement by another but rather to institute authentic freedom of association; (5) the referendum of 3 December 2000 was undertaken within the framework of the Constitution. The Committee notes the communication of 8 February 2000 in which the Government strongly criticizes the trade union movement and its leaders for corruption over the last 30 years. The Committee also observes that the Government submits that the complainants have not proven the allegations and did not even deem it necessary to forward the relevant Decrees. However, the Committee recalls that this case involves allegations concerning relatively recent measures in violation of freedom of association, that the Government has been sent all the complainants' communications, and that the text of the Decrees of the National Assembly are public documents. The Committee considers that the objective of the reform of the trade union movement, with which, according to the Government, the trade union federations were in agreement, is not to be undertaken through measures that are incompatible with Conventions Nos. 87 and 98.*

985. *The Committee points out that, in the face of government criticism of the trade union movement, when the members of a trade union organization consider that their organization is turning its back on their interests, they have at their disposal in all free and democratic societies various means to express their disagreement: they can cease their membership of the organization, elect new leaders, amend their trade union statutes, or dissolve the organization. The Committee recalls that, according to Articles 2 and 3 of Convention No. 87, workers shall have the right to establish organizations of their own choosing and these organizations (through their members) shall have the right to elect their representatives in full freedom and to organize their administration and activities, while the public authorities shall refrain from any interference which would restrict this right. Therefore, observing the content of the referendum of 3 December 2000, the Committee cannot accept the authorities taking steps to change the trade union leadership because, according to Convention No. 87, it is not their responsibility to do so, particularly as the referendum decided on by the authorities and encompassing all voters (not only trade union members) involves the indiscriminate suspension of the leaders of all trade union central organizations, federations and confederations, and the principle of alternation, that is to say the impossibility of these leaders to continue in their positions in the future.*

986. *The Committee deplores this situation which is all the more reprehensible as the authorities have also made a large number of anti-union statements to the media in conjunction with this process, including remarks of an aggressive and hostile nature against the CTV which cannot fail to have a threatening effect and which are of a generic nature, without, as the complainants indicate, there currently being any proceedings against or sentences involving trade union leaders. Similarly, in view of the supposed neutrality of the Government's aims in respect to the referendum, the Committee observes that, according to the documentation and press cuttings provided by the complainant, the President of the Republic took part in the open days of the Bolivarian Workers' Force (FBT), an emerging new movement allied to the Government, from where it attacked the*

Venezuelan Workers' Confederation (CTV), in such way that everything appears to indicate that the hostilities towards the CTV are closely linked to favouritism towards the FBT. Moreover, this forms part of actions taken by the public authorities for the purpose of unifying the trade union movement as expressly stated in the Decree of 12 August 1999. The Committee considers that the situation described is incompatible with the principles of freedom of association and stresses that the referendum mentioned constitutes a major violation of these principles. In the view of the Committee, the fact that the Government indicates that the trade union federations that had been party to the agreement, subsequently reversed their opinion concerning the legislating of trade union reform, in no way alters this conclusion.

987. *Furthermore, the Committee deplores that the authorities have prohibited trade union elections for the third consecutive time, that in violation of Article 4 of Convention No. 98 they have suspended collective bargaining in the oil sector for several months citing an alleged state of national emergency (although following the dispute a collective agreement was signed on 21 October 2000) and that the companies are seeking to negotiate directly with workers in the absence of their trade unions. The Committee also deplores the lack of respect shown by the authorities to the ICFTU delegation that visited the country at the end of November 2000.*

988. *The Committee draws the Government's attention to certain principles and in particular stresses that "by according favourable or unfavourable treatment to a given organization as compared with others, a government may be able to influence the choice of workers as to the organization which they intend to join" [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 304] and that the pressure placed on workers by the authorities by means of public statements made against a trade union violates Article 2 of Convention No. 87. In any event, unity within the trade union movement should not be imposed by the State through legislation because this would be contrary to the principles of freedom of association [see **Digest**, op. cit., para. 289]. Instead it is the workers' organizations which should determine the structure of the trade union movement, it being inadmissible that non-affiliated workers are permitted to participate in changes to that structure.*

989. *The Committee also wishes to strongly emphasize that it is the responsibility of the workers' and employers' organizations to determine the conditions of election of their leaders and the authorities should refrain from any undue interference in the exercise of the rights of workers' and employers' organizations freely to choose their representatives, as guaranteed by Convention No. 87.*

990. *This being the case, and taking into consideration the conclusions noted above and the fact that no response has been provided concerning certain allegations, the Committee urges the Government and the authorities to put an end, without delay, to the repeated violations of Conventions Nos. 87 and 98 that are occurring in the country and in particular:*

(1) to abandon the idea of imposing or favouring in any way trade union monopoly or unity since these should only result from the will of the affiliated workers;

(2) to invalidate the results of the referendum of 3 December 2000 and to refrain from removing elected trade union leaders from office;

(3) to stop making hostile statements against the Venezuelan Workers' Confederation (CTV);

(4) to act in a neutral manner with all trade union organizations and to refrain from any discriminatory treatment, particularly against the CTV;

(5) to allow trade unions to conduct their elections when they choose in a context of respect for trade union statutes, and to put an end to the functions of the National Electoral Council in respect of trade union elections;

(6) to ensure that in future collective bargaining principles are respected in the petroleum sector, and that any direct negotiation between the enterprise and the workers does not undermine the position of trade union organizations;

(7) to stop submitting matters of a trade union nature to non-members;

(8) to show respect in future to the delegations of international trade union movements sent to the country; and

(9) to revoke the transfer of SINOLAN trade union leaders that are in violation of the collective agreement.

991. *With regard to the allegations related to legislation, the Committee has noted this and fully supports the observations made by the Committee of Experts on the Application of Conventions and Recommendations at its December 2000 meeting which are reproduced below:*

> *The Committee notes with concern that the new Constitution of the Republic, of December 1999, contains a number of provisions which are not in conformity with the requirements of the Convention, as follows:*
>
> – *Article 95. "The constitution and rules of trade union organizations shall require the alternation of executive officers by means of universal, direct and secret suffrage." The Committee recalls that, by virtue of **Article 3 of the Convention**, workers' and employers' organizations shall have the right to draw up their constitutions and rules, and to elect their representatives in full freedom. In this respect, the imposition of the requirement for the alternation of trade union executive officers by legislative means constitutes an important obstacle to the guarantees set forth in the Convention;*
>
> – *Article 293. The electoral authority shall have the functions of: organizing the elections of trade unions, occupational associations and political organizations under the terms set out in the law; Eighth Transitional Provision. While awaiting the enactment of the new electoral laws envisaged in this Constitution, electoral processes shall be convoked, organized, directed and supervised by the National Electoral Council (by means of a Decree published in the **Official Gazette** No. 36,904, of 2 March 2000, respecting measures to guarantee freedom of association, the members of the Electoral Board were appointed and their functions determined, including the achievement of trade union unification or the resolution of issues respecting membership of workers' organizations). In this regard, the Committee considers that the rules governing the procedures and arrangements for the election of trade union leaders should be determined in trade union statutes and not by a body outside workers' organizations. The Committee also considers that the issue of trade union unity and the status of the members of trade unions should be determined by decision of trade union organizations and in no event imposed by law, since such an imposition constitutes one of the most serious violations conceivable of freedom of association.*
>
> *In these conditions, the Committee requests the Government to take measures to amend the constitutional provisions referred to above, and to repeal the Decree published in **Official Gazette** No. 36,904, of 2 March 2000,*

respecting measures to guarantee freedom of association, and asks it to provide information in its next report on any measures adopted in this respect.

Finally, the Committee also notes with deep concern the draft texts for the protection of trade union guarantees and freedoms, and the "democratic rights" of workers in their trade unions, federations and confederations, which contain provisions that are in violation of the guarantees set out in the Convention, as well as an agreement issued by the National Assembly to convoke a national trade union referendum on 3 December 2000 with a view to the unification of the trade union movement and the suspension or removal of current trade union leaders, which implies a very serious interference in the internal affairs of trade union organizations, which is totally incompatible with the requirements of ***Article 3*** *of the Convention.*

992. *Furthermore, the Committee observes that in one of the Decrees issued by the National Assembly, the trade union movement is accused of the misappropriation of trade union finances and the authorities are ordered to investigate the offences and acts contrary to the morals and economic interests of the workers perpetrated by their leaders, with these authorities being able to establish the origin of the executive officials' wealth and order the necessary protective measures. In this respect, making value judgements against trade union leaders currently in office, charging them indiscriminately and generically with offences and immoral acts, and allowing investigations into the assets of any trade union to be carried out, are contrary to the presumption of innocence and reflect unacceptable harassment and cannot but intimidate trade union leaders. However, the Committee notes that, according to the Government, following the intervention of the Director-General of the ILO, a decision was taken to suspend with immediate effect the publication of the Decrees of the National Assembly, in particular the Decree concerning trade union matters. The Committee notes the Government's statement that the Decree concerning the measures to guarantee freedom of association (No. 36,904) of 2 March 2000 has never been, nor will it ever be, applied since the trade union federations, after having agreed to the Decree before its adoption, retracted their approval.*

993. *The Committee demands that the Government take measures to formally repeal or substantially amend trade union standards and Decrees that are in violation of Conventions Nos. 87 and 98, adopted since the arrival of the new government, which moreover, according to the complainants, were adopted without respecting the compromise to reach a consensus on the substance of said Decrees. The Committee also demands that the Government take steps to withdraw the Bill for the protection of trade union guarantees and freedoms and the Bill for the democratic rights of workers, which contain restrictions on trade union rights that are incompatible with Conventions Nos. 87 and 98. The Committee brings the legislative aspects of this case to the attention of the Committee of Experts on the Application of Conventions and Recommendations.*

The Committee's recommendations

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

(a) The Committee notes with grave concern the severity of the allegations and deplores the fact that the Government has not replied to all the allegations.

(b) The Committee urges the Government and the authorities to put an end, without delay, to the repeated violations of Conventions Nos. 87 and 98 that are occurring in the country and in particular:

(1) to abandon the idea of imposing or favouring in any way trade union monopoly or unity since these should only result from the will of the affiliated workers;

(2) to invalidate the results of the referendum of 3 December 2000 and to refrain from removing elected trade union leaders from office;

(3) to stop making hostile statements against the Venezuelan Workers' Confederation (CTV);

(4) to act in a neutral manner with all trade union organizations and to refrain from any discriminatory treatment, particularly against the CTV;

(5) to allow trade unions to conduct their elections when they choose in a context of respect for trade union statutes, and to put an end to the functions of the National Electoral Council in respect of trade union elections;

(6) to ensure that in future collective bargaining principles are respected in the oil sector, and that any direct negotiation between the enterprise and the workers does not undermine the position of trade union organizations;

(7) to stop submitting matters of a trade union nature to non-members;

(8) to show respect in future to the delegations of international trade union movements sent to the country; and

(9) to revoke the transfer of SINOLAN trade union leaders that are in violation of the collective agreement.

(c) The Committee demands that the Government take measures to repeal or substantially amend trade union standards and Decrees that are in violation of Conventions Nos. 87 and 98, adopted since the arrival of the new government, which moreover, according to the complainants, were adopted without respecting the compromise to reach a consensus on the substance of said Decrees. The Committee demands that the Government take steps to withdraw the Bill for the protection of trade union guarantees and freedoms and the Bill for the democratic rights of workers, which contain restrictions to trade union rights that are incompatible with Conventions Nos. 87 and 98.

(d) The Committee requests the Government to inform it for its May-June meeting of the measures adopted in accordance with the above requests and brings the legislative aspects of this case to the attention of the Committee of Experts on the Application of Conventions and Recommendations.

CASE NO. 2080

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

Complaint against the Government of Venezuela presented by the C.A. Metro de Caracas Workers' Union (SITRAMECA)

Allegations: Interference by the authorities in a trade union merger

995. The complaint is contained in a communication from the C.A. Metro de Caracas Workers' Union (SITRAMECA) dated 9 March 2000. The Government sent its observations in communications dated 11 September 2000 and 16 February 2001.

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

A. The complainant's allegations

997. In its communication dated 9 March 2000, the C.A. Metro de Caracas Workers' Union (SITRAMECA) states that on 1 September 1999, an extraordinary general assembly was called for the two unions in C.A. Metro de Caracas (SITRAMECA and ASUTMETRO), with the aim of merging them. SITRAMECA adds that the merger process has been raised before the courts owing to serious legal errors. This has brought the whole process into disrepute and undermined its legitimacy as well as placing the workers of C.A. Metro de Caracas in an indefensible position as the enterprise does not acknowledge SITRAMECA. Agreements between both trade union organizations aimed at carrying out a new merger process are being prepared; these agreements will safeguard current legal standards and guarantee effective and efficient protection of the rights and interests of the workers.

998. The complainant states that on 23 November 1999 the Government, through the Minister of Labour, sent an unnumbered decree dissolving one trade union organization, merging it with the other and arbitrarily legalizing the abovementioned disputed merger process between the two unions, i.e. the Single Association of Workers of C.A. Metro de Caracas (ASUTMETRO) and the C.A. Metro de Caracas Workers' Union (SITRAMECA), demonstrating explicit and undue interference in union matters without observing the standards for this type of procedure that exist in current labour standards. The complainant considers that the Minister of Labour's actions constitute flagrant interference in the internal functioning of the abovementioned trade union organizations. In light of the fact that the merger process was taking place between the trade union organizations, it should have been the trade union organizations themselves who resolved any differences rather than a high-level government civil servant who, in doing so, violated Article 3 of Convention No. 87. The interference of the Minister of Labour in dissolving one trade union organization and merging it with the other also violates Article 4 of Convention No. 87. The complainant attaches a copy of the Decree of 23 November 1999 of the Minister of Labour.

B. The Government's reply

999. In its communications of 11 September 2000 and 16 February 2001, the Government categorically rejects the complaint because the decision to dissolve ASUTMETRO was freely and autonomously taken during the assembly that was attended by a representative number of workers on 26 August 1999. The announcement of the irrevocability of the trade union merger, agreed upon in a decision of 1 September 1999 by SITRAMECA and ASUTMETRO, is the result of the exercise of freedom of association, as is the compliance with the outcome of the electoral process which took place with no interference from the Government during the electoral process. The Decree of the Minister of Labour does not represent appointment of the leadership of the trade union committee, it merely lists the names of the newly elected officials.

1000. The Government explains that on 20 August 1999 the Act outlining the agreement reached between the leadership of the Single Association of Workers of C.A. Metro de Caracas (ASUTMETRO) and the C.A. Metro de Caracas Workers' Union (SITRAMECA) and members of the National Constituent Assembly was signed, and the merger process between the two trade unions began. Subsequently, on 26 August, ASUTMETRO called an ordinary assembly, in accordance with that which had been agreed and signed in the Act of 20 August 1999 where, among other things, they decided to automatically dissolve themselves as a trade union organization once the new leadership had been elected by single electoral process. On 1 September 1999, the first integrated extraordinary general assembly took place with a relatively broad and representative audience from the two trade union organizations, and a series of decisions were made as follows:

> 1. The legitimacy of a new trade union directorate, arising out of the convocation of a single electoral process, is officially declared to this combined general assembly of the workers of C.A. Metro de Caracas as the highest sovereign representative body to determine and proclaim irrevocable the trade union merger …
>
> 2. The combined general assembly stipulates that all its decisions shall be compulsory for all workers of C.A. Metro de Caracas, and the workers and trade union leaders of both trade union organizations are responsible for their implementation …
>
> 7. The combined general assembly of workers sets a maximum period of 45 days from the present date (1 September 1999) to establish a single electoral process wherein all workers protected by the collective agreement, whether or not they are members of one of the two trade unions of Metro, shall have the right to vote in collective, secret and direct elections …
>
> 8. A preliminary electoral commission will be set up to organize and administer the single electoral process. This commission shall comprise nine (9) workers, democratically chosen from among those at the combined general assembly. These workers shall accept the duty conferred on them, having no position of responsibility in the trade union organizations currently in existence in the enterprise nor electing to accept any position of responsibility in the single electoral process … (the members of this commission being elected under this same act).

1001. The Government states that following judicial proceedings, the court ruled that the challenged assembly was void, as the requirements of article 431 of the Organic law of labour had not been complied with; the Ministry of Labour decided not to give an opinion as regards the notice that should be given by the union executives to the enterprise, since the Supreme Court of Justice has not yet issued its judgement on a new judicial proceeding

filed with it. The Government adds that the assembly published this first communiqué of 12 approved decisions signed by Mr. Francisco Torrealba (signatory to the complaint before the Committee of Freedom of Association) on behalf of SITRAMECA, and Mr. Oscar Aparicio on behalf of ASUTMETRO. On 15 September 1999 another communiqué was published informing all those workers interested in taking part in the single electoral process to submit their nominations and the prerequisites that must be fulfilled. Voting took place on 20 October 1999, scrutineering was carried out in the presence of the members of the single electoral commission and subsequently a voting report giving details of the results of the elections for the executive committee and disciplinary tribunal was presented. On 25 October 1999, the commission carried out the induction of the new executive committee and the disciplinary tribunal.

1002. However, prior to the induction of the elected trade union members, those who had been defeated in the elections apparently presented a series of challenges which led to the single electoral commission issuing a decision on 13 October 1999 relating to the challenges to candidates, wherein they stated, among other things, the following:

1. The single electoral commission has complete authority and autonomy to proceed with the single electoral process, according to the mandate of the combined general assembly of 1 September 1999.

3. The decisions of the combined extraordinary general assembly of 1 September 1999 form the fundamental framework of standards for the single electoral process; there is no express exception therein regarding the prohibition of nominations.

4. Documentary evidence supporting the challenges to the contested candidates was late in arriving.

5. These challenges should have been raised at the combined extraordinary general assembly of 1 September 1999 so that exclusions to the nominations might have been clarified.

1003. Subsequently, a Decree issued by the Minister of Labour merely listed the names of the newly elected officials and acknowledged the merger of the two trade unions as legitimate (on 10 December 1999, a worker of the enterprise filed proceedings against this Decree with the Supreme Court of Justice; the suit is at the preliminary stage and the Government will provide the judgement once it is issued).

1004. In this course of events it is essential to emphasize that the combined extraordinary general assembly of 1 September 1999, wherein the trade union alliance was announced, agreed to hold a single electoral process where all workers, whether they were affiliated or not to one of the two existing trade unions of the enterprise, might vote; and it was decided to merge the trade unions into the one with the greater number of members. ASUTMETRO, therefore, would be dissolved as a result of the trade union merger. The accusations that the Minister of Labour's Decree was responsible for the dissolution of a trade union organization is completely false. This decision was freely and autonomously taken by ASUTMETRO as shown by the Act of 20 August 1999. The Government therefore categorically rejects the false accusation of violation of Article 4 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

1005. The agreement reached by these trade unions to undertake a merger is a clear demonstration of the exercising of freedom of association with full autonomy of administrative organization and free election of representatives as laid down in Convention No. 87. These trade union organizations are therefore fulfilling certain basic functions that are part of their *raison d'être*; and it is vitally important to recognize and strengthen those

institutions that are truly representative of Venezuelan workers for social dialogue and participation.

1006. The Minister of Labour's actions were limited to noting the voting report presented by the single electoral commission on 20 October 1999 and to listing the names of the newly elected officials of the executive committee and the disciplinary tribunal, according to the Act. The Government merely issued an administrative Act for a specific purpose. This Act was not standard setting in nature: it merely listed the names of the newly elected officials and did not represent appointments by the Government to the executive committee and disciplinary tribunal.

1007. Furthermore, the Government believes that the Decree in question conforms with article 91 of the Constitution of Venezuela (repealed), which guarantees the rights of trade union members and employers, as this administrative Act occurred when that Constitution was in force. This Decree is also in line with article 95 of the new Constitution, which was approved as a result of a countrywide constitutional referendum on 15 December 1999 and entered into force on 30 December 1999 when it was published in the *Official Gazette* No. 36.860. This constitutional document is fully in line with Convention No. 87 as it lays down that trade union organizations shall not be subject to interference, suspension or dissolution by public authorities and that workers shall be protected against all acts of discrimination or interference contrary to the exercise of this right.

1008. Regarding the group of workers from SITRAMECA who contested the results of the elections, this group should contest the election results before the competent legal authorities rather than the Decree issued by the Minister of Labour, as this in no way represents interference of any kind in the trade union process.

C. The Committee's conclusions

1009. *The Committee observes that in the present case the complainant objects to a Decree issued by the Minister of Labour on 23 November 1999, which, it believes, dissolves one of the two trade union organizations of C.A. Metro de Caracas, merging it with the other trade union organization of that enterprise, and arbitrarily legalizes a merger process between the two trade union organizations.*

1010. *The Committee notes the Government's statements that: (1) the trade union organizations of ASUTMETRO and SITRAMECA agreed to carry out a merger in which ASUTMETRO would freely and autonomously cease to exist, according to the Act of 20 August 1999 in which members of the National Constituent Assembly participated; (2) the combined extraordinary general assembly of 1 September 1999 agreed to a single electoral process wherein all workers, whether they were affiliated or not to one of the two trade unions, would have the right to vote and decided to merge the trade unions into the one with the greater number of members, with ASUTMETRO subsequently being dissolved as a result of the trade union merger; (3) in its Decree of 23 November 1999 (which has been appealed to the Supreme Court of Justice), the Minister of Labour limited himself to noting the voting report presented by the single electoral commission on 20 October 1999 and to listing the names of the newly elected officials of the executive committee and the disciplinary tribunal; this was purely an administrative Act that mentioned only the results of the elections; (4) prior to those elected taking up their duties it seems there were a series of challenges from those who had been defeated that the single electoral commission decided to reject; and (5) a court has declared void the assembly of 1 September 1999, but an appeal against this decision has been filed with the Supreme Court of Justice.*

1011. *The Committee would like to point out that in the series of events related by the Government there is one element that stands out: the single electoral process allowed the*

workers of C.A. Metro de Caracas to vote, whether they were members or not of the ASUTMETRO or SITRAMECA trade union organizations. The Committee considers that this fact, whether or not it was agreed to by the trade unions in question, invalidates the trade union merger and the appointment of the trade union bodies. The Decree of the Minister of Labour which "recognizes as legitimate the merger of the two trade unions of the C.A. Metro de Caracas company and the election of the new executive committee of the Workers' Union of C.A. Metro de Caracas" violates the most fundamental principle of freedom of association, i.e. that only trade union members can decide on their trade union structures and the organization of the institutions of these structures. The Committee strongly rejects this type of statement and urges the Government to respect Convention No. 87 and not to interfere in internal matters of trade union organizations. The Committee draws the attention of the Government to Articles 2 and 3 of Convention No. 87 as follows:

Article 2

Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.

Article 3

1. *Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.*

2. *The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.*

1012. *In these circumstances and taking into account the judicial proceedings that have been filed, the Committee hopes that the courts will annul the Minister of Labour's Decree of 23 November 2000, as well as the trade union merger of SITRAMECA and ASUTMETRO, and urges the Government to ensure that this process only takes place if initiated by the trade union members of both organizations in full freedom. The Committee requests the Government to keep it informed of developments in the situation.*

The Committee's recommendations

1013. ***In the light of its foregoing conclusions, the Committee requests the Governing Body to approve the following recommendations:***

(a) Noting that the Government has violated Convention No. 87, the Committee hopes that the courts will annul the Decree issued by the Minister of Labour on 23 November 2000, as well as the trade union merger of SITRAMECA and ASUTMETRO, and urges the Government to ensure that this process only takes place if initiated by the trade union members of both organizations in full freedom.

(b) The Committee requests the Government to keep it informed of developments in the situation.

Geneva, 16 March 2001.

Max Rood,
Chairperson.

Points for decision:

Paragraph 104;	Paragraph 439;	Paragraph 733;
Paragraph 117;	Paragraph 458;	Paragraph 768;
Paragraph 132;	Paragraph 466;	Paragraph 778;
Paragraph 218;	Paragraph 484;	Paragraph 802;
Paragraph 234;	Paragraph 525;	Paragraph 813;
Paragraph 256;	Paragraph 536;	Paragraph 828;
Paragraph 289;	Paragraph 553:	Paragraph 861;
Paragraph 302;	Paragraph 563;	Paragraph 875;
Paragraph 316;	Paragraph 575;	Paragraph 896;
Paragraph 325;	Paragraph 591;	Paragraph 911;
Paragraph 339;	Paragraph 622;	Paragraph 926;
Paragraph 359;	Paragraph 675;	Paragraph 939;
Paragraph 371;	Paragraph 684;	Paragraph 994;
Paragraph 415;	Paragraph 716;	Paragraph 1013.