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SIXTH ITEM ON THE AGENDA

325th 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 31 May and 1 and 14 June 2001, under the chairmanship of Professor Max Rood.

2. The members of Chilean and Venezuelan nationalities were not present during the examination of the cases relating to Chile (Case No. 2107) and Venezuela (Cases Nos. 2067 and 2088).

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3. Currently, there are 56 cases before the Committee, in which complaints have been submitted to the governments concerned for observations. At its present meeting, the Committee examined 22 cases on the merits, reaching definitive conclusions in 11 cases and interim conclusions in 11 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. 2119 (Canada/Ontario), 2120 (Nepal), 2121 (Spain), 2122 (Guatemala), 2123 (Spain), 2124 (Lebanon), 2125 (Thailand) and 2126 (Turkey), 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. 1865 (Republic of Korea), 2017 (Guatemala), 2036 (Paraguay), 2050 (Guatemala), 2111 (Peru), 2114 (Japan), 2115 (Mexico), 2117 (Argentina) and 2118 (Hungary).

Partial information received from governments

6. In Cases Nos. 1787 (Colombia), 1948 (Colombia), 1955 (Colombia), 1962 (Colombia), 1986 (Venezuela), 1995 (Cameroon), 2046 (Colombia), 2086 (Paraguay), 2094 (Slovakia) and 2104 (Costa Rica), the governments have 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. 2013 (Mexico), 2096 (Pakistan), 2113 (Mauritania) and 2122 (Guatemala), the Committee has received the governments' observations and intends to examine the substance of these cases at its next meeting.

Urgent appeals

8. As regards Cases Nos. 2095 (Argentina), 2103 (Guatemala), 2105 (Paraguay) and 2116 (Indonesia), the Committee observes that, despite the time which has elapsed since the submission of the complaints or the last examination of the cases, it has not received the observations of the governments concerned. The Committee draws the attention of the governments in question to the fact that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body, it may present a report on the substance of 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.

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

9. The Committee considered that it should especially draw the Governing Body's attention to certain cases due to the seriousness and the urgency of the issues raised therein. These cases concern the following countries: Ethiopia (Case No. 1888), Haiti (Case No. 2052) and Venezuela (Cases Nos. 2067 and 2088).

10. Furthermore, due to the Haitian Government's total lack of cooperation in forwarding observations regarding the recent complaints submitted against it, the Committee requested its Chairperson, pursuant to paragraph 61 of the Committee's procedure, to make contact with the representatives of the Haitian Government attending the International Labour Conference in order to discuss the matters at issue.

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: Peru (Case No. 1878), Canada/Ontario (Case No. 1951), Venezuela (Case No. 2067) and Peru (Case No. 2098).

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

Case No. 1963 (Australia)

12. The Committee last examined this case concerning violations of freedom of association arising out of actions in relation to workers in stevedoring operations at various Australian ports, at its November 2000 meeting [see 323rd Report, paras. 22-24]. At that time, the Committee requested the Government to provide information concerning any inquiry held to determine whether serving defence force personnel were involved in training in Dubai in order to replace dismissed workers. It also requested the Government to forward decisions concerning the relevant outstanding court matters once they have been rendered.

13. In communications of 19 and 26 February 2001, respectively, the Government provides a summary of the status of the court matters and information on the Defence Force Discipline Act. In a communication of 16 May 2001, the Government forwards a letter from the Chief of the Army concerning the alleged training of Australian defence force

personnel in Dubai in May 1998, stating that having searched all relevant records, no investigation has been conducted because "we believe that nothing untoward had occurred that required or justified an investigation".

14. *The Committee takes note of the information provided by the Government, and requests it to continue providing information as to the status of the outstanding court matters, and to forward the decisions once they have been rendered.*

Case No. 1862 (Bangladesh)

15. At its November 2000 meeting, when it last examined this case [see 323rd Report, paras. 28-31], the Committee had urged the Government, once again, to speed up the discussions regarding the amendment of sections 7(2) and 10(1)(g) of the 1969 Industrial Relations Ordinance so that concrete results may be obtained in the very near future. The Committee also requested the Government to provide it with the decisions of the Labour Court concerning the registration of the trade union at Saladin Garments Ltd., and of the High Court Division concerning the registration of the Karmashari trade union at Palmal Knitwear Ltd., as soon as they are issued.

16. In its communication of 15 February 2001, the Government states in connection with the first issue that it is still consulting social partners in order to reach consensus on the amendments to the Industrial Ordinance of 1969, and expects a fruitful result soon; in addition, a high-level tripartite committee is currently reviewing the draft Labour Code 1994 and it is expected that this review will be finalized soon. Concerning the registration of the trade union at Saladin Garments Ltd., the case is still pending before the First Labour Court in Dhaka; the Committee will be informed as soon as the decision is issued. As regards the situation at Palmal Knitwear Ltd., the case is still pending before the High Court Division; while the Ministry of Labour cannot interfere in this matter with the Judicial Department, which is an independent body, the Government has directed the Solicitor Branch to move the case to the High Court for speedy disposal.

17. *Noting that discussions with social partners are continuing concerning amendments to the Industrial Ordinance of 1969 and that a tripartite committee is reviewing the framework of industrial relations, the Committee firmly hopes that these tripartite discussions will yield positive results in the very near future, particularly taking into account the lengthy consultations that have already taken place, the reiterated calls by the Committee of Experts and the commitment made in that respect by a Government representative at the 1998 Conference; the Committee requests the Government to keep it informed of developments in this respect. The Committee strongly hopes that the court decisions concerning the registration of the trade unions at Saladin Garments Ltd. and Palmal Knitwear Ltd. will be issued shortly and requests the Government, once again, to provide it with these judgements as soon as they are issued*

Case No. 1989 (Bulgaria)

18. When it last examined this case at its November 2000 meeting, the Committee requested the Government to keep it informed of developments with respect to any pending court cases concerning workers dismissed from the Bulgarian State Railways (BSR) following warning strikes in support of wage increases. It also requested the Government to keep it informed of the outcome of the independent commission established to examine allegations of anti-union discrimination against members of the Trade Union of Engine Personnel of Bulgaria (TUEPB) who refused to withdraw from the union [see 323rd Report, paras. 39-41].

19. In a communication of 26 February 2001, the Government states that the BSR has taken the required action to implement the courts' decisions that have come into force. As a result, drivers have been reinstated in jobs doing the same kind of work they were performing prior to their dismissal. Arising from the courts' decisions, a Protocol presented by TUEPB was signed between BSR and the Union of the Transport Trade Unions in Bulgaria (UTTUB), the implementation of which was confirmed by an Order issued by the Director-General of BSR. The Protocol provides that BSR will finance a 14-day training course at the Centre for Professional Qualification in Sofia, for the drivers who have been reinstated. It also provides that an examination will be organized within 15 days of the completion of the training on the Regulations for the Trains Movements, the Regulations for Technical Operation, and on the Signalization Instructions. To ensure objectivity and impartiality, a UTTUB representative is to be present during the examination. The Government states further that the independent commission which was to inquire into the allegations of harassment of the members of TUEPB, is in the process of being set up.

20. *The Committee takes due note of the information provided by the Government, in particular the signing of a Protocol, initiated by TUEPB, providing for the retraining of the reinstated workers. The Committee, however, reiterates its request for information on the outcome of the court cases that were pending, and would like to know how many of the workers have in fact been reinstated. Once again, the Committee trusts that all the dismissed workers will be reinstated in their jobs with full compensation. The Committee also expresses the hope that the independent commission inquiring into the allegations of harassment of the TUEPB members will be able to move forward with its mandate without further delay, and asks to be kept informed in this regard.*

Case No. 2083 (Canada/New Brunswick)

21. When it examined this case at its March 2001 session, the Committee requested the Government to take measures to ensure that casual workers in the public service be granted the right to establish and join organizations of their own choosing and to bargain collectively, and to keep it informed of developments [see 324th Report, paras. 235-256]. In a communication of 8 May 2001, the Government indicates that the competent authorities were to meet representatives of the complainant organization on 17 May 2001. *The Committee notes this information and requests the Government to keep it informed of the results of that meeting.*

Case No. 1987 (El Salvador)

22. The Committee last examined this case, relating to the refusal to recognize and to grant legal personality to various trade unions, at its November 2000 meeting [see 323rd Report, paras. 61-62]. On that occasion the Committee requested the Government to keep it informed with regard to the process of reform of the Labour Code and expressed the hope that full account would be taken of its recommendations in that process.

23. In a communication of 7 February 2001, the Government informs the Committee that on 20 October 2000 the Ministry of Labour and Social Welfare of El Salvador, in accordance with a decision handed down by the administrative litigation division of the Honourable Supreme Court of Justice, decided to grant legal personality to the Trade Union of the El Salvador Telecommunications Company (SUTTEL), whose credentials were issued on 14 November 2000 as the trade union elected its General Executive Committee on 29 October 2000, which will exercise its functions until 23 May 2001.

24. The Government stresses that if the Ministry of Labour has not encouraged negotiations between the employer and the trade union it is because the Labour Code establishes that in order for an employer to be obliged to recognize a trade union as representative of workers' interests for the purposes of negotiation and collective bargaining, that trade union must represent the majority of the enterprise's workers, which is not the case. The Government adds that in the company in question, there is already a trade union organization with legal personality granted by the Secretary of State, called the Trade Union of the El Salvador Telecommunications Enterprise (SUTTEL). The complainant organization later informed the ILO that the company formally committed itself, under an agreement, to bargain with the SUTTEL.

25. *The Committee notes this information, and once again requests the Government to keep it informed with regard to the reform of the Labour Code in the light of the recommendations it has made in previous examinations of the case.*

Case No. 2010 (Ecuador)

26. The Committee last examined this case, concerning the murder of a trade union official, threats against another official and deaths during demonstrations, at its meeting in March 2001 [see 324th Report, paras. 554 and 563]. On that occasion, the Committee expressed the firm hope that the judicial inquiry under way into these murders would be concluded very soon and requested the Government to keep it informed of the final outcome of these investigations.

27. In its communication of 6 March 2001, the Government supplies the final documents concerning to the factual investigation of the case and states that all proceedings have been completed. Indeed, according to the criminal court which examined the case, during this action, which was officially conducted as a judicial inquiry, no specific complaint or accusation was proven, no proceedings remained pending and no one was charged.

28. *The Committee notes this information and regrets that the murder has remained unpunished. Therefore, the Committee is bound to recall 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 of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 55].*

Case No. 1978 (Gabon)

29. The Committee last examined this case, which concerns the existence and free functioning of trade union structures of the Gabonese Confederation of Free Trade Unions (CGSL) in the Leroy-Gabon and SOCOFI enterprises and the dismissal of trade unionists for exercising their right to strike, at its May 2000 meeting [see 321st Report, paras. 28-36]. At the time, it requested the Government to take the necessary measures to ensure the existence and free functioning of the CGSL trade union in the SOCOFI enterprise, once the union had complied with registration formalities provided by law. The Committee had further asked the Government to keep it informed of the decision of the Court of Appeals on the legality of the strike launched by the CGSL at the SOCOFI enterprise in 1997.

30. In a communication dated 31 January 2001, the Government indicates that the decision regarding the legality of the strike at the SOCOFI enterprise is still on appeal before the Libreville Labour Court, but that SOCOFI has nevertheless been invited to authorize trade union pluralism within the enterprise.

31. Moreover, the Government states its intention first to hold elections of workers' representatives throughout the country and subsequently to enter into negotiations with the social partners, with a view to remedying legal shortcomings in the collective agreements as regards trade union representation in enterprises.

32. *The Committee takes note of this information. As regards the decision concerning the legality of the strike at the SOCOFI enterprise, it notes that the matter is still pending before the Libreville Labour Court. The Committee recalls that the strike took place in September 1997, i.e. more than three and a half years ago, and that the dismissed workers are still awaiting the Court's decision. The Committee once again urges the Government to take the necessary measures – if the strike is ruled to have been lawful – in order that the workers dismissed for exercising the right to strike are reinstated in their posts without loss of pay. It also reiterates its request that the Government notify it of the decision of the Labour Court as soon as the decision is handed down.*

33. *As regards the allegations concerning the dissolution of the CGSL trade union structure at the SOCOFI enterprise, the Committee notes the Government's statement that SOCOFI has been invited to authorize trade union pluralism within the enterprise. The Committee, therefore, requests the Government to confirm the existence and free functioning of the CGSL trade union in the enterprise. Moreover, while taking due note of the Government's statement of intention to enter into negotiations with the social partners on the question of trade union representation in enterprises and to hold elections of workers' representatives throughout the country, the Committee reminds the Government that it is for workers' organizations to determine the conditions under which their leaders are elected, and that the authorities should refrain from any unjustified interference in the exercise of the guaranteed right of workers' organizations to elect their representatives in full freedom, pursuant to Convention No. 87.*

Case No. 2028 (Gabon)

34. At its meeting in November 2000 [see 323rd Report, paras. 201-213] the Committee examined this case, which concerned the arrest and detention of a trade union member, Mr. Nguelani. On that occasion, recalling that the arrest of trade unionists against whom no charge is brought involves serious restrictions on freedom of association, the Committee urged the Government to take the necessary steps to ensure that Mr. Nguelani was duly compensated by the authorities for his loss of salary during preventive detention and requested the Government to keep it informed in this regard.

35. In a communication dated 31 January 2001, the Government states that, as regards the arrest of Mr. Nguelani, national law does not grant trade union immunity in criminal cases and that there is no indication that his detention ordered by a judge on grounds other than trade union activity was used as a pretext to justify restriction of his exercise of freedom of association. Concerning his being placed in preventive custody for four months, the Government points out that this was within the law, since in criminal cases preventive custody is limited to six months.

36. As regards compensation for loss of his salary, the Government points out that national law provides that compensation may be awarded to a person who has been held in preventive custody during proceedings culminating in dismissal of the case, discharge or acquittal, where such detention caused manifestly unusual and particularly serious prejudice to the accused. The time limit for appeal is six months following the decision of dismissal, discharge or acquittal. In this case, according to the Government, it was up to Mr. Nguelani to claim this right within the prescribed time limit, failing which it would be time-barred. In the absence of evidence to the contrary, neither he nor his trade union confederation had availed themselves of this right.

37. *The Committee notes the information provided by the Government and, in particular, the fact that according to it there was no indication that the detention of Mr. Nguelani ordered by a judge on grounds other than trade union activity had been used as a pretext to justify restriction of his exercise of freedom of association. However, the Committee recalls that in its previous examination of the case it had observed from the written statement made by the plaintiff, Ms. Oyane, which had been certified by Boové town hall and transmitted by the Government, that she affirmed that the labour inspector had strongly urged the plaintiffs to bring a charge against the CGSL representative for embezzlement of the sums paid, inter alia, for CGSL membership. This written statement had concluded by severely censuring the improper conduct of the labour inspector. The Committee had also noted that as a result of this charge, the CGSL representative had been held in preventive custody for four months, that his request for release on bail had been refused, and that the case had finally been dismissed. In these circumstances, although the Government refuses to see a link between Mr. Nguelani's legitimate trade union activity and the charges brought against him which led to his detention, the Committee can only reiterate the conclusions it had formulated during its previous examination of the case, i.e. that the arrest of trade unionists against whom no charge is brought involves restrictions on freedom of association.*

Case No. 1970 (Guatemala)

Direct contacts mission in Guatemala

38. The Committee was informed that a direct contacts mission took place in Guatemala (23-27 April 2001) with respect to the follow-up given to its recommendations concerning Case No. 1970.

39. *The Committee will examine this case at its November 2001 session in the light of the content of the mission report.*

Case No. 1991 (Japan)

40. The Committee last examined this case concerning allegations of anti-union discrimination arising out of the privatization of the Japanese National Railways (JNR), at its November 2000 meeting [see 323rd Report, paras. 327-383]. The Committee had urged all parties concerned to accept the Four Party Agreement, which set out conditions aimed at encouraging negotiations between the Japan Railway companies (JR companies) and the complainants with a view to reaching a satisfactory solution rapidly which would ensure that the workers concerned who were dismissed as a consequence of the privatization were fairly compensated. Noting that the issue of the non-recruitment of KOKURO members was pending before the Tokyo High Court, the Committee had also requested the Government to keep it informed of the outcome of the decision in this regard.

41. In a communication dated 17 January 2001, the Government indicates that the Tokyo High Court dismissed the appeals concerning the issue of the non-recruitment of KOKURO members. Since the list of candidates was prepared by the JNR, a separate legal entity, the High Court found that the "JR" companies could not be considered as "employers" with respect to the trade union members concerned, and thus had not committed an unfair labour practice in their recruitment practices. The Government states that the decisions have been further appealed to the Supreme Court. *The Committee requests the Government to keep it informed of the outcome of the decision of the Supreme Court in this regard.*

42. In a more recent communication dated 23 April 2001, the Government provides follow-up information concerning the outcome of KOKURO's 67th National Periodic Conference,

where the Four Party Agreement and activity guidelines for its implementation were discussed. The activity guidelines were adopted by the Conference on 27 January 2001 and included the following:

(i) KOKURO would recognize that the JRs bear no legal responsibility and;

(ii) in negotiations towards a resolution of the dispute, KOKURO would seek to ensure hiring by the JRs of its members, payment of compensation, employment security, the eradication of all unfair labour practices and the establishment of sound labour management relations.

The Government adds that on 15 March 2001, the members of the Four Party Agreement (the Ruling Parties and the Social Democratic Party) convened the Four Party Consultation Committee in order to hear of the results of KOKURO's National Conference from its Executive Committee.

43. *Noting that KOKURO has finally accepted the Four Party Agreement of 30 May 2000 which offers a real possibility of speedily resolving the issue of non-hiring by the JRs, the Committee urges all parties concerned to continue serious and meaningful negotiations with a view to reaching a satisfactory solution rapidly which would ensure that the dismissed workers concerned are fairly compensated. The Committee requests the Government to keep it informed of any progress in this regard.*

Case No. 2078 (Lithuania)

44. The Committee last examined this case at its meeting in March 2001 when it requested 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 participated 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 requested the Government to ensure that Decision No. 1443V was revoked and that any further requirement of minimum services in the event of a strike be determined in consultation with the workers' and employers' organizations concerned. Furthermore, the Committee requested the Government to amend or clarify section 13 of the Act on the Settlement of Collective Disputes so as to ensure that it was not used to restrict the right to strike in practice beyond what is permissible under accepted principles of freedom of association. Finally, the Committee requested the Government to keep it informed of any new developments in the negotiations taking place at the Vilnius bus and trolleybus enterprises [see 324th Report, paras. 592-622].

45. In a communication dated 10 May 2001, the Government indicates that the Supreme Court of Lithuania reviewed the appeal of the Vilnius Bus Depot, Ltd and upheld the Court of Appeals ruling that the motor-transport workers strike was legal. A collective agreement was signed at the enterprise on 6 February 2001 and there is no collective dispute at present. A new agreement is now being negotiated and the Government states that it will continue to provide information of the results in this regard.

46. *The Committee takes due note of this information, in particular the Supreme Court's confirmation of the legality of the strike. It recalls however that its previous recommendations further indicated the need to amend the Act on the Settlement of Collective Disputes so as to ensure the participation of the workers' and employers' organizations concerned in the determination of any minimum services and the need to revoke Decision No. 1443V which set out the minimum service for passenger*

transportation services in Vilnius. The Committee requests the Government to keep it informed of the progress made in this regard.

Case No. 2034 (Nicaragua)

47. The Committee last examined this case, relating to unjustified dismissals of trade union officials, at its November 2000 meeting [see 323rd Report, paras. 397-407]. On that occasion the Committee urged the Government to ensure that the trade union official Mr. Osabas Varela was reinstated in his post at the El Relampago plantation and any back wage owed to him paid. The Committee also requested the Government to keep it informed of any measures taken in this regard. Likewise, noting that both the administrative and the judicial authorities had ordered the reinstatement of the union officials dismissed at the Emma plantation, the Committee urged the Government to ensure that Mr. Bayardo Munguía Fuentes and Mr. Manuel de Jesús Canales were reinstated in their posts and any back wages paid. The Committee requested the Government to keep it informed of any measures taken in this regard.

48. In a communication dated 5 March 2001, the Government informs the Committee that the situation has not changed because the parties to the dispute have not exhausted the legal means provided for in national legislation to resolve social and labour disputes. The Government recalls that the complainant organization is obliged to proceed with the legal proceedings in place for the protection of workers' rights, given the limited scope of these matters in both space and time.

49. *The Committee notes this information with regret and again requests the Government to adopt the necessary measures to ensure that Mr. Osabas Varela, Mr. Bayardo Munguía Fuentes and Mr. Manuel de Jesús Canales are reinstated in their posts and any back wages paid.*

Cases Nos. 2092 and 2101 (Nicaragua)

50. The Committee last examined this case, concerning the dismissal of a trade union official, at its meeting in March 2001 [see 324th Report, paras. 717-733]. On that occasion, the Committee drew up 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.

51. In its communication of 30 April 2001, the Government sent the Committee a copy of the ruling handed down by the main Constitutional Division of the Supreme Court concerning the dismissals which were the subject of legal challenges. This ruling ordered the reinstatement of nine trade unionists into their previous positions, under the same terms and conditions that had previously applied. As soon as the Government has been informed of the ruling handed down by the criminal court, it will send a copy to the Committee. The Government stated that the Ministry of Labour maintains a labour inspectorate in the export processing zone to ensure that workers are not subject to reprisals for carrying out their legitimate trade union activities, including employees at CHENTEX Garments S.A. Furthermore, the Government sent a copy of the collective agreement signed by the enterprise and the Trade Union of Independent Workers, which, in accordance with the country's labour laws, covers all workers of the enterprise. With its communication of 11 May 2001, the Government attaches a copy of the agreement concluded by the company and the complainant organization whereby: all the labour and criminal proceedings currently pending are withdrawn; four trade union leaders are reinstated into their jobs; and the phased-in reinstatement of 17 other workers is planned. The parties to the agreement further agree to resort to negotiation and dialogue to settle disputes.

52. *The Committee notes this information with satisfaction.*

Case No. 2006 (Pakistan)

53. The Committee last examined this case at its March 2001 meeting when it had noted with interest the restoration of: (i) the trade union rights of workers of the Pakistan Water and Power Development Authority (WAPDA); (ii) the registration and the legal status as collective bargaining agent of the WAPDA union; and (iii) the facility of check-off to the said union. The Committee had requested the Government to confirm that the ban on trade union activities in the Karachi Supply Company (KESC) had been lifted and further urged the Government to take the appropriate measures to ensure that the right of the KESC Democratic Mazdoor Union as collective bargaining agent was restored without delay. Finally, the Committee had requested the Government to keep it informed of any developments in respect of the WAPDA and KESC union officials who had been forcibly retired [see 324th Report, paras. 70-72].

54. In a communication dated 3 May 2001, the Government states that the restoration of the check-off facility to the KESC Democratic Mazdoor Union is under consideration of the Government. However, due to the adverse financial position of KESC, it may take a little more time for the restoration of trade union activities in KESC.

55. *The Committee notes with serious concern that the Government merely repeats its previous argument that it will restore trade union rights in KESC as soon as the enterprise becomes viable and productive again [see 323rd Report, para. 427]. The Committee deeply deplores the continuation of the ban on trade union activities in KESC which has been in place for two years now (since 31 May 1999). The Committee is therefore bound to remind the Government once again that the Committee of Experts on the Application of Conventions and Recommendations has emphasized that the freedom of association Conventions do not contain any provision permitting derogation from the obligations arising under the Convention, or any suspension of their application based on a plea that an emergency exists [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 186]. Furthermore, the Committee considers that the viability or productivity of an enterprise must not be a precondition for the guarantee of the fundamental rights of freedom of association. As a result, the Committee urges the Government to lift the ban on trade union activities in KESC and to restore the trade union and collective bargaining rights of KESC workers without delay. It requests the Government to keep it informed of developments in this regard.*

56. *The Committee once again requests the Government to keep it informed of any developments in respect of WAPDA and KESC union officials who were forcibly retired.*

Case No. 1796 (Peru)

57. The Committee last examined this case concerning dismissals of trade union leaders, at its June 2000 meeting [see 321st Report, paras. 58-60]. On that occasion the Committee requested the Government to keep it informed of the final outcome of the proceedings involving the trade union leaders Mr. Delfín Quispe Saavedra and Mr. Iván Arias Vildoso.

58. In a communication dated 18 January 2001, the Government informed the Committee that it had written to the judiciary branch, requesting information regarding the current status of the legal proceedings instituted by Mr. Delfín Quispe Saavedra challenging the invalidity of his dismissal.

59. In a communication dated 24 February 2001, the General Confederation of Workers of Peru (CGTP) stated that the unlawful dismissal of trade union leader Mr. Iván Arias Vildoso was upheld by the courts that successively examined the case, in violation of his trade union immunity and his right to effectively challenge the decision of which he was the victim.

60. *The Committee notes this information and again requests the Government to keep it informed of the final outcome of the proceedings instituted by the trade union leaders Mr. Delfín Quispe Saavedra and Mr. Iván Arias Vildoso.*

Case No. 1813 (Peru)

61. The Committee last examined this case, concerning the murder of trade unionists, at its meeting in June 2000 [see 321st Report, paras. 61-62]. On that occasion, the Committee deeply regretted that the facts of the case had not yet been clearly established and that those responsible for the killings in question, which took place in 1994, had not been identified and punished. The Committee accordingly hoped that the proceedings which were then under way would be concluded in the near future and requested the Government to keep it informed of the final outcome.

62. In a communication of 18 January 2001, the Government informs the Committee that the proceedings initiated in this case in connection with offences against the life, person and safety of individuals including David Segundo Castro ended on 28 September 1999 with the acquittal of those accused. On 19 January 2000, however, the case was referred to the First Criminal Court of Callao; the proceedings against the accused in their absence remain pending until such time as they are captured, and new warrants for their arrest have been issued.

63. *The Committee takes note of this information and again expresses the hope that the judicial proceedings currently under way will be concluded in the near future, since justice delayed is justice denied. The Committee therefore once again requests the Government to keep it informed of the final outcome of the proceedings in question.*

Case No. 1878 (Peru)

64. The Committee last examined this case, concerning inadequate collective bargaining between the Peruvian Social Security Institute and the Single Trade Union of Technicians and Specialized Auxiliaries of the Peruvian Social Security Institute (which now has the

acronym SUTAESSALUD), at its meeting in June 1998 [see 310th Report, paras. 44-47]. On that occasion, the Committee observed that talks between the parties appeared to have arisen informally, and that the complainant's concerns at that moment were the establishment of the joint committee and to ensure that reforms to the Act concerning collective labour relations created a legal framework in which collective bargaining between the parties could take place satisfactorily. Therefore, the Committee requested the Government to examine the reasons for which the joint committee had still not been set up, and to take measures to promote collective bargaining in 1998 at the Peruvian Social Security Institute.

65. In its communication of 31 January 2001, the Government informs the Committee that the absence of pay increases in the public sector is not a violation of constitutional law or any ILO Convention. In particular, Emergency Decree No. 011-99 grants single productivity bonuses that are applicable to all ESSALUD workers. The Government also states, with regard to the coexistence of two systems of labour legislation in the public sector, one being private and the other public, that workers covered by the latter are protected by Convention No. 151, and that it promotes negotiations on conditions of employment between the relevant public authorities and civil servants' organizations. Nonetheless, the Government states that bargaining should be restricted to general conditions of employment, excluding remuneration.

66. In its communications of 5 July and 25 October 1999, SUTAESSALUD states that the Government grants a single productivity bonus to workers in the sector, subject to a number of requirements to be met in an evaluation. As a result of this practice, those who fail to meet the criteria are declared redundant, thus contributing to mass lay-offs, as well as restricting collective bargaining.

67. *The Committee notes this information with regret. Therefore, the Committee requests the Government to adopt measures to promote collective bargaining and points out that, according to the Committee of Experts, it is contrary to the principles of Convention No. 98 to exclude from collective bargaining certain issues such as those relating to conditions of employment, including remuneration. 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. 1944 (Peru)

68. The Committee last examined this case, concerning an anti-union dismissal, at its meeting in March 2000 [see 320th Report, paras. 61-65]. On that occasion, the Committee was still waiting for information on the measures taken to reinstate the leader of the FNTPJ, Mickey Juán Alvarez Aguirre, in his job without loss of vested rights.

69. In a communication of 18 January 2001, the Government informs the Committee that Mr. Alvarez Aguirre was not reinstated following refusal to grant trade union leave, because the judicial authorities are in the process of reorganization required by law. The trade union leader's disregard for the orders of a superior and abandoning of his workplace resulted in administrative proceedings (the final report of which is supplied by the Government), at the end of which it was decided not to reinstate him, since his dismissal had been based on a serious misdemeanour which, under existing regulations, is deemed sufficient reason for dismissal.

70. *The Committee notes this information with regret, and recalls that dismissal of trade union officials by reason of union membership or activities is contrary to Article 1 of Convention No. 98, and could amount to intimidation aimed at preventing free exercise of their trade union functions.*

Case No. 2004 (Peru)

71. The Committee last examined this case, concerning the dismissal of a trade union official, at its meeting in November 1999 [see 318th Report, paras. 393-404]. On that occasion, the Committee invited the Governing Body to approve the following recommendations:

(a) With regard to the dismissal of the trade union official, Mr. Benancio Aguilar Atahua, of the Unión de Cervecerías Peruanas Backus y Johnston S.A., the Committee, while noting that a judicial process is under way on this matter, considers that Mr. Benancio Aguilar Atahua should be reinstated in his post without loss of pay. It requests the Government to take all necessary measures to this end and to keep it informed in this regard.

(b) The Committee firmly trusts that the legal proceedings begun in October 1998 by the union official Mr. Aguilar Atahua in connection with his dismissal will be concluded in the near future. The Committee requests the Government to keep it informed of the court ruling which should be handed down swiftly.

72. In its communication of 24 April 2001, the Government informs the Committee that after the Constitutional and Social Division of the Supreme Court of Justice rejected the appeal lodged by the defendant, under the ruling of 19 September 2000, it ordered the reinstatement of the plaintiff. However, the plaintiff withdrew his claim before the court since he had reached an agreement with the enterprise, which offered him US$50,000 and the social benefits owed to him from 5 September 1998, the date of his dismissal, until 11 October 2000, the date of the agreement.

73. *The Committee notes this information.*

Case No. 2059 (Peru)

74. The Committee last examined this case, concerning anti-trade union dismissals and practices, at its meeting in November 2000 [see 323rd Report, paras. 457-477]. On that occasion, the Committee made the following recommendations:

(a) The Committee requests the Government to carry out, as a matter of urgency, an inquiry into the alleged anti-union discrimination and intimidation perpetrated in the Banco Continental, and in particular into the allegations concerning pressure brought to bear on unionized workers to leave their union, the award of promotions or salary increases virtually exclusively to non-unionized workers, anti-union transfers, and economic incentives for workers – and unionized workers in particular – to resign from their employment, with dismissal as the only alternative. The Committee requests the Government to keep it informed in this respect.

(b) Considering that persons hired under training agreements should also have the right to organize, the Committee requests the Government to take the necessary steps so as to guarantee this right to the workers concerned both in law and in practice. Furthermore, the Committee requests the Government to ensure that the employment conditions of these workers are covered by the collective agreements in force in the enterprises where they are employed.

(c) The Committee notes that the proceedings concerning the dismissal of Messrs. Juan Manuel Oliveros Martínez and Jorge Mercado Puente de la Vega have already taken 14 months. The Committee, therefore, requests the judicial authorities, in order to avoid a denial of justice, to pronounce on the dismissals without delay and stresses that any further undue delay in the proceedings could in itself justify the reinstatement

of these persons in their posts. The Committee requests the Government to keep it informed in this respect.

75. In its communication of 30 March 2001, the Government informs the Committee that, according to the High Court of Justice, the action lodged on 4 December 1998 by Mr. Juan Manuel Oliveros Martínez against Banco Continental, his employer, regarding the invalidity of his dismissal allegedly based on the fact that the litigant was a "trade union activist", was initially declared unfounded by the Fifteenth Labour Court of Lima. Banco Continental denied that the dismissal was based on his alleged "trade union activism". After the case had been examined in other proceedings and the initial judgment upheld, on 21 December 2000 the Second Labour Court of Lima revoked said judgment and declared the petition founded in every respect. Therefore, it ordered the reinstatement of the complainant in his usual post, the payment of salaries not received from the date of dismissal until that of reinstatement, and the payment of accrued legal interest. The Government also undertook to send the Committee any information it received relating to the judicial proceedings of trade union leader Mr. Jorge Mercado Puente. It adds that the State respects trade union rights stemming from ILO international Conventions ratified by its country.

76. In a communication of 26 April 2001, the Government states that, on 9 September 1999, Mr. Jorge Mercado Puente de la Vega requested Banco Continental to rescind his discharge. The worker ultimately accepted a settlement proposal whereby the bank would pay him a fixed sum plus benefits, and the case has been closed.

77. *The Committee notes with satisfaction the judicial decision ordering the reinstatement of a trade union leader. The Committee requests the Government to confirm that Mr. Oliveros Martínez has been reinstated. The Committee also takes note of the settlement concluded between Mr. Jorge Mercado Puente de la Vega and Banco Continental, which allowed the closing of this case. Furthermore, the Committee requests the Government to keep it informed of the other pending issues relating to the case.*

Case No. 1826 (Philippines)

78. The Committee first examined this case in March 1996, at which time it urged the Government to take appropriate steps immediately to ensure that a certification election was conducted at the Cebu Mitsumi Inc. in Danao City. Two years before the Committee first examined the case, the petition for a certification election, signed by almost all the rank and file workers of Cebu Mitsumi, had already been filed by the Cebu Mitsumi Employees' Union (CMEU) [see 302nd Report, paras. 405-408]. During its most recent examination of this case in November 2000, the Committee took note of information provided by the Government to the effect that the Department of Labour and Employment (DOLE) had issued an order for the holding of a certification election on 14 September 2000 [see 323rd Report, paras. 72-74].

79. In a communication of 4 May 2001, the complainant submits additional information in the form of a resolution from the Tenth International Metalworkers' Federation Asia-Pacific Conference (20-21 April 2001). According to the resolution, on 2 October 2000, the union and management of Cebu Mitsumi agreed to 28 November 2000 as the date of the certification election, and the management agreed to submit a verified list of qualified voters. On 19 October 2000, the management instead submitted an unverified list of voters; on 20 October, it filed a motion to suspend the election proceedings until after the May 2001 national and local elections. In addition, the president of CMEU, Mr. Ferdinand Ulalan, was suspended indefinitely on unfounded grounds. The resolution, therefore, calls on the management to withdraw its motion to suspend the election proceedings and to

reinstate Mr. Ulalan, and calls on DOLE to expedite the scheduling and conduct of the local election not later than 14 May 2001, the date of the national and local elections.

80. *The Committee deeply regrets the lengthy period that has elapsed since the petition for a certification election at the Cebu Mitsumi Inc. was first filed by CMEU, particularly in light of the fact that at that time, over seven years ago, the petition was signed by almost all the rank and file workers of the company. The Committee also notes with deep concern the new allegation that the president of CMEU has been suspended indefinitely on unfounded grounds. The Committee strongly urges the Government to ensure that an impartial certification election is held immediately at Cebu Mitsumi, and to consider examining the legal framework for certification elections, with a view to modifications that will guarantee that such excessive and potentially prejudicial delays will not take place in future. The Committee requests to be kept informed of any progress in this regard. The Committee also requests the Government to respond to the new allegation concerning the suspension of Mr. Ulalan.*

Case No.1581 (Thailand)

81. The Committee last examined this case at its November 2000 meeting when it had trusted that the State Enterprise Labour Relations Act (SELRA), which had entered into force on 8 April 2000, would restore fully the right to organize and to bargain collectively to state enterprise employees. The Committee had also requested the Government to keep it informed of developments concerning the accompanying amendment to the Labour Relations Act which applies to the private sector [see 323rd Report, paras. 87-90].

82. In a communication dated 7 March 2001, the Government indicates that a copy of the SELRA of 2000 will be transmitted to the Office as soon as translation thereof is completed.

83. As regards the required accompanying amendment to the Labour Relations Act, the Government points out that the said draft amendment is being scrutinized by the Office of the Council of State. In this regard, the Council of State has taken into consideration all suggestions made by the main workers' and employers' organizations. The Government indicates that it will transmit a copy of the draft Labour Relations Act as soon as the Council of State finishes its reading.

84. *The Committee takes due note of this information. It once again trusts that the SELRA and the draft Labour Relations Act grant fully the right to organize and to bargain collectively to state enterprise employees and private sector employees respectively. It requests the Government to send a copy of the SELRA as soon as translation thereof is completed, as well as of the draft Labour Relations Act as soon as the Council of State finishes its reading thereof.*

Case No. 2018 (Ukraine)

85. The Committee last examined this case, which concerned among other things allegations of violation of the right to strike and judicial proceedings against the president of a union, at its November 2000 meeting [see 323rd Report, paras. 93-96]. On this occasion, it had requested the Government to provide as soon as possible the amendments to the Transport Act, and to ensure that the criminal proceedings against the president of the complainant organization be carried out with diligence.

86. In its communication of 22 March 2001, the Government indicates that section 18 of the Transport Act provides that strikes in that sector can take place if the management of the

enterprise does not apply the tariff agreements, except in cases of passenger transport, of supplies for factories which operate non-stop or when a strike represents a danger for the life and safety of the population. The Government adds that the Ministry of Transport is currently drafting amendments to the Transport Act, including provisions on strikes in that sector, and that it will send additional information once the Supreme Council has made a decision.

87. In a communication dated 20 April 2001, the Independent Trade Union of Workers of the Iyichevsk Maritime Commercial Port (NPRP) declares that the Government has still not complied with the Committee's recommendations and provides numerous examples of recent violations of trade union rights in the country.

88. *The Committee takes note of this information. It recalls to the Government that neither passenger transport, nor the transport of supplies for factories which operate non-stop constitute essential services in the strict sense of the term where strikes can be totally prohibited; however, these services can be considered of primary importance where the requirement of a minimum service in the event of a strike can be justified. 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 [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, paras. 560-566]. The Committee trusts that the Government will fully take account of these principles in the draft amendments of the Transport Act and ask to be kept informed in this regard. The Committee also requests the Government to send its observations concerning the allegations contained in the complainant's most recent communication.*

Case No. 2075 (Ukraine)

89. The Committee last examined this case at its November 2000 meeting when it requested the Government to engage immediately in discussions with the All Ukrainian Trade Union "Solidarinost" with a view to establishing the data necessary for its registration and to indicate to the union any purely procedural formalities which might still need to be carried out by the union so that it may be registered without delay. The Committee further called upon the Government to take the necessary measures without delay to ensure the reactivation of the union's bank account [see 323rd Report, paras. 506–524].

90. In communications dated 29 March and 5 May 2001, the Government indicates that the All Ukrainian Trade Union "Solidarinost" had lodged an appeal with the arbitration college to review the ruling by the Supreme Arbitration Court dated 6 April 2000. The arbitration college upheld the Supreme Arbitration Court's previous ruling and a subsequent protest was made to the Arbitration Presidium which, on 15 February 2001, also upheld the original ruling. The Government adds that the trade union has thus far not submitted the documents required for registration.

91. *The Committee takes due note of this information. It recalls, however, that the Government had been requested to engage actively in discussions with the All Ukrainian Trade Union "Solidarinost" with a view to establishing the data necessary for its registration. It further recalls that at the time of its initial examination of this case, the Committee had also noted the difficulties of registration arising out of the provisions of the Act on Trade Unions, their Rights and Safeguard of their Activities which, it had concluded, were not compatible with the provisions of Convention No. 87 (ratified by Ukraine) and which were subsequently found unconstitutional by the Constitutional Court of Ukraine. In this regard, the Committee notes with interest the ILO technical assistance mission which took place in Ukraine from 23 to 27 April 2001 to advise, inter alia, on the legislative provisions concerning registration. It hopes that the Government will take the necessary measures in*

the near future to ensure that the registration requirements do not place obstacles in the right of workers to form organizations for the defence of their social and economic interests and that such measures will also facilitate the registration of the All Ukrainian Trade Union "Solidarinost". It requests the Government to keep it informed of the progress made in this regard as well as the measures taken to ensure the reactivation of the union's bank account.

Case No. 2080 (Venezuela)

92. At its meeting in March 2001, the Committee examined this case, in which the complainant had disputed the legitimacy of a trade union voting procedure in which non-union members had participated and the purpose of which had been to bring about the merger of two trade unions in the Caracas metro sector. More specifically, the complainant had challenged a decree by the former Minister of Labour dated 23 November 1999, which had legalized the merger of the two unions representing employees of C.A. Metro de Caracas and the election of a new union committee of the C.A. Metro de Caracas Workers' Union. The Committee considered that the Minister's decree violated the most elementary principle of freedom of association, i.e. that only trade union members can decide on their trade union structures and the composition of the unions' executive bodies. The Committee strongly rejected this type of statement, and urged the Government to respect Convention No. 87 and not to interfere in the internal affairs of trade union organizations.

93. The Committee concluded its examination with the following recommendations [see the 324th Report of the Committee, paras. 995-1013]:

– Noting that the Government has violated Convention No. 87, the Committee hopes that the courts will annul the decree issued by the former Minister of Labour on 23 November 1999, 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.

94. In its communications of 11 and 25 March 2001, the Government attaches a copy of the Supreme Court of Justice Ruling of 8 March 2001, which renders null and void the decree of the Minister of Labour of 23 November 1999.

95. *The Committee notes this information with satisfaction.*

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96. Finally, as regards Cases Nos. 1512/1539 (Guatemala), 1618 (United Kingdom), 1843 (Sudan), 1849 (Belarus), 1851 (Djibouti), 1877 (Morocco), 1880 (Peru), 1884 (Swaziland), 1890 (India), 1895 (Venezuela), 1922 (Djibouti), 1937 (Zimbabwe), 1938 (Croatia), 1939 (Argentina), 1942 (Hong Kong Special Administrative Region, China), 1952 (Venezuela), 1953 (Argentina), 1957 (Bulgaria), 1959 (United Kingdom/Bermuda), 1961 (Cuba), 1966 (Costa Rica), 1967 (Panama), 1975 (Canada/Ontario), 1980 (Luxembourg), 1984 (Costa Rica), 1992 (Brazil), 1996 (Uganda), 2005 (Central African Republic), 2007 (Bolivia), 2009 (Mauritius), 2010 (Ecuador), 2012 (Russian Federation), 2014 (Uruguay), 2019 (Swaziland), 2022 (New Zealand), 2024 (Costa Rica), 2027 (Zimbabwe), 2030 (Costa Rica), 2031 (China), 2037 (Argentina), 2038 (Ukraine), 2042 (Djibouti), 2048 (Morocco), 2051 (Colombia), 2053 (Bosnia and Herzegovina), 2056 (Central African

Republic), 2058 (Venezuela), 2060 (Denmark), 2065 (Argentina), 2069 (Costa Rica), 2072 (Haiti), 2076 (Peru), 2081 (Zimbabwe), 2084 (Costa Rica), 2085 (El Salvador) and 2091 (Romania), 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. 1785 (Poland), 1914 (Philippines), 1925 (Colombia), 1965 (Panama), 1972 (Poland), 1973 (Colombia), 2015 (Colombia), 2035 (Haiti), 2043 (Russian Federation) and 2047 (Bulgaria), which it will examine at its next meeting.

CASE NO. 2102

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

Complaint against the Government of the Bahamas presented by — the National Congress of Trade Unions and — the Bahamas Trade Union Congress

Allegations: Legislation in violation of freedom of association, lack of consultation concerning legislation

97. The National Congress of Trade Unions and the Bahamas Trade Union Congress presented a complaint of violations of freedom of association against the Government of the Bahamas in a communication dated 24 September 2000. Further information in support of the complaint was forwarded by the complainants in a communication of 5 October 2000.

98. In a communication dated 28 November 2000, the Government responded to the allegations.

99. The Bahamas has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98); it has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

A. The complainants' allegations

100. The complainants state that they are the two umbrella organizations representing virtually all the registered trade unions in the Bahamas. The complaint concerns five Bills which were tabled in Parliament in 2000: the Employment Bill, the Minimum Wages Bill, the Industrial Tribunal and Trade Disputes Bill, the Health and Safety at Work Bill, and the Trade Union and Labour Relations Bill. The complainants contend that these Bills violate Conventions Nos. 87 and 98, and express concern that provisions of the current laws that protect the development of trade unions will be repealed. The complainants also indicate that there has been a lack of adequate consultation in the preparation of the legislation, and that the Government intends to continue to push for the passing of the Bills regardless of the complainants' objections.

101. The complainants state that the country's workers are currently in limbo regarding redress for violations of the current labour laws and practice since the Court of Appeal has found the Industrial Tribunal to be unconstitutional and "designed to create confusion". The proposed and tabled Industrial Tribunal and Trade Disputes Bill remains unconstitutional as drafted. Having communicated to the Government their deep concern in this regard, the complainants have been informed that a sixth Bill is being envisaged to establish a court to

deal with industrial matters. Though this sixth Bill is referenced in the other Bills, the complainants have not yet seen it, and are being asked to accept the Bill without having had an opportunity to review it.

102. The complainants describe the Trade Union and Labour Relations Bill as "lethal" for trade unions and workers. In the view of the complainants, the Bill has been designed to restrict severely the activities and freedom of the labour movement, and in some instances to do away with trade unions completely. The complainants then list some of their major concerns regarding the Bill:

- the requirements, regulations and rules governing the responsibilities of trustees are excessively intrusive and are in fact more stringent than any of the rules, regulations and responsibilities in any legislation in the country governing officers of a company, NGO, church or government corporation;

- the financial reporting process proposed is excessive, violates principles of free trade unionism, and is an invasion in the administration of any independent organization. This represents new and increased governmental interference in constitutionally recognized organizations;

- the relationship with the auditors has been changed, creating excessive legally binding obligations. It also creates a situation where the auditor becomes more of an investigator than an auditor. Further, the obligation of the auditor to report information listed in the Bill is not applied in respect of any other organization in the country;

- the current law exempts trade unions and their leaders from criminal and civil liability. The new law proposes that trade unions and trade union members can be sued for trade union activities. This represents a major departure from what is currently the law by introducing tort liability for trade unions. History tells us that progress is often only made when action is taken to "force" change in order to better the terms and conditions of employment for workers. Should this aspect of the Bill become law, it is clear that it will be used by employers to systematically and lawfully rid the workplace of trade unions;

- the Bill will take away the fundamental right to strike in furtherance of a trade dispute which workers enjoy at present, as well as the right to work to rule or to go slow. Denying workers the right to withhold their labour is unacceptable. The loss of this right, along with the threat of tort liability will serve to destroy unions;

- the maximum penalty for trade unions and workers is up to $100,000, while the maximum penalty for employers is $5,000;

- there is no language in the Bill to ensure that industrial agreements will be legally binding, as is currently the case. This is regressive, and rather than strengthening trade unions as social partners, it will enable their demise;

- the issue of recognition is not solved by the Bill (section 67(5)). The wording of the Bill will need to be changed if the intention is to have mandatory recognition of trade unions, with the Minister's determination being final. As the provision is currently drafted, it is unconstitutional and can be challenged, which will be another lawful way of deterring and destroying trade unions.

103. The complainants also point to provisions in the other Bills concerning basic wages, minimum wages, and severance payments, as well as the creation of a new category of temporary workers who are not entitled to maternity benefits or vacation pay.

104. For a number of months, the complainants registered their strong objection to the Bills, making numerous appeals in person and in writing, organizing a march, and burning the Bills. The complainants have also provided the Government with directions and amendments to the Bills, concrete evidence of the regressive nature of the Bills, and have asked that they not be adopted. With their communication of 5 October 2000, the complainants enclose a lengthy critique of the Trade Union and Labour Relations Bill, and the Employment Bill, with suggested amendments. The complainants state that they have not been heard, and characterize the manner in which the Government is proceeding with its agenda as "frightening".

B. The Government's reply

105. In its communication of 28 November 2000, the Government informs the Committee that the complainants refer to earlier drafts of the Bills, which have since been amended following dialogue with the social partners and consultation with the International Labour Office. In the view of the Government, the amendments addressed most of the concerns that had been raised by the workers' representatives; however, after the most recent tabling of the Bills in Parliament, the trade unions adopted the position that they were regressive and accused the Government of rushing the Bills through Parliament. The Government responded to this criticism by establishing a working committee to review the concerns of the trade unions.

106. The Government states that it is currently engaged in ongoing dialogue with the complainants with a view to refining further the proposed legislation. The complainants have been participating in agreed working groups since October 2000. It is envisaged that a "happy medium" will be reached concerning the unpalatable provisions of the Bills. According to the Government, the consultations have focused on specific areas of concern raised by the workers' representatives. The Government states that it will forward to the Committee the conclusions arising out of the working groups and the final texts once the process is concluded.

C. The Committee's conclusions

107. *The Committee notes that the allegations of violations of freedom of association arise from the introduction into Parliament of five Bills concerning labour and employment: the Employment Bill, 2000; the Minimum Wages Bill, 2000; the Industrial Tribunal and Trade Disputes Bill, 2000; the Health and Safety at Work Bill, 2000; and the Trade Union and Labour Relations Bill, 2000. The complainants contend that these Bills violate Conventions Nos. 87 and 98, and that there had been inadequate consultation with the trade unions concerned prior to the legislation being presented to Parliament.*

108. *The Committee notes that, according to the Government, the complainants refer to draft Bills that have since been amended following consultation with the social partners and with the International Labour Office. Since the Bills as amended continued to attract considerable criticism from the trade union movement, the Government states that a working committee to review the Bills has been established, and that working groups set up by consensus, and in which the complainants have been participating, have been reviewing the Bills since October 2000 with a view to reaching a compromise. The Committee notes the Government's commitment to forward the conclusions arising out of the working groups and the final texts.*

109. *Given the Government's statement that consultations are taking place at present in an attempt to address the concerns raised by the complainants with respect to the draft Bills, the Committee expresses the firm hope that full consultations with the social partners will*

take place in good faith, and that the further amended Bills will comply with freedom of association principles. The Committee requests the Government and the complainants to keep it informed of the results of the working groups and to forward the final draft of the Bills prior to their adoption by Parliament so that the Committee may examine the conformity of the Bills with freedom of association principles. The Committee also draws the Government's attention to the continued availability of ILO technical assistance in bringing the legislation into conformity with the principles of freedom of association and Convention No. 98, which has been ratified by the Bahamas.

The Committee's recommendations

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

(a) Expressing the firm hope that full consultations with the social partners will take place in good faith concerning the five draft Bills, and that the further amended Bills will comply with freedom of association principles, the Committee requests the Government and the complainants to keep it informed of the results of the working groups and to forward the final draft of the Bills prior to their adoption by Parliament so that the Committee may examine the conformity of the Bills with freedom of association principles.

(b) The Committee draws the Government's attention to the continued availability of ILO technical assistance in bringing the legislation into conformity with the principles of freedom of association and Convention No. 98, which has been ratified by the Bahamas.

CASE NO. 2090

INTERIM REPORT

Complaint 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 dismissal of trade unionists

111. The Committee already examined the substance of this case at its March 2001 meeting, when it presented an interim report to the Governing Body [324th Report, paras. 133-218, approved by the Governing Body at its 280th Session (March 2001)]. The Federation of Trade Unions of Belarus (FPB) submitted additional information in respect of the

complaint in a communication dated 28 March 2001 and the Belarus Automobile and Agricultural Machinery Workers' Union (AAMWU) and the Agricultural Sector Workers' Union (ASWU) supplemented their allegations in communications dated 30 March and 26 April 2001, respectively. The Belarusian Free Trade Union (BFTU) transmitted a communication dated 23 March 2001 in which it alleges various denials of trade union rights at an enterprise.

112. The Government had transmitted additional information in reply to some of the new allegations in a communication dated 23 February 2001 and has forwarded further information in a communication dated 13 April 2001.

113. Belarus has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Collective Bargaining Convention, 1981 (No. 154).

A. Previous examination of the case

114. At its March 2001 session, the Governing Body approved the following recommendations in the light of the Committee's interim conclusions:

(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; Belarusian 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.

115. Neither the additional information transmitted by the complainants in communications dated 9, 24 and 25 January 2001 nor the Government's reply to some of these allegations in its communication dated 23 February 2001 were fully reflected in the Committee's last examination of the case due to the receipt of these communications just prior to the Committee's March meeting. These communications are therefore set out in full below.

B. The complainants' additional allegations

116. In its communication dated 9 January 2001, transmitted by the Federation of Trade Unions of Belarus on 9 February, the Belarus Radio and Electronic Workers' Union (REWU) stated that a new regional trade union of electronics industry workers, not affiliated to REWU, was established at the Integral Amalgamation. REWU claims that the director of the Amalgamation put pressure upon the union members and threatened them with dismissal if they did not submit applications to walk out of the established sector-level union (REWU). Moreover, the Integral Amalgamation administration did not admit the REWU president nor the executive committee officials onto the premises of the enterprise in order to participate in the Dzerhinsky Plant Trade Union Committee session in September 2000 which was to consider the walk-out.

117. REWU explains that these facts were reported to the Minister of Industry and the Minister of Justice and that the Public Prosecutor of Minsk had been requested to undertake an investigation and initiate criminal proceedings. The Prosecutor's Office refused to initiate a criminal case for lack of *corpus delicti*, yet the District Prosecutor has instructed the director of the Integral Amalgamation to eliminate all violations of the Law on Trade Unions. For its part, the Ministry of Justice replied that it had not received any statements concerning massive recruitment of members into the newly formed trade union, adding that employees had a right to choose the trade union to which they wished to belong.

118. Both the Trade Union Committee and the Integral administration refused to provide REWU with information on those employees who chose to walk out and join the new Integral Amalgamation union.

119. At another plant in the Integral Amalgamation (Tsvetotron Plant in Brest), while a local organization was formed on 17 October 2000 to join the new Integral regional union, the local organization which was affiliated to REWU also remained intact. Extracts from the minutes of the Tsvetotron Plant trade union conference in September 2000 concerning the affiliation to the Integral Amalgamation union were also provided. The minutes show that the report of the conference was made by the plant director and interventions in favour of the new affiliation were made by the director of the instrument plant and the deputy-director of human resources. On the other hand, the deputy chair of the Trade Union Committee maintained that "there was nothing bad in putting efforts in order to find solutions to many problems, provided the Integral Amalgamation Trade Union Committee remained part of the REWU. She focused on the administration's uncivilized interference into the plant union's home affairs in the form of holding shop-level meetings and fixing the time of the conference without consultation with the union".

120. At the REWU conference on 14 December, new members of the Tsvetotron Trade Union Committee were elected to replace those who had opted for another union. While the Trade Union Committee has preserved its legal personality and a bank account, the director and deputy-director of the plant are creating various obstacles to its operations, including denying trade union representatives access to the plant, preventing the Trade Union Committee chair from participating in enterprise management bodies, threatening workers with dismissal if they refuse to withdraw from the union, delaying payment of trade union dues and non-application of the branch collective agreement.

121. An appeal concerning these infringements of trade union rights at the Tsvetotron Plant was submitted to the Prosecutor's Office of the Moskovsky district of Brest who, in a statement of 29 November 2000, pointed out to the plant administration that further violations of the Law on Trade Unions and of the Presidential Decree on measures for furthering interaction of state administration and trade unions would be inadmissible. In a letter signed by the Moskovsky District Prosecutor, which was attached to REWU's communication, the District Prosecutor states that it was found upon verification that the Tsvetotron Plant management did not fully comply with REWU by-laws when, upon management's initiative, a trade union conference was held on 17 October 2000 with the following agenda item: "Affiliation of the primary trade union of the Tsvetotron Plant with the new regional trade union of electronics industry workers of the Integral Amalgamation". The question of withdrawing from membership of REWU was not even included on the conference agenda nor was it discussed. The District Prosecutor concludes that a new trade union was established and joined by members of the REWU primary trade union who consequently became members of two distinct regional trade unions simultaneously.

122. The District Prosecutor notes in his letter that REWU's by-laws provide that withdrawal must be voluntary, at the worker's own initiative and only by written application; yet many of the individual workers did not agree with the conference's decision to join the Integral

union. Finally, the District Prosecutor noted that, according to the branch collective agreement, the employer was to transfer trade union dues but a total of 725,158 roubles for the month of September had not been transferred. In conclusion, the District Prosecutor proposed, among others, that the question of the legality of establishing at the Tsvetotron Plant a regional trade union of electronics industry workers of the Integral Amalgamation should be re-examined and that account should be taken of the fact that trade union membership should be voluntary and withdrawal from membership should be made upon written application of each member.

123. REWU adds that, in the course of their re-registration under Presidential Decree No. 2, the REWU and its amended by-laws were registered on 12 May 1999 and no question had been raised at that time as to the validity of the amendment made to the by-laws on 3 March 1999 (this amendment had replaced the section which gave primary organizations the right to voluntarily disaffiliate from the branch union by decision of their general assemblies (conferences) with a provision that withdrawal from the branch union would occur upon receipt of written application by individual members). According to REWU, this amendment had been adopted by the plenary session of the branch union and later approved in September 2000 at the branch union's congress.

124. REWU explains however that, upon the request of the newly elected Trade Union Council of the Integral workers, the Minister of Justice stated that there was no legislation granting the right to a trade union to forbid local units to leave their branch unions at the time these amendments were introduced into the REWU's constitution and that moreover the amendments had not been approved by the REWU's congress. The Minister concluded that the amendments had no legal effect.

125. In its communication dated 24 January 2001, the Belarusian Free Trade Union (BFTU), affiliated to the Congress of Democratic Trade Unions (CDTU), stated that it has still not been able to register its structures at local executive committee level due to the requirement of a legal address. The BFTU adds that managers refuse to negotiate with unregistered organizational structures, their trade union leaders are not allowed to enter the workplace and trade union offices are taken away by force.

126. The BFTU has only been able to register one local organizational structure in Mogilev at the Zenith Plant. All other applications for registration were denied due to lack of legal address. While the organization had complained to the district court, the BFTU alleges that the courts refuse to hear cases on their merits and simply rubber-stamp the illegal decisions of the registration bodies.

127. Finally, the BFTU also provides information concerning the dismissal of Mr. Bourgov, Chairperson of the MoAZ Free Trade Union, for refusing to work on a non-workday.

128. By a letter dated 25 January 2001, the Belarus Automobile and Agricultural Machinery Workers' Union (AAMWU) transmits several documents in support of the complaint concerning interference in the internal affairs of trade unions. Among the documents is a declaration of the Presidium of the Federation of Trade Unions of Belarus (FPB) which refers to new instructions issued by the Presidential Administration aimed at further limiting trade union rights and liberties, as well as attempts to amend the trade union legislation without consulting the federation.

129. The AAMWU also attaches Order No. 584 of the Borisov Aggregate Plant which bans all mass events held by public organizations on the enterprise territory at the industrial premises, roads and pavements, bans meetings on the enterprise territory in places which have not been placed at their disposal without submitting an application to the employer at least two weeks before and prescribes that unit managers and vice-directors shall

personally participate in any authorized events in order to educate personnel, represent management and answer questions. All unauthorized events shall be suppressed by the head of the Security Unit.

130. In its communication dated 28 March 2001, the FPB refers to the new instructions from the Presidential Administration which, among others, set out:

> 1. The Ministries of Justice, Labour and Industry of Belarus, together with the members of the House of Representatives and the Council of the Republic, shall by 20 January 2001 draw up provisions supplementing existing legislation on trade unions, including provisions relating to the establishment of other workers' representative bodies (such as works councils, etc.). Until the adoption of amendments to legislation governing the activities of trade unions, no general agreement between the Council of Ministers, employers' organizations and trade unions should be signed.
>
> 2. The Council of Ministers, provincial executive committees and the Minsk Municipal Executive Committee shall ensure that, when collective agreements are concluded for 2001, efforts are intensified to speed up the transition to contract-based labour relations and to resolve the issue of the inappropriateness of transferring a proportion of trade union dues to higher level trade union structures.
>
> …
>
> 6. The Minsk Executive Committee (city authorities) shall intensify work with a view to establishing a municipal trade union council.

131. The FPB further alleges that: the media have begun a widespread campaign to discredit the unions and particular union leaders; the President's Office is attempting to disrupt the trade unions or bring them under state control; ministers are under instructions to dismiss union officials who voice critical views; trade unions are denied the right to register and thus, in effect, liquidated; and employers refuse to transfer membership dues.

132. In addition, trade union structures are being undermined by the increased pressure exerted on the primary trade unions to force them out of the branch unions and federations. For example, as a result of the pressure and threats exerted by the administration of the Belarus Metallurgical Plant, all the workers at the plant in question have been forced to leave the branch metalworkers' union and set up a works union under the control of the plant's administration. Similar attempts are being made at the Rechitskij Hardware Plant in Gomel, while union leaders are prevented from entering plants.

133. The FPB further refers to threats made by the Ministry of Justice to dissolve the federation if its president stands in the forthcoming national presidential elections. In this respect, the FPB refers to a press release from the Ministry dated 12 January 2001 which states that:

> The nomination of a representative of the FPB as a candidate for the presidency in the Republic of Belarus openly contradicts the Federation's Constitution. Besides, the very fact of considering the issue at a council session is not in line with the goals and objectives of a trade union association and the Electoral Code of the Republic of Belarus. Under such circumstances, the Ministry of Justice has got all grounds for issuing a written warning to the Council, and subsequently for raising a question of dissolving the Federation of Trade Unions of Belarus in accordance with the law.

134. Furthermore, in order to isolate all democratic opposition, Presidential Decree No. 8 was signed on 12 March 2001, prohibiting international assistance to any non-state organizations, including trade unions. A copy of the Decree was annexed to the complaint.

135. In its communication dated 30 March 2001, the AAMWU states that, despite the Committee's examination of their complaint, the state authorities have not changed their attitude to the trade union movement and are intensifying their attacks on trade unions and attempting to subordinate them to the state administrative bodies. The principal manifestations of this, on the instructions of the Presidential Administration, include the following:

– prohibition on transferring to the trade union bodies union dues collected through non-cash payments from union members in enterprises. The dues withheld from the AAMWU already total nearly 300 million roubles, with about 130 million roubles in dues collected every month;

– the establishment of corrupt "tame" trade unions at enterprise level, resulting in withdrawal of membership from the branch unions and the FPB. Workers are drawn into these trade unions by means of deceit, threats and other forms of coercion (for example in the "Integral" production association and the Belarus Metal Works);

– persecution of and pressure on enterprise directors who do not wish to join the anti-union campaign;

– an organized campaign to discredit union leaders in the state-owned media using lies, slander, etc.;

– promulgation of Presidential Decree No. 8 of 12 March 2001 respecting measures to improve the procedure for receiving and utilizing free foreign aid, which practically prohibits international activity by trade unions;

– drafting of amendments to the Act respecting trade unions which restrict their rights, especially the freedom to join a trade union.

136. Finally, in its communication dated 26 April 2001, the Agricultural Sector Workers' Union (ASWU) alleges significant delays in the transfer of union dues.

C. The Government's reply

137. In its communication dated 23 February 2001, the Government transmits a partial reply to the allegations made in the complainants' communications of 24 and 25 January 2001.

138. Referring to the letter from the chairperson of the Belarusian Free Trade Union (BFTU) which touches upon matters related to the registration of the primary trade unions, the Government states that the facts underlying the refusal to register these primary organizations stem from their failure to present information confirming the existence of a legal address (providing the location of their executive bodies). In particular, the Government has noted that a basic conflict arises, in so far as trade unions generally have tried to indicate the address of the premises made available to them by the employer as a legal address. The Government reiterates that the national legislation gives the employer the right, but not the obligation, to make available to trade unions the equipment, premises and means of transport required for their operation. This matter is settled by negotiation between the parties, on a voluntary basis. The Government adds, however, that, in the absence of an agreement with the employer, the trade unions may, as a legal address, present the registration body with an address of corresponding premises located outside the enterprise. Thus, the Government does not agree with the complainants' assertion that the trade union is completely dependent on the employer to obtain a legal address required for state registration.

139. At the same time, the Government is working on modifying the current registration procedure, in particular to cancel the requirement for the confirmation of the existence of a legal address for the recording of trade unions' organizational units which, according to their trade unions' by-laws, do not constitute legal entities. Along these lines, a copy of a draft decree to amend Presidential Decree No. 2 was annexed to the Government's reply.

140. As concerns the dismissal of I. Bourgov and A. Evmenov, the Government indicates that this was due to their violation of labour discipline (absenteeism). No violation of the legislation by the plant's management has been established and this has been confirmed by the decision of the Oktyabrsky district court in Mogilev and the Mogilev regional court.

141. As for the assertion contained in the statement by the Council Presidium of the Federation of Trade Unions of Belarus (FPB) to the effect that amendments and additions to the Act on trade unions have supposedly been prepared, the Government notes that this does not correspond to its policy in the social and labour sphere, which is aimed at developing social dialogue and the further improvement of social partnership in the Republic. The Ministry of Labour, which is the national state administrative body responsible for relations with the social partners, would not support such changes to the law. The Government adds that, should a need arise to modify the Act on trade unions, Belarusian trade unions must by statute be invited to take part in the drafting of such modifications.

142. The Government expresses its surprise at the complainants' statement that "until amendments to the legislative acts governing the activities of trade unions are adopted, the Government has been instructed to refrain from signing the General Agreement between the Council of Ministers, the employers' associations and the trade unions". In the Government's opinion, the chances of signing the General Agreement depend on the positions of all the parties, on their desire and willingness to negotiate positively and to find compromises, on their adherence to the legally recognized principles of social partnership and on their recognition and respect for the wilful assumption of genuine commitments.

143. According to the Government, certain demands by the FPB in respect of the General Agreement have required additional consultation, both in the framework of tripartite working commissions and within government bodies which have had to work out acceptable solutions faced with an extremely large number of demands. Finally, on 24 January 2001, a compromise was reached and on that basis the Government stated that it was prepared to sign the General Agreement for 2001-03. In the meantime, the FPB sent a letter to the First Deputy Prime Minister on 6 February 2001 in which it put forward additional proposals to the positions previously accepted, with which the Government can only agree in part.

144. As concerns the question of the procedure for the transfer of trade union dues, the Government transmits a constitutional court ruling dated 21 February 2001 and adds that section 27 of the Act on trade unions provides that the sources and procedures for forming and using the resources of trade union budgets are defined by the by-laws of the unions.

145. Concerning the statement of the FPB Council about measures supposedly taken by the Minsk municipal executive committee to set up a Minsk municipal trade union association, which in the opinion of the trade unions violates the law of the Republic of Belarus, the Government states that information was posted on the Internet page of the Belarusian trade unions on 26 January 2001 to the effect that the FPB Council's Presidium had taken a decision to set up a Minsk municipal association of sectoral trade unions as an organizational unit. Towards that end, according to the information posted on the trade union's page, an organizing committee is being established in the FPB which will include representatives of all the sectoral trade unions and regional associations. The posting by

the trade unions of this information on the Internet testifies to the fact that the FPB independently, and without any interference on the part of the executive branch, is working to set up a new organizational unit.

146. As regards an order issued by the Minsk Motor Plant in December 2000, the Government points out that its provisions are aimed exclusively at regulating events initiated by public organizations (including trade unions) within the territory of the enterprise, at ensuring order, and at preserving the employer's property and ensuring that occupational safety standards are observed. The order prohibits events at premises designated solely for production, in passageways and on sidewalks. The employer is obliged to take the appropriate measures to ensure safe conditions of work for the employees. The order issued by the Borisov Equipment Plant is similar to this one. The Government therefore cannot agree that the provisions of the orders violate the national legislation and international labour standards, including Convention No. 98.

147. In its communication dated 13 April 2001, the Government transmitted additional information in reply to the allegations concerning interference in the internal affairs of REWU at various enterprises of the Integral Amalgamation. The Government states that the REWU by-laws provided that "primary-level organizations have the right to voluntarily affiliate to and disaffiliate from the branch union. In the latter case they keep a share of the joint assets and financial resources. The decision to withdraw shall be taken by the assembly (conference) of the primary-level organization". According to the Government, the decision of the first-level trade union "NPO" (Research and Production Association) Integral to withdraw from the REWU was voluntary and prompted by disagreements relating to the amount of the trade union dues paid by the organization to the REWU.

148. The provision concerning voluntary disaffiliation of a primary-level trade union from the branch union by decision of the assembly (conference) was deleted by the Sixth Plenary Session of the Republic Council of the REWU held on 3 March 1999. However, the Government states that the 1995 version of its by-laws provides that:

> … the highest body of a trade union is its congress. It is within the exclusive remit of the congress to adopt the trade union's by-laws, or to amend and supplement them. The council of the trade union is the higher body which supplements and amends the trade union's by-laws pursuant to changes in the laws and regulations of the Republic of Belarus in force, and these amendments and additions are then approved at its congress.

In this respect, the Government emphasizes that, at the time at which the Council of the REWU made this amendment to the by-laws, there had been no amendments of the laws and regulations in force that would have constituted grounds (as required by the by-laws) for the Council to introduce amendments in the by-laws. This, according to the Government, is the reason underlying the ambiguous interpretation of the question of legitimacy of the amendments introduced to the trade union's by-laws.

149. The amendments to the REWU by-laws were approved at the trade union's Third Congress on 12 October 2000, while the constituent conference of the workers of the Integral Research and Production Association adopted the decision to establish the Regional Trade Union of Electronics Workers of NPO Integral on the basis of the primary-level trade union NPO Integral and to disaffiliate from the REWU on 8 September 2000 and was registered on 18 September 2000, in accordance with the legislation in force.

150. The trade union conference of the workers of the Tsvetotron Plant in Brest decided that the plant's primary-level organization would affiliate to the Regional Trade Union of Electronics Workers of NPO Integral and disaffiliate from the REWU on 17 October 2000. Upon individual requests being made by the workers, a primary-level organization of the

Regional Trade Union of Electronics Workers of NPO Integral was established at the Tsvetotron Plant in Brest. According to the Government, out of 1,517 staff at the plant, 1,250 joined the new first-level organization by individual request. This primary-level organization was recorded by Decision No. 995 of 1 November 2000 of the Administration of the Moskovsky District of Brest.

151. Finally, the Government asserts that the management of the NPO Integral enterprise does not bring pressure to bear on the workers with regard to their joining or withdrawing from trade unions. The voluntary nature of the workers' decision to disaffiliate from the REWU and join the Regional Trade Union of Electronics Workers of NPO Integral is borne out by the relevant records and individual requests by workers.

152. The Government stresses the importance it attaches to workers being able in practice to establish organizations of their own choosing in full freedom and to join such organizations without any interference and therefore considers that it should neither support nor hinder attempts made within the framework of the law to supplant an existing organization. In conclusion, the Government again emphasizes its interest in reaching a speedy resolution of the complaint and its willingness to take the necessary steps to implement the Committee's recommendations.

D. The Committee's conclusions

153. *The Committee notes that the additional information provided by the complainants in this case refers, both in general and specific terms, to the lack of effective action on the part of the Government to redress the issue of legal address which was hindering the registration of a certain number of primary-level trade union organizations and to continuing interference in the internal affairs of trade unions.*

Trade union registration

154. *The Committee takes due note of the communication dated 24 January 2001 of the Belarusian Free Trade Union (BFTU) in which it states that it has still not been able to register its structures at the local level due to the requirement of a legal address. The BFTU adds that the consequences of not being registered are great since employers refuse to negotiate with unregistered organizational structures, their leaders are not allowed to enter the premises, and their offices are taken away by force.*

155. *During its last examination of this case, the Committee had noted the suggested changes to Presidential Decree No. 2 set out in a draft decree accompanying the Government's reply of 23 February 2001. At that time, the Committee noted that these amendments appeared to be limited to the recording of organizations which have no legal personality, while the need to furnish a legal address for organizations wishing to be registered remained. The Committee had recalled the difficulties in obtaining the necessary legal address for registration purposes cited in the complaint and noted in the mission report, and requested the Government and the complainants to provide additional information as to the practical resolution of the difficulties for registration encountered by the complainants. Furthermore, the Committee requested the Government to provide detailed information on the status of the requests for registration 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; Belarusian Free Trade Union at the "Belgoles" State Timber Processing Amalgamation.

156. *The Committee notes with regret that the Government has not provided any information to demonstrate that progress has been made in respect of the measures envisaged to eliminate the obstacles to registration caused by the legal address requirement and that it has not provided the information requested concerning the status of the abovementioned organizations. The Committee therefore once again urges the Government to take the necessary measures to eliminate the obstacles to registration caused by the legal address requirement and to provide detailed information on the status of the requests for registration made by the abovementioned organizations.*

Government interference

157. *In its previous comments, the Committee had noted the Presidential Instructions of 11 February 2000 which called upon the ministers and chairs of government committees to interfere in the elections of branch trade unions, their congresses, and the Congress of the Federation of Trade Unions of Belarus (FPB) and urged the Government to take the necessary measures to ensure that such interference in internal trade union affairs would not occur in the future, including through the revocation of the relevant instructions and, if necessary, by issuing clear and precise instructions to relevant authorities that interference in the internal affairs of trade unions would not be tolerated.*

158. *The Committee now notes the complainants' allegations set forth in the communications of 25 January and 30 March (from the Belarus Automobile and Agricultural Machinery Workers' Union (AAMWU)) and of 28 March 2001 (from the FPB) that new instructions were issued by the Presidential Administration in January 2001 which call upon the Ministries of Justice, Labour and Industry to draw up provisions relating to the establishment of other worker representative bodies, such as works councils, and indicating that no general agreement should be signed until the adoption of such amendments. According to the complainants, the Instructions further state that efforts should be intensified to speed up the transition to contract-based labour relations and to resolve the issue of the inappropriateness of transferring a proportion of trade union dues to higher level trade union structures. Finally, they refer to the need to intensify efforts to establish a municipal trade union council in Minsk.*

159. *The Committee notes that the Government's reply of 23 February 2001 does not comment upon the alleged intention to amend the trade union legislation, but does deny that the adoption of such amendments would be linked to the signing of the General Agreement, since this depends rather on the will of the parties to negotiate and to find compromises. The Government adds that any such amendments would first be the subject of consultations with the social partners.*

160. *As to the question of the procedure for the transfer of trade union dues, the Committee notes that the constitutional court was seized with this matter by "a citizen appeal". The Committee takes due note of the constitutional court ruling of 21 February 2001, annexed to the Government's reply, which reaffirms the constitutionality of the deduction of trade union membership dues from a worker's wages through non-cash payment to trade union accounts where a written application has been submitted by the worker for such payment, while adding that, in the absence of an express application, deductions from wages are illegal. Given that some trade union members have not submitted such applications and*

that there even may have been deductions from wages of non-union members, the court draws the attention of trade unions to the lack of due control on their part of compliance with the established procedure for the payment of trade union dues.

161. *Finally, as concerns the instruction concerning the establishment of a Minsk municipal trade union, the Government asserts that this was a decision of the federation's own Presidium.*

162. *Firstly, as concerns the overall question of the Instructions of the Presidential Administration of January 2001, while taking due note of the information provided by the Government, the Committee must express its deep concern, not so much for the substance of the issues raised in the Instructions, but rather for the mere fact that these matters should be the subject of Presidential Instructions, particularly in the light of the general climate of industrial relations in the country since the submission of the complaint. While an intention to amend the labour legislation by establishing other representative bodies of workers such as works councils is not, in and of itself, a violation of freedom of association principles, the prioritization of such amendments in high-level government instructions in a context where all the registered trade union bodies in the country have complained of state interference in their internal affairs and where certain primary-level organizations have been refused registration, does give rise to certain doubts as to the Government's sincere desire to reinforce the social partnership on the basis of mutual faith and confidence. Furthermore, as concerns the possible approach to such amendments, the Committee must recall that the Collective Bargaining Convention, 1981 (No. 154), (ratified by Belarus) contains explicit provisions guaranteeing that, where there exist in the same undertaking both trade union representatives and elected representatives, appropriate measures are to be taken to ensure that the existence of elected representatives in an enterprise is not used to undermine the position of the trade unions concerned [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 787].*

163. *The interfering nature of these Instructions is even more apparent when one considers that the Instruction "to resolve the issue of the inappropriateness of transferring a proportion of trade union dues to higher level trade union structures" coincides with a "citizen appeal" to the constitutional court on the procedure for the transfer of trade union dues. Finally, while an internal trade union decision to establish a municipal trade union council would appear to be wholly consistent with the right of workers' organizations to formulate their programmes and activities, the Committee is obliged to conclude that a Presidential Instruction to the city authorities to intensify their work in this respect constitutes undue interference in the internal affairs of trade unions.*

164. *In the light of the above considerations, the Committee must once again urge the Government to take the necessary measures immediately to ensure a stop to such government interference into the internal affairs of trade unions and further urges it to give serious consideration to the need to issue clear and precise instructions to all relevant authorities that interference in the internal affairs of trade unions will not be tolerated.*

165. *Looking at the specific Instruction to intensify efforts to "resolve the issue of the inappropriateness of transferring a proportion of trade union dues to higher level trade union structures", the Committee notes that this Instruction coincides with the allegations made by several of the complainants of delays in the transfer of trade union dues to their organizations. In this respect, the Committee notes the statement of the District Prosecutor annexed to the Radio and Electronics Workers' Union's communication which refers to a total of 725,158 roubles for the month of September which had not been transferred to the branch union. It further notes that the AAMWU refers to a prohibition on the transfer to trade union bodies of dues collected through non-cash payments from union members in*

*enterprises amounting at the end of March to nearly 300 million roubles. The Committee must recall in this respect 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 [see **Digest**, op. cit., para. 435]. It expresses its deep concern that, within the context of a significant delay in the transfer of dues, the Presidential Instructions of January 2001 call into question the appropriateness of such transfers. The Committee therefore requests the Government to establish, as a matter of urgency, an independent investigation into the claims of delayed transfer of union dues made by the complainants and to take the necessary measures to ensure the payment of any dues owed. It requests the Government to keep it informed of the outcome of these investigations. Further noting that the communication of the Agricultural Sector Workers' Union (ASWU) dated 26 April also refers to significant delays in the transfer of union dues, the Committee requests the Government to include these claims in the independent investigation to be established and to provide detailed information in reply to these allegations.*

166. *As concerns the press release from the Ministry of Justice concerning the nomination of a representative of the FPB as a candidate for the presidency of the country and the possibility, in these circumstances, of raising the question of dissolving the federation in accordance with the law, the Committee recalls that measures of suspension or dissolution by the administrative authority constitute serious infringements of the principles of freedom of association [see **Digest**, op. cit., para. 664]. The Committee must express its deep concern that the press release refers to such a possibility and given the extremely serious consequences dissolution of a union involves for the occupational representation of workers, the Committee considers that such circumstances can in no way justify the dissolution of an entire federation. The Committee therefore urges the Government to ensure that no steps will be taken to consider the dissolution of the federation for these reasons.*

167. *Finally, the Committee notes with deep concern the allegations concerning Presidential Decree No. 8 of 12 March 2001 regarding certain measures aimed at improving the arrangement of receiving and using foreign gratuitous aid. In particular, the Committee notes that a certificate must be issued registering such aid before it may be used. It further notes that paragraph 4.3 of the Decree provides that foreign gratuitous aid, in any form, cannot be used towards the preparation and carrying out of, inter alia, public meetings, rallies, street processions, demonstrations, pickets, strikes, designing and disseminating campaign material, as well as running seminars and other forms of mass campaign of the population. Paragraph 5.3 provides that violation of this requirement by trade unions can result in the termination of their activities and the provision of such aid by representative bodies of foreign organizations and international non-governmental organizations on the territory of Belarus can result in the termination of the activities of such bodies. The commentary to the Decree emphasizes that "even a single violation can bring about the elimination of a public association, fund or other non-profit organization".*

168. *The Committee must recall in this respect that trade unions should not be required to obtain prior authorization to receive international financial assistance in their trade union activities and that legislation prohibiting the acceptance by a national trade union of financial assistance from an international organization of workers to which it is affiliated infringes the principles concerning the right to affiliate with international organizations of workers [see **Digest**, op. cit., paras. 633 and 632]. The Committee therefore considers that the aspects of the Decree which prohibit trade unions, and potentially employers' organizations, from using foreign aid, financial or otherwise, from international organizations of workers or employers is a serious violation of the principles of freedom of association and urges the Government to take the necessary measures, as a matter of urgency, to ensure that workers' and employers' organizations may benefit freely, and*

without previous authorization, from the assistance which might be provided by international organizations. The Government is requested to keep the Committee informed of the measures taken in this regard.

Interference in trade union internal affairs and anti-union discrimination

169. *The Committee notes the additional allegations of interference raised by the FPB, the AAMWU and the Radio and Electronic Workers' Union (REWU), particularly as concerns efforts to compel trade union committees of various enterprises to withdraw from the current industrial unions and to create their own unions in order to encourage fragmentation of the trade union movement. In its communication dated 9 January 2001, REWU provides documentation in respect of its previous allegations that the direction of the Integral Amalgamation put pressure on workers to break off from REWU and that REWU officials were denied access to the premises when this matter was being considered. REWU also provided minutes of the trade union conference at the Tsvetotron Plant of the Integral Amalgamation in Brest when this issue was discussed. In particular, the Committee notes from the minutes that the report of the conference was made by the plant director and interventions in favour of the new affiliation were made by the director of the Instrument Plant and the deputy-director of human resources whereas the deputy chair of the Trade Union Committee desired that the Integral Amalgamation Trade Union Committee remain part of REWU. The Committee further notes from the report that the deputy chair had referred to "the administration's uncivilized interference into the plant union's home affairs in the form of holding shop-level meetings and fixing the time of the conference without consultation with the union".*

170. *While the report of the District Prosecutor in respect of the decision at the Tsvetotron Plant corroborated REWU's allegations and, in conclusion, proposed that the question of the legality of establishing a regional trade union of electronics industry workers of the Integral Amalgamation at the Tsvetotron Plant should be re-examined and that account should be taken of the fact that trade union membership should be voluntary and withdrawal from membership should be made upon written application of each member, the Committee notes that, according to the documents annexed to the complaint, the Minister of Justice has affirmed that the amendments made to the REWU by-laws providing that membership withdrawal must be based on individual written application are invalid. In this respect, the Committee wishes to recall that the drafting of, and amendments to, the constitutions and by-laws of workers' organizations should, as a general rule, be a matter solely for the organization concerned and its members. Any question as to the legality of the procedure for amending a union's constitution or by-laws should be a matter for the judicial authority. The Committee considers that a pronouncement by an administrative body in this respect constitutes undue interference in the internal affairs of the union concerned. Consequently, the Committee considers that the letter of the Minister of Justice declaring these amendments to be invalid constitutes undue interference in the internal affairs of the REWU and requests the Government to ensure that such interference will not recur.*

171. *While the complainants assert that the amendment in question was first adopted by the plenary session of the branch union and later approved at the branch union's congress, and that no objection had apparently been made as to its legality when the new by-laws were registered during the process of re-registration under Presidential Decree No. 2, the Committee takes due note of the information provided by the Government concerning the ambiguity of the legality of the amendments in relation to REWU's own by-laws concerning the procedure for their amendment. Nevertheless, the Committee wishes to express its concern over the serious allegations made by the complainant concerning management interference in the decision to set up a new regional trade union and the*

difficulties encountered by REWU representatives in obtaining access to the workplace in order to express their views on the matter and provide any relevant information. It further notes from the documentation provided in respect of the trade union conference held at the Tsvetotron plant the extent of the involvement of the plant management in the decision to withdraw from REWU, which the Committee considers demonstrates clear interference in internal union affairs. In addition, the Committee notes that the report of the District Prosecutor concerning the decision taken at the Tsvetotron Plant to withdraw from REWU concludes that there were several problems related to the convening of the trade union conference and the manner in which it was held. In these circumstances, the Committee requests the Government to take the necessary measures to institute an independent investigation into the questions surrounding the establishment of a regional trade union of electronics industry workers by the Research and Production Association of the Integral Amalgamation and the decision taken at the Tsvetotron Plant to affiliate to the new regional union. It requests the Government to keep it informed of the outcome of the investigation.

172. *As concerns similar alleged acts to break up the trade union movement, the Committee requests the Government to furnish information in reply to the additional allegations of threats and pressure exerted upon workers to coerce them to leave the branch union and set up new unions at the Belarus Metallurgical Plant and the Rechitskij Hardware Plant in Gomel.*

173. *Finally, the Committee notes the allegations that, by enterprise order, the Borisov Aggregate Plant has: banned all mass events held by public organizations on the enterprise territory at the industrial premises, on the roads and pavements; required prior approval for any events held on premises which have not already been placed at the disposal of public organizations; and prescribed that unit managers and vice-directors should personally participate in any authorized events in order to educate personnel, represent management and answer questions. For its part, the Government refers to a similar order issued by the Minsk Motor Plant and points out that the provisions of such orders are aimed exclusively at regulating events initiated by public organizations (including trade unions) within the territory of the enterprise, at ensuring order, and at preserving the employers' property and ensuring that occupational safety standards are observed.*

174. *While recognizing that the employer may have a legitimate prerogative to ensure the proper regulation of activities on its premises, the Committee trusts that any refusal to authorize a trade union meeting or event will be reasonable and based on the type of considerations noted by the Government. Furthermore, the Committee considers that the order prescribing that unit managers and vice-directors should personally participate as representatives of management in any authorized events of trade unions is contrary to the right of workers' organizations to exercise their activities without interference by employers. The Committee therefore requests the Government to take the necessary measures to ensure that any authorized trade union gatherings at the Minsk Motor Plant or at the Borisov Aggregate Plant may take place without any undue influence from the management in the internal trade union affairs.*

175. *Finally, as concerns anti-union dismissals, the Committee recalls that, in its previous conclusions, it had requested the Government to take the necessary measures to ensure that Mr. Evmenov was reinstated in his post with full compensation for any lost wages and benefits and to keep the Committee informed in this regard. The Committee notes from the BFTU communication of 24 January 2001, and the court judgement annexed thereto, that the chairperson of the MoAZ Free Trade Union, Mr. Bourgov, has also been dismissed for being absent from work one day, a day which Mr. Bourgov contests was a non-workday. In*

its reply of 23 February, the Government merely states that both these dismissals were due to violations of labour discipline (absenteeism).

176. *The Committee must once again recall 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]. Furthermore, in line with its previous conclusions concerning Mr. Evmenov, the Committee cannot accept that the failure to work on a non-workday should be considered a breach of labour discipline.*

177. *The Committee therefore once again urges the Government to take the necessary measures to ensure that both Mr. Evmenov and Mr. Bourgov are reinstated in their posts with full compensation for any lost wages and benefits. The Government is requested to keep the Committee informed of the progress made in this respect.*

Pending requests

178. *In its previous conclusions and recommendations, the Committee requested the Government to take the necessary measures to institute independent investigations into the threats of dismissal made to members of the GPO "Khimvolokno" Free Trade Union urging them to leave the union, as well as to the members of the Free Trade Union at the "Zenith" Plant, and the refusal to employ, after the expiration of his term of office, the re-elected chairperson of the Free Trade Union of Metalworkers at the Minsk Automobile Plant, Mr. Marinich. The Committee further requested the Government to ensure that the effects of any anti-union discrimination or interference in respect of the above cases be redressed. In the absence of any further information from the Government on these matters, the Committee once again requests it to keep it informed of progress made in instituting these investigations and their outcome.*

179. *In conclusion, the Committee must express its continuing deep regret that, rather than taking the necessary measures to ensure that all attempts to interfere in the internal affairs of trade unions will immediately stop, as recommended by the Committee in its previous conclusions, it would appear that systematic attacks on trade union rights and the trade union movement in Belarus have become ever more frequent. The Committee once again urges the Government to do everything in its power to ensure that the trade union movement in Belarus can develop in full independence and autonomy.*

180. *Finally, the Committee requests the Government to provide information in reply to the allegations made by the BFTU in its communication dated 23 March 2001.*

The Committee's recommendations

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

(***a) Noting with regret that the Government has not provided any information to demonstrate that progress has been made in respect of the measures envisaged to eliminate the obstacles to registration caused by the legal address requirement and that it has not provided the information requested concerning the status of the registration requests made by the organizations***

cited in the conclusions, the Committee once again urges the Government to take the necessary measures to eliminate the obstacles to registration caused by this requirement and to provide detailed information on the status of these organizations.

(b) Taking due note of the Instructions of the Presidential Administration which were issued in January 2001, the Committee once again urges the Government to take the necessary measures immediately to ensure a stop to such government interference into the internal affairs of trade unions. It further urges the Government to give serious consideration to the need to issue clear and precise instructions to all relevant authorities that interference in the internal affairs of trade unions will not be tolerated.

(c) As concerns the delays in the transfer of trade union dues to several of the complainant organizations, the Committee requests the Government to establish, as a matter of urgency, an independent investigation into these claims and to take the necessary measures to ensure the payment of any dues owed. It further requests the Government to keep it informed of the outcome of these investigations and to provide detailed information in reply to the allegations of delayed transfer of dues.

(d) Expressing its deep concern at the press release of the Ministry of Justice which refers to the possibility of raising the question of dissolving the Federation of Trade Unions of Belarus (FPB), the Committee considers that the circumstances at hand can in no way justify the dissolution of an entire federation and therefore urges the Government to ensure that no steps will be taken to consider the dissolution of the federation for the reasons invoked.

(e) Considering that the aspects of Presidential Decree No. 8 which prohibit trade unions, and potentially employers' organizations, from using foreign aid from international organizations of workers or employers is a serious violation of the principles of freedom of association, the Committee urges the Government to take the necessary measures, as a matter of urgency, to ensure that workers' and employers' organizations may benefit freely, and without prior authorization, from the assistance which might be provided by international organizations. The Government is requested to keep the Committee informed of the measures taken in this regard.

(f) Considering that the letter of the Minister of Justice which declares the amendments to the REWU by-laws to be invalid constitutes undue interference in the internal affairs of the REWU, the Committee requests the Government to ensure that such interference will not recur.

(g) The Committee requests the Government to take the necessary measures to institute an independent investigation into the questions surrounding the establishment of a regional trade union of electronics industry workers by the Research and Production Association of the Integral Amalgamation and the decision taken at the Tsvetotron Plant to affiliate to the new regional union. It requests the Government to keep it informed of the outcome of the investigation. The Committee also requests the Government to furnish

information in reply to the additional allegations of threats and pressure exerted upon workers to coerce them to leave the branch union and set up new unions at the Belarus Metallurgical Plant and the Rechitskij Hardware Plant in Gomel.

(h) The Committee requests the Government to take the necessary measures to ensure that any authorized trade union gatherings at the Minsk Motor Plant or at the Borisov Aggregate Plant may take place without any undue influence from the management in the internal trade union affairs.

(i) The Committee urges the Government to take the necessary measures to ensure that Mr. Evmenov and Mr. Bourgov are reinstated in their posts with full compensation for any lost wages and benefits and to keep the Committee informed of the progress made in this respect.

(j) The Committee once again requests the Government to take the necessary measures to institute independent investigations into the threats of dismissal made to members of the GPO "Khimvolokno" Free Trade Union urging them to leave the union, as well as to the members of the Free Trade Union at the "Zenith" Plant, and the refusal to employ, after the expiration of his term of office, the re-elected chairperson of the Free Trade Union of Metalworkers at the Minsk Automobile Plant, Mr. Marinich. The Committee further requests the Government to ensure that the effects of any anti-union discrimination or interference in respect of the above cases be redressed and to keep it informed of the progress made in instituting these investigations and their outcome.

(k) The Committee requests the Government to provide information in reply to the allegations made by the BFTU in its communication dated 23 March 2001.

CASE NO. 2099

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

Complaint against the Government of Brazil presented by the National Confederation of Financial Institutions Workers (CNTIF)

Allegations: Failure to engage in collective bargaining; exclusive bargaining with higher level trade union organizations; discrimination against trade union officers and insufficient protection against arbitrary dismissal

182. The complaint in this case is contained in a communication from the National Confederation of Financial Institutions Workers (CNTIF), dated 24 August 2000. On 11 January 2001, the Government sent the reply of Banco do Brasil S.A., dated 8 December 2000.

183. Brazil has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), but has ratified the Right to Organise and Collective

Bargaining Convention, 1949 (No. 98), and the Workers' Representatives Convention, 1971 (No. 135).

A. The complainant's allegations

184. In its communication of 24 August 2000, the National Confederation of Financial Institutions Workers (CNTIF), which groups together 180 banking trade unions and seven federations, and is affiliated to the Single Central Organization of Workers (CUT), states that the Government of Brazil, through Banco do Brasil S.A., a mixed enterprise, fails to comply with Conventions Nos. 98, 135 and, therefore, 87, for the following reasons.

185. The CNTIF states that up to and including August 1999, Banco do Brasil S.A. negotiated with its employees their share in the profits and results of the enterprise, as provided for in the Political Constitution and regulated by Provisional Measure No. 1982-67. This profit-sharing was decided upon with trade union participation, either through direct negotiation and conclusion of the collective agreement, or through a negotiating committee whose members were designated by the parties (the trade union in question was represented in this committee). However, the complainant alleges that, in violation of the aforementioned provisions, Banco do Brasil S.A. unilaterally changed these profit-sharing arrangements, and the Government endorsed this by amending the abovementioned Provisional Measure. According to the complainant, these acts constitute an infringement of collective freedom of association, and this is corroborated by the fact that the Federal Supreme Court reaffirmed the obligation to ensure that trade unions are present in negotiating committees.

186. The CNTIF alleges further that Banco do Brasil S.A. is excluding the trade unions from collective bargaining by holding talks with the National Confederation of Workers of Credit Enterprises (CONTEC), whereas the trade unions had specifically withdrawn this Confederation's authority to negotiate. The decision to withdraw this authority was made by a workers' assembly and notified to both the Confederation and the enterprise. The complainant maintains that the trade unions affiliated to CONTEC should maintain their freedom of association in the negative sense, meaning the freedom not to be represented in all areas by higher level organizations. However, the case law of the Supreme Labour Tribunal indicates that in the case of a collective dispute, confederations can act without the authorization of a trade union assembly. The complainant adds that Banco do Brasil S.A. even refuses to formalize collective bargaining with the trade unions, but not that with CONTEC. Furthermore, according to the Supreme Labour Tribunal, confederations have exclusive competence for resolving nationwide collective disputes, regardless of the wishes of first-level organizations. According to the complainant, this reversal is dangerous in that the representative nature of the Confederation is not legitimized directly by the workers, but by a council of representatives, and that trade union representativity is disregarded.

187. The CNTIF also alleges that between 1 September 1999 and 31 August 2000, which coincided with the term of the collective agreement then in force, the bank demanded a reduction in the number of trade union officers who carried out their duties at the cost of the enterprise, and the deletion of the clause referring to representatives of first-level trade unions (which was still applicable during the term of the 1998-99 agreement), thus refusing to recognize the right to organize at the workplace. According to the complainant, this deletion violates ILO Convention No. 135, which has been ratified by Brazil.

188. Lastly, the CNTIF states that Banco do Brasil S.A., despite the fact that it is part of the public administration, does not provide its employees with adequate protection against arbitrary dismissal (in 1997 over 500 employees were dismissed without just cause). In this regard, it points out that the bank considers "dismissal" to be a "sanction" for breach of discipline, thus enabling it to dismiss without justification senior employees and those

recruited through competitions, even after long periods of service, in order to employ "interns" to make up for obviously inadequate staffing levels.

B. The Government's reply

189. With regard to the first allegation, the Government states that the bank has reached an agreement with the trade unions concerning profit-sharing, and distributes a share of the profits amongst employees in accordance with a programme based on the relevant Provisional Measure and approved by the supervisory body of the federal Government. There is a collective agreement which provides for negotiations regarding this matter.

190. As for the allegation that Banco do Brasil S.A. engages in collective bargaining with a confederation without the consent of the trade unions and contrary to decisions taken in assembly, the Government states that it does not agree with the complainant asserting that Banco do Brasil S.A. negotiates and signs collective agreements with both the National Confederation of Workers of Credit Enterprises (CONTEC) and the trade unions. CONTEC is the national confederation legally authorized to represent banking employees on a national scale, in accordance with the federal Constitution and the legislation in force. It is therefore surprising that an organization with which the bank has never held negotiations has presented a complaint to the ILO.

191. Concerning the alleged discriminatory treatment of trade union leaders, the Government states that Banco do Brasil S.A. has nearly 100 employees who have paid time off to carry out their trade union duties, entirely at the cost of the enterprise. It should be noted that during collective bargaining, the parties adopt strategic positions that are not always satisfactory for both sides. Therefore, to allow these complaints is to fail to recognize the negotiating process, which is aimed at reaching a settlement by consensus.

C. The Committee's conclusions

192. *The Committee notes that the complainant alleges that, in violation of the right to collective bargaining and contrary to previous practice, Banco do Brasil S.A., a mixed enterprise that up until September 1999 engaged in collective bargaining with its employees concerning profit-sharing arrangements decided to change this profit-sharing system unilaterally. The Committee also notes that the Government endorsed this change by reflecting it in the Provisional Measure governing this issue. The Committee observes that according to the Government a collective agreement exists in which bargaining on all these issues is provided for. The Committee recalls that in the view of the Committee of Experts, it is contrary to the provisions of Convention No. 98 to exclude from collective bargaining certain issues such as those relating to conditions of employment. Furthermore, measures taken unilaterally by the authorities to restrict the scope of negotiable issues are often incompatible with the Convention [see General Survey on freedom of association and collective bargaining, 1994, paras. 265 and 250]. The Committee requests the Government to keep it informed of the outcome of the projected negotiations.*

193. *With regard to collective bargaining between Banco do Brasil S.A. and a trade union confederation which did not have the approval of first-level trade unions, and which had been denied the authority to negotiate by the latter, the Committee observes that article 8 of the federal Constitution enshrines trade union monopoly by prohibiting the establishment of more than one trade union organization at any level representing a professional or economic category in the same territorial division. The Committee also notes that, according to the Government, CONTEC is the national confederation legally authorized to represent banking employees on a national scale. Similarly, the Committee*

observes that, according to the complainant, Banco do Brasil S.A. also refuses to formalize collective bargaining carried out with the trade unions, but not that held with CONTEC. It notes, moreover, that according to the case law of the Supreme Labour Tribunal, in the case of collective disputes, confederations can act without the authorization of a trade union assembly, and that trade union confederations are competent to settle nationwide collective disputes, regardless of the wishes of first-level organizations. In these circumstances, the Committee recalls that according to the principle of free and voluntary collective bargaining embodied in Article 4 of Convention No. 98, the determination of the bargaining level is essentially a matter to be left to the discretion of the parties and, consequently, the level of negotiation should not be imposed by law, by decision of the administrative authority or by the case law of the administrative labour authority [see ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 851]. Furthermore, the Committee emphasizes that the imposition by law of the trade union monopoly is not compatible with the principles of freedom of association, and, therefore urges the Government to ensure that national law is brought into conformity with these principles. Lastly, the Committee draws this legal aspect of the case to the attention of the Committee of Experts on the Application of Conventions and Recommendations.*

194. *Regarding the allegedly discriminatory treatment of trade union officers and representatives within the enterprise, the Committee notes that, according to the complainant, Banco do Brasil S.A. has reduced the number of trade union leaders authorized to carry out their duties at the cost of the enterprise. In these circumstances, although the Committee does not consider this reduction to be contrary to the principles of freedom of association, given that it is the result of collective bargaining, it requests the Government to prevent any discrimination between trade unions in this context.*

195. *Lastly, concerning the allegation of inadequate protection against arbitrary dismissal, the Committee notes that the complaint does not mention that these dismissals are the result of anti-union measures. Therefore, it will not pursue its examination of this matter.*

The Committee's recommendations

196. ***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 outcome of the projected negotiations on the participation of employees of Banco do Brasil S.A. concerning profit-sharing arrangements.

(b) The Committee recalls that according to the principle of free and voluntary collective bargaining embodied in Article 4 of Convention No. 98, the determination of the bargaining level is essentially a matter to be left to the discretion of the parties. The Committee also emphasizes that the imposition by law of a trade union monopoly is not compatible with the principles of freedom of association, and therefore urges the Government to ensure that national law is brought into conformity with these principles.

(c) Although the Committee does not consider the reduction in the number of trade union representatives authorized to carry out their duties at the cost of the enterprise to be contrary to the principles of freedom of association, given that it is the result of collective bargaining, it requests the Government to prevent any discrimination between trade unions in this context.

CASE NO. 1951

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

Complaint against the Government of Canada (Ontario) presented by — the Canadian Labour Congress (CLC) and — the Ontario Secondary School Teachers' Federation (OSSTF)

Allegations: Interference with collective bargaining; denial of the right of principals and vice-principals to organize, bargain collectively and strike; lack of protection against anti-union discrimination and employer interference

197. The Committee examined this case at its November 1998 and June 1999 meetings, and in both instances presented an interim report to the Governing Body [see 311th Report, paras. 170-234, approved by the Governing Body at its 273rd Session (November 1998); 316th Report, paras. 214-228, approved by the Governing Body at its 275th Session (June 1999)].

198. The Government forwarded additional observations and information in communications of 12 October 1999, 7 January and 17 August 2000, and 7 March 2001.

199. 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), or the Collective Bargaining Convention, 1981 (No. 154).

A. Previous examination of the case

200. The complaint concerns legislation governing the education sector in Ontario, namely the Education Quality Improvement Act, 1997 (Bill 160), which substantially amended the Education Act. The Committee's previous examination of the case addressed the scope of collective bargaining in the education sector pursuant to Bill 160, the exclusion of principals and vice-principals from the collective bargaining process provided by Bill 160 and from the Labour Relations Act, and the lack of adequate consultation with the parties concerned prior to the adoption of Bill 160.

201. When it last examined this case, the Committee presented the following recommendations [see 316th Report, para. 228]:

(a) Stressing that the Government should ensure that the unions are fully consulted when general policies affecting them are formulated, and that in all cases free collective bargaining should be allowed to take place on the consequences on conditions of employment of decisions on educational policy, the Committee requests the Government to keep it informed in this regard.

(b) The Committee requests the Government to keep it informed with respect to the case currently before the Ontario Court of Appeal concerning school principals and vice-principals and to provide a copy of the court's decision as soon as it is rendered.

(c) The Committee requests the Government to take the necessary measures to ensure that school principals and vice-principals may form and join the organization of their own choosing and that they enjoy effective protection against anti-union discrimination and employer interference, and requests the Government to keep it informed in this regard.

B. The Government's reply

202. In its communication of 7 January 2000, the Government states that the three provincial associations of principals and vice-principals continue to be active on behalf of their membership in discussions with the Government. The associations met with the Deputy Minister of Education on four occasions in 1998; their presidents and executive directors met with the Minister of Education on four occasions in 1999. These discussions normally concerned school operational and curriculum issues. The Ministry of Education has also provided financial assistance to support a variety of professional development activities of the associations. The Government points, for example, to a leadership symposium organized by the associations in November 1999, which was supported by the Ministry. The associations also have representatives on a number of ministry committees dealing with curriculum and programme initiatives. The Government states further that school boards across the Province of Ontario have established mutually satisfactory terms and conditions of employment with the associations.

203. With respect to the issue of protection against anti-union discrimination and employer interference, the Government states in its communication of 12 October 1999 that "to our knowledge, there have been no instances of discrimination or employer interference due to membership in a provincial association".

204. In its communication of 17 August 2000, the Government notes that the Ontario Court of Appeal had released its decision concerning school principals and vice-principals on 7 June 2000. The Court dismissed the appeal, holding that Bill 160, including late amendments thereto, did not infringe freedom of association as guaranteed under the Canadian Charter of Rights and Freedoms. A copy of the decision was provided by the Government. In its communication of 7 March 2001, the Government informs the Committee that the Supreme Court of Canada dismissed the application for leave to appeal.

C. The Committee's conclusions

205. *The Committee notes that this case concerns allegations of violations of freedom of association arising from the adoption of legislation governing labour relations in the education sector, namely the Education Quality Improvement Act, 1997 (Bill 160), which amended the Education Act. In particular, the decreased scope of collective bargaining under Bill 160 was raised, as well as the exclusion of principals and vice-principals from bargaining units for the purpose of collective bargaining, and from the rights and protections of the Ontario Labour Relations Act, 1995. The lack of adequate consultation with the parties concerned prior to the adoption of Bill 160 was also alleged.*

206. *Concerning the scope of collective bargaining in the education sector, the Committee has previously dealt with this issue in some detail in this case [see 311th Report, paras. 216-220; 316th Report, paras. 222-223]. The Committee again recalls the importance of promoting collective bargaining in the education sector. While determining that the broad lines of educational policy can be excluded from collective bargaining, other matters that deal primarily with questions relating to conditions of employment should not be regarded as falling outside the scope of collective bargaining. The Committee has acknowledged previously that while class size may have a bearing on*

conditions of employment, it could also be considered as an issue more closely linked to broad educational policy and thus could be excluded from the scope of collective bargaining. Other matters raised in the present case may also have aspects of broad policy; however, the Committee must once again stress that if the Government considers that such subjects should be determined without recourse to collective bargaining, it must ensure that the unions concerned are fully consulted when such broad policy is being formulated. Furthermore, in all cases, free collective bargaining should be allowed on the consequences on conditions of employment of decisions on educational policy. The Committee again requests the Government to keep it informed in this regard.

207. *Regarding principals and vice-principals, the Committee recalls that, pursuant to Bill 160, they are excluded from teachers' bargaining units and from collective bargaining procedures. They are also excluded from the collective bargaining machinery established by virtue of the Labour Relations Act, as well as the protection provided in the Labour Relations Act against anti-union discrimination, including dismissal, and employer interference in union activities.*

208. *The Committee notes that the exclusion of principals and vice-principals from teachers' bargaining units and from the statutory collective bargaining procedures was the subject of a recent case before the Ontario Court of Appeal* (Ontario Teachers' Federation et al. vs. the Attorney-General of Ontario); *leave to appeal this decision to the Supreme Court of Canada has been denied. As the Government notes, the Court of Appeal dismissed the appeal, holding that the provisions of Bill 160 concerning principals and vice-principals did not infringe the guarantee of freedom of association under the Canadian Charter of Rights and Freedoms. The Court noted that the primary effect of the relevant provisions of Bill 160 "was to remove principals and vice-principals from teacher bargaining units ... [T]hey also excluded principals and vice-principals from the application of the Labour Relations Act, 1995, S.O. 1995, c.1. Sch. A, thereby foreclosing their right, under the Act, to organize in separate bargaining units. The amendments also empowered cabinet to determine the terms and conditions of employment for principals and vice-principals by way of regulation." In the context of the case, the issue was raised as to whether principals and vice-principals should be considered as managers whose interests are aligned with the employer, or as team leaders with the same interests as teachers in the outcome of the negotiations. Since in its view, the finding on this point was not unreasonable, the Court of Appeal deferred to the trial judge's finding that the purpose of the relevant provisions was to remove the principals and vice-principals from a position of conflict arising out of their duty to manage the schools and their loyalty to other members of the union.*

209. *The Committee notes the Government's statement that three provincial associations of principals and vice-principals have been formed which are active on behalf of their membership in discussions with the Government, and that the Ontario Court of Appeal held that Bill 160 did not violate the guarantee of freedom of association under the Canadian Charter of Rights and Freedoms. With respect to the interpretation of freedom of association under the Canadian Charter of Rights and Freedoms, the Committee has already commented on the fact that while the right to strike and to bargain collectively are integral components of the principles of freedom of association, the constitutional guarantee of freedom of association pursuant to the Canadian Charter of Rights and Freedoms does not give expression to these rights [see 311th Report, para. 231]. The judgement of the Court of Appeal also refers to the "limited scope" of the constitutional concept of "freedom of association".*

210. *The Committee recalls that it is not necessarily incompatible with freedom of association principles to deny managerial or supervisory employees the right to belong to the same trade union as other workers, providing two conditions are met: first, that such workers have the right to form their own associations to defend their interests; second, that the*

categories of such staff are not defined so broadly as to weaken the organizations of other workers by depriving them of a substantial proportion of their present or potential membership. The expression "manager" or "supervisor" should be limited to cover only those persons who genuinely represent the interests of employers [see ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, paras. 231-232]. Due to the legislative provisions at issue, principals and vice-principals have not only been removed from teachers' bargaining units, but are also denied the statutory right to organize in separate bargaining units under the Labour Relations Act. Although they can form their own associations and voluntarily bargain terms and conditions of employment outside the statutory framework, principals and vice-principals have had their bargaining strength considerably diminished due to Bill 160: they have been removed from the bargaining units, and consequently the teachers' unions, to which they have belonged for many years, have no statutory right to form their own trade union, and Cabinet is empowered to determine their terms and conditions of employment without recourse to any form of bargaining. In addition, due to their exclusion from the Labour Relations Act, principals and vice-principals are denied protection against anti-union discrimination, including dismissal, and employer interference in trade union activities.*

211. *The Committee again recalls its statement in a similar case concerning the exclusion of particular workers from the Ontario Labour Relations Act:*

> While not neglecting the importance it places on the voluntary nature of collective bargaining, the Committee recalls that 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 terms and conditions of employment by means of collective agreements [see **Digest**, op. cit., para. 781]. Furthermore, the preliminary work for the adoption of Convention No. 87 clearly indicates that "one of the main objects of the guarantee of freedom of association is to enable employers and workers to form organizations independent of the public authorities and capable of determining wages and other conditions of work by means of freely concluded collective agreements [see **Digest**, op. cit., para. 799; 308th Report, Case No. 1900 (Canada/Ontario), para. 186].

212. *The Committee notes the Government's statement that, to its knowledge, there have been no instances of discrimination or employer interference due to membership in a provincial association. However, the Committee must again recall the importance it has attached to the need for specific provisions prohibiting acts of interference by employers against workers and their organizations, and prohibiting discrimination on the basis of trade union membership or activities, and for clear procedures and dissuasive sanctions [see* ***Digest****, op. cit., para. 737 et seq.]. The Committee has stated that it "considers that the absence of any statutory machinery for the promotion of collective bargaining and the lack of specific protective measures against anti-union discrimination and employer interference in trade union activities constitutes an impediment to one of the principal objectives of the guarantee of freedom of association, that is the forming of independent organizations capable of concluding collective agreements" [see Case No. 1900 (Canada/Ontario), 308th Report, para. 187]. The Committee, therefore, urges the Government to amend the legislation to ensure that principals and vice-principals are able to form and join organizations of their own choosing, have access to collective bargaining, and enjoy effective protection from anti-union discrimination and employer interference. The Committee further requests the Government to keep it informed in this regard.*

213. *Regarding prior consultation, which the complainants contend did not take place with respect to Bill 160, the Committee again reiterates its hope that, when a government seeks to alter the bargaining structure in which it acts directly or indirectly as an employer, such*

changes should be preceded by an adequate consultation process, whereby all objectives can be discussed by the parties concerned. The Committee, therefore, urges the Government to ensure in future that such consultations are undertaken.

214. *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

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

(a) Stressing once again that the Government should ensure that the unions are fully consulted when general policies affecting them are formulated, and that in all cases free collective bargaining should be allowed on the consequences on conditions of employment of decisions on educational policy, the Committee requests the Government to keep it informed in this regard.

(b) The Committee urges the Government to amend the legislation to ensure that school principals and vice-principals may form and join organizations of their own choosing, have access to collective bargaining, and enjoy effective protection from anti-union discrimination and employer interference. The Committee requests the Government to keep it informed in this regard.

(c) The Committee urges the Government to ensure in future that, when it seeks to alter the bargaining structure in which it acts directly or indirectly as an employer, such changes are preceded by an adequate consultation process, whereby all objectives can be discussed by the parties concerned.

(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. 2107

DEFINITIVE REPORT

Complaint against the Government of Chile presented by the National Confederation of Federations and Trade Unions of Food Industry, Tourism, Hotel and Restaurant, and Related and Allied Workers (COTIACH)

Allegations: Violation of the right to collective bargaining; harassment against members of the National Confederation of Federations and Trade Unions of Food Industry, Tourism, Hotel and Restaurant, and Related and Allied Workers (COTIACH)

216. The complaint is contained in communications from the National Confederation of Federations and Trade Unions of Food Industry, Tourism, Hotel and Restaurant, and Related and Allied Workers (COTIACH) dated 3 October and 12 December 2000.

217. The Government sent its observations in a communication dated 30 March 2001.

218. Chile 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

219. In its communications of 3 October and 12 December 2000, the National Confederation of Federations and Trade Unions of Food Industry, Tourism, Hotel and Restaurant, and Related and Allied Workers (COTIACH) alleges that since approximately 1986, the enterprise Agrícola Ariztía Ltda. periodically obliges its workers to sign, under threat of dismissal or other reprisals, instruments which it calls "collective labour agreements". According to the COTIACH, these documents contain labour-related provisions and are drawn up by the enterprise without any worker participation or any type of real bargaining that would afford them collective status. In fact, the workers do not actually sign these "agreements" but instead a blank sheet of paper before the head of personnel which contains their name and identity card details, and this document is subsequently attached to the instrument drawn up by the enterprise and sent to the Labour Inspectorate for registration.

220. The complainant adds that the purpose of this practice is to prevent workers at the enterprise using their constitutional right to collective bargaining. Each time a trade union tries to bargain collectively on behalf of its members, Agrícola Ariztía Ltda. objects to the involvement of any of its workers who have signed the abovementioned agreements, given that as they are in principle covered by a collective agreement currently in force, according to Chilean labour standards (articles 328(2) and 314 of the Labour Code) they are not entitled to engage in further collective bargaining until the end of the term of application of the relevant instruments. However, even if the workers have signed such instruments, they do not constitute collective agreements. According to the COTIACH, article 314 of the Labour Code that authorizes such practices is contrary to the principles of freedom of association: the bargaining in question takes place without trade union participation and the workers involved do not have the right to strike. These instruments, when they are

indeed signed by workers, have been called "multiple individual contracts" or contracts of adhesion, as from a legal standpoint they constitute individual labour contracts.

221. The complainant adds that on 11 November 1999, company union No. 2 submitted a draft collective labour contract, on behalf of 232 affiliated workers, and that the enterprise objected to 221 of the workers participating in the negotiations, maintaining that they had signed "collective agreements" and pointing out that other workers had left the enterprise, leaving only six workers entitled to be represented by the trade union in the collective bargaining process. The COTIACH states that following a detailed study of the facts, the Labour Inspectorate decided that the instruments cited by the enterprise to prevent the majority of the unionized workers participating in the bargaining process did not constitute collective instruments and ordered the enterprise to include these workers in the negotiations (Decision No. 35 of 29 November 1999). The enterprise lodged an application for protection with the Court of Appeal of San Miguel, considering that the Labour Inspectorate had violated its right of ownership by refusing to recognize the guarantees and provisions contained in the collective agreements.

222. The COTIACH states that the Court of Appeal declare Decision No. 35 issued by the Labour Inspectorate null and void because it affected the right of ownership of Agrícola Ariztía Ltda., and this judgement was confirmed by the Supreme Court of Justice. Nevertheless, the complainant indicates that Agrícola Ariztía Ltda. has recently been sanctioned by the Second Labour Court of San Miguel for engaging in anti-union practices against the complainant trade union. More specifically, the judgement handed down by the court magistrate indicates that the enterprise's practice of making workers sign such "collective labour agreements" is a violation of freedom of association and imposes a fine on the enterprise.

223. According to the COTIACH, the impact of the above actions on trade union No. 2 is clear: at the enterprise there are a dozen "collective agreements" covering a varying number of workers (between 19 and 78) and they all have different periods of validity, allowing Agrícola Ariztía Ltda. to ensure that the trade union will never be able to bargain collectively on behalf of all its members.

224. Lastly, the complainant alleges that Agrícola Ariztía Ltda. has also engaged in other conduct in violation of freedom of association. More specifically, it alleges that workers joining the enterprise are constantly pressurized not to join the trade union and that affiliated workers are pressurized to end their membership. Just one fact suffices to demonstrate the magnitude of anti-unionism in this enterprise: company union No. 2 was established five years ago with over 400 members and by the end of 1999 its members had fallen to just 132, in other words approximately 300 workers had left the organization, many of whom had been dismissed, while others had given in to the enterprise's pressures and threats.

B. The Government's reply

225. In its communication of 30 March 2001 the Government states that according to the information registered by the Labour Services in 1999 and 2000, the enterprise Agrícola Ariztía Ltda. concluded the following collective agreements: collective agreement signed on 16 March 1999 with 113 workers, in force until 28 February 2002; collective agreement signed on 25 October 1999 with 51 workers, in force until 30 September 2002; collective agreement signed on 22 March 2000 with 54 workers, in force until 20 February 2003; collective agreement signed on 14 April 2000 with 43 workers, in force until 31 March 2003; collective agreement signed on 24 May 2000 with 38 workers, in force until 30 April 2003; and collective agreement signed on 25 October 2000 with 119 workers, in force until 30 September 2003. All these agreements affect employees' work at the establishment

situated in the commune of La Cisterna, Santiago. Two further agreements relate to workers in establishments in the city of Melipilla: collective agreement signed on 1 May 2000 with 46 workers, in force until 31 May 2003; and collective agreement signed on 1 September 2000 with 15 workers, in force until 31 August 2003.

226. The Government adds that the Municipal Labour Inspectorate of Santiago Sur and the Provincial Labour Inspectorate of Melipilla, in whose jurisdictions establishments belonging to the enterprise are located, have conducted a number of investigations into these collective agreements to determine whether they are in fact the result of true collective bargaining and are consequently legally binding as such in the terms stipulated in article 314 of the Labour Code, which reads as follows:

> Without prejudice to the regulated collective bargaining procedure, with the prior agreement of the parties, at any time and without restrictions of any type, it shall be possible to initiate, between one or more employers and one or more trade union organizations or groups of workers, irrespective of the number of their members, direct negotiations that shall not be subject to rules of procedure, to agree on common conditions of work and remuneration or other benefits, applicable to one or more enterprises, premises, sites or establishments for a specific period of time. Temporary or provisional trade unions or groups of workers shall be able to reach agreement with one or more employers on common conditions of work and remuneration for specific sites or tasks of a temporary or seasonal nature. These negotiations shall not be subject to the procedural rules established for regulated collective bargaining, neither will they give rise to the rights, prerogatives and obligations indicated in this Code. The collective instruments signed shall be called collective agreements (*convenios colectivos*) and shall have the same effects as collective contracts (*contratos colectivos*), without prejudice to the special rules referred to in article 351.

227. The Government states that from the investigations carried out, which include confidential interviews with workers covered by the collective agreement in question, trade union officials and enterprise representatives, it has been possible to conclude repeatedly that none of the instruments reviewed can be qualified as a collective agreement resulting from the negotiation process laid down in article 314, as the facts considered clearly demonstrate an absence of collective consent or real participation in the supposed negotiations, which supports the view that these agreements are in fact "contracts of adhesion" whereby workers are asked individually to accept a specific contractual proposal offered by Agrícola Ariztía Ltda.

228. The Government indicates with respect to this practice that the Labour Inspectorate developed a repeated and uniform approach, establishing that the legislator shall only consider as a collective agreement one which is signed by a collective subject, in other words, as far as workers are concerned, by employees grouped together for that purpose, which is only the case when they are acting through one or more trade union organizations or when they have agreed together to do so.

229. A review of the various investigative reports into this subject reveal a number of elements in support of the conclusion that the agreements in question do not represent the collective will, for example the absence of the participation or consent of the workers' group, whose signature appears on the document, is demonstrated by the fact that the proposed agreement is submitted on the initiative of the enterprise, which defined its content in advance, with the employees participating little, if at all. Neither is there any participation through representatives elected or appointed by the workers' group as, according to the investigators' findings in all the cases in point, either the enterprise appoints them or they nominate themselves. Similarly, the shortness of the process is striking, and once again points to a lack of worker participation, as the period between the presentation of the offer by the enterprise and the signing of the agreement is generally only two days, and during

this time the workers do not have access to the proposed text; and the (two) meetings held with the groups are extremely short and involve virtually no discussion, as they consist of the enterprise providing information about and inviting acceptance of the proposed offer. Lastly, the employees, grouped together in sections, are called upon to sign the document, a procedure which is carried out in the presence of a person of authority.

230. With reference to the specific situation of regulated collective bargaining by workers' union No. 2, the Government indicates that this began on 11 November 1999 when the corresponding draft collective contract was submitted to the enterprise; a total of 232 workers from the La Cisterna establishment participated. In its reply, the enterprise objected to the participation of 221 of the workers, owing to other collective agreements being in force which excluded them from participating in the process. The negotiating committee submitted an objection of legality to the Labour Inspectorate which conducted the requisite investigation in accordance with the prevailing administrative procedures; results were the same as those already mentioned, that is to say that the collective agreements cited by the enterprise were not in fact collective and consequently the Inspectorate established in Decision No. 35 of 29 November 1999 (handed down by the Municipal Labour Inspector of Santiago Sur) that the workers in question could negotiate. Given this situation, Agrícola Ariztía Ltda. lodged an application for protection with the Court of Appeal of San Miguel (collegiate, civil, ordinary court) against the Municipal Labour Inspectorate of Santiago Sur. The Court of Appeal of San Miguel accepted the appeal and in a judgement dated 19 April 2000 indicated in the part containing the verdict and sentence:

> … the application for protection lodged in record 1 by Agrícola Ariztía Ltda. against the Municipal Labour Inspectorate of Santiago Sur is accepted and its appeal against Decision No. 35 of 29 November 1999 is declared null and void; the Inspectorate shall decide on the appropriate legal course of action with respect to the employer's observations concerning the draft collective contract submitted by company union No. 2.

The Municipal Labour Inspectorate of Santiago Sur lodged a remedy of appeal against the ruling of the Court of Appeal of San Miguel before the Supreme Court but, in a judgement dated 10 May 2000, the Supreme Court upheld the appealed judgement of 19 April 2000. On this point it should be noted that the judgement of the Court of Appeal of San Miguel reiterates what to date constitutes the majority opinion of the courts of justice in this matter; it considers that labour inspectorates are not competent to try or to rule on the legal nature of collective instruments, as it is the labour courts that have exclusive jurisdiction in this matter. Consequently the labour inspectorates, by ruling in the manner that the Labour Inspectorate of Santiago Sur did, would be encroaching on jurisdictional powers which, in the view of the courts, is illegal and arbitrary.

231. The Government points out that in practice this judgement meant that the regulated negotiations of union No. 2 could not be concluded as the number of workers participating in the process was drastically reduced which obviously translated into a weakening of the negotiations and of the trade union organization. This organization had previously brought an action against the enterprise for unfair practices that infringed collective bargaining before the Second Labour Court of San Miguel, basing its action, among other things, on the situation relating to the existence of numerous collective agreements. In a judgement dated 5 January 2000, the Court imposed a fine on Agrícola Ariztía Ltda. Whereas clause No. 8 of the judgement establishes as follows:

> The actions of the defendant established in the above whereas clauses constitute an unfair practice that infringes upon collective bargaining as legally defined in article 387(d) of the Labour Code, that is "any arbitrary or abusive practice intended to restrict collective bargaining or render it impossible", given

> the fact that as the workers were bound by a collective agreement in force they found themselves prevented from participating in any collective bargaining that might be initiated by the complainant trade union, having been pressurized into agreeing to conclude the agreements referred to, which demonstrates that said practice is the true intention of the employer when he proposes such instruments.

Nevertheless, this judgement cited in the application for protection by the Labour Inspectorate of San Miguel, was rejected by the Court of Appeal, which in the fourth whereas clause of its judgement indicated that the matter of unfair practice in collective bargaining, the trying and punishing of which constitute a process which is regulated by the Labour Code, and infringements of constitutional guarantees that should be reviewed by way of applications for protection, were separate issues.

232. Lastly, the Government states that all the information in the above paragraphs confirms that the enterprise's repeatedly observed conduct has led to a situation where there is practically no trade union activity within it. Currently union No. 2 has a very small number of members. Likewise, the enterprise has managed to eliminate collective bargaining, keeping the majority of its employees subject to collective agreements resulting from processes it controls itself. However, the fact that pressure was placed on the workers to sign the agreements presented by their employer has been recognized and explicitly established in the judicial decision of the Second Labour Court of San Miguel which censured the enterprise's unfair practices regarding collective bargaining, stating in its seventh whereas clause:

> The workers were pressurized in order to obtain their consent to sign the collective agreements under reference, either through the threat of dismissal or transfer to the general service section, with the corresponding reduction in their remuneration, or by offering them a sum of money for their signature, a situation which was acknowledged by the defence witnesses.

From all the background information provided it can be seen without a shadow of a doubt that the enterprise Agrícola Ariztía Ltda. has maintained an attitude of ongoing harassment vis-à-vis the trade union activity carried out in the enterprise, as demonstrated by the fact that at present only trade union No. 2 is in operation, while a further two trade union organizations have been in recess for a few years. The enterprise approaches collective bargaining in the same way; at present there are no collective instruments which have resulted from regulated negotiations but, on the contrary, the principal practice in the enterprise, and the practice which covers the majority of its workers, is that of collective agreements. It is important to point out that all the actions carefully and diligently carried out by the officials of the Labour Inspectorate, in the various bodies to which applications were made, have been unable to prevent or reduce the open persecution by Agrícola Ariztía Ltda. of the trade union organizations, their officials and their activities, as seen in the case of the collective bargaining initiated by company union No. 2.

C. The Committee's conclusions

233. *The Committee observes that in this case the complainant alleges that the enterprise Agrícola Ariztía Ltda.: (1) obliges its workers to sign, under threat, instruments that it calls "collective labour agreements" which are in fact contracts of adhesion or multiple individual contracts (m.i.c.); (2) prevented company union No. 2 from negotiating a collective contract on behalf of 232 workers, arguing that 221 of them had already signed the abovementioned "collective agreements" (that is to say m.i.c.); and (3) pressurizes the workers who join the enterprise not to become members of the trade union and the workers who are affiliated to leave the trade union, which has led to 300 workers leaving the organization.*

234. *As regards the allegation that the enterprise obliges its workers to sign, under threat, instruments that it calls "collective labour agreements" (that is to say m.i.c.), the Committee notes the Government's statement that numerous investigations have been carried out by the administrative authorities and that it has been repeatedly concluded that the agreements cannot be classified as collective agreements resulting from negotiation as provided for in the Labour Code, given that the elements seen clearly reflect the lack of collective consent and of real participation in the supposed negotiations and that these agreements resemble "contracts of adhesion" which the workers are called upon to accept individually when offered a contractual proposal by the enterprise. In this respect, the Committee recalls that the Collective Agreements Recommendation, 1951 (No. 91), provides that:*

> *… for the purpose of this Recommendation, the term "collective agreements" means all agreements in writing regarding working conditions and terms of employment concluded between an employer, a group of employers or one or more employers' organizations, on the one hand, and one or more representative workers' organizations, or, in the absence of such organizations, the representatives of the workers duly elected and authorized by them in accordance with national laws and regulations, on the other.*

In this respect, the Committee emphasized that the said Recommendation stresses the role of workers' organizations as one of the parties in collective bargaining. Direct negotiation between the undertaking and its employees, bypassing representative organizations where these exist, might in certain cases be detrimental to the principle that negotiation between employers and organizations of workers should be encouraged and promoted [see ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 786]. In these circumstances, the Committee requests the Government to take measures to ensure that the enterprise respects the principles of collective bargaining and in particular Article 4 of Convention No. 98 concerning 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 requests the Government to take measures to amend legislation to clearly prevent this type of practice of "multiple individual contracts" when there is a representative trade union and to see to it that direct negotiation with workers does not create difficulties for or weaken the position of trade unions.*

235. *Concerning the alleged refusal by Agrícola Ariztía Ltda. to negotiate with company union No. 2 a draft collective contract that covered 232 workers, arguing that 221 of them were covered by "collective agreements" in force (these were in fact "multiple individual contracts"), the Committee notes the Government's statement that: (i) the Labour Inspectorate concluded that the collective agreements cited by the enterprise were not actually collective agreements and that consequently the disputed workers could negotiate; (ii) the enterprise lodged an application for protection with the judicial authorities against the ruling of the Labour Inspectorate that was accepted (the Government indicates that the legal judgement reproduces the majority opinion of the courts of justice to the effect that labour inspectorates are not competent to try or to rule on the legal nature of collective instruments and specifically on whether in this particular case multiple individual contracts constituted a collective agreement or not; in other words this question should have been submitted to the competent judicial authority and not to the Inspectorate); and (iii) consequently, given the lack of authority of the Labour Inspectorate to rule on the matter, in practice the trade union could not conclude the negotiation of the collective contract as the number of workers able to participate in the collective negotiation process was drastically reduced. In this respect, the Committee observes that, irrespective of the decision of the Supreme Court of Justice concerning the competent institutional body to decide on the legal nature of the collective instruments, in January 2000 another judicial authority fined the enterprise for unfair practices in collective bargaining, stating that the*

workers were pressurized in order to obtain their consent to sign collective agreements (m.i.c.) either through the threat of dismissal or transfer to the general service section, with the corresponding reduction in their wage remuneration; or by offering them a sum of money to sign the documents. In these circumstances, the Committee concludes that the enterprise's argument that 221 of the 232 workers covered by a draft collective agreement were already covered by collective agreements is contrary to the principle of good faith that should reign in negotiations between the parties. The Committee therefore requests the Government to take measures to ensure that Agrícola Ariztía Ltda. and its company union No. 2 participate in negotiations in good faith and do everything possible to reach agreement.

236. *As regards the allegation that Agrícola Ariztía Ltda. pressurizes workers joining the enterprise not to become members of the trade union and workers who are affiliated to leave the trade union, resulting in 300 workers having left the organization, the Committee notes the Government's statement that the enterprise has maintained an attitude of ongoing harassment towards trade union activity, as demonstrated by the fact that union No. 2 is currently the only one in operation, while a further two trade union organizations have been in recess for a few years. According to the Government, all the actions carried out by the administrative authority in the various bodies to which applications were made have been unable either to prevent or reduce the open persecution by the enterprise of the trade union organizations, their officials and their activities, as seen in the case of the collective bargaining initiated by union No. 2. In this respect, while it deeply deplores the anti-union conduct of the enterprise in question established by the authorities which constitutes a clear violation of Conventions Nos. 87 and 98, ratified by Chile, the Committee requests the Government to take all measures necessary to end the violations of these Conventions and the acts of harassment against the enterprise trade unions, their officials and members and to take measures to punish those responsible.*

The Committee's recommendations

237. ***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 measures to ensure that the enterprise Agrícola Ariztía Ltda. respects the principles of collective bargaining and in particular 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 requests the Government to take measures to amend legislation to clearly prevent the practice of "multiple individual contracts" when there is a representative trade union and to see to it that direct negotiation with workers does not create difficulties for, or weaken the position of, trade unions.

(b) The Committee requests the Government to take measures to ensure that Agrícola Ariztía Ltda. and its company union No. 2 participate in negotiations in good faith and do everything possible to reach agreement.

(c) Deeply deploring the anti-union conduct of Agrícola Ariztía Ltda., established by the authorities, which constitutes a clear violation of Conventions Nos. 87 and 98, ratified by Chile, the Committee requests the Government to take all measures necessary to end the violations of these Conventions and the acts of harassment against the enterprise trade unions,

their officials and members and to take measures to punish those responsible.

CASE NO. 2110

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

Complaint against the Government of Cyprus presented by the Pancyprian Public Employees Trade Union (PASYDY)

Allegations: Refusal to engage in good-faith consultations and collective bargaining with public employees

238. In a communication dated 1 December 2000, the Pancyprian Public Employees Trade Union (PASYDY) presented a complaint of violations of freedom of association against the Government of Cyprus.

239. The Government furnished its observations in a communication dated 23 March 2001.

240. Cyprus 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), as well as Labour Relations (Public Service) Convention, 1978 (No. 151).

A. The complainant's allegations

241. In its complaint, PASYDY alleges that the Government submitted to the Legislature for enactment into law a Bill concerning the introduction of a National Health Scheme (NHS) without adequate prior consultation and/or negotiation with PASYDY – which represents the overwhelming majority of the Cyprus public servants – and contrary to the procedures provided by the existing industrial relations code in the public service. In this connection, PASYDY emphasizes that the Bill would affect directly the social and economic rights and interests of more than 4,000 public servants and their families. It asserts that this action by the Government constitutes a flagrant violation of trade union rights and liberties, and seriously undermines free collective bargaining and industrial peace and stability in the country.

242. PASYDY then proceeds to explain the background to its complaint. It points out that successive governments of Cyprus have been toying with the idea of introducing a NHS since the birth of the Republic in 1960. The intent of these governments to introduce such a scheme has taken the form, over the years, of occasional general discussions, seminars, public meetings and reports by technical committees and consultants; but never the form of serious, good-faith, intensive and exhaustive negotiations in the Joint Staff Committee – the official body for collective bargaining and the determination of salaries and conditions of employment in the Cyprus Civil Service.

243. According to PASYDY, the truth of this allegation is demonstrated in the most conclusive and convincing manner by the Government itself which chose to publicize its intent to introduce a NHS on 17 April 1991. This took place nearly eight years before the Joint Staff Committee (JSC) was convened, under persistent pressure by PASYDY, to discuss the industrial relations problems which would inevitably be created for the state medical and paramedical personnel should a NHS be introduced in Cyprus. PASYDY asserts that the

minutes of the only two meetings of the JSC (on 3 and 9 February 1999), which scratched but the surface of industrial relations, provide ample evidence that the Government failed to understand then, as it still fails to understand to this date, the basic substance of the dispute, despite repeated efforts by PASYDY to explain it to the people concerned.

244. More specifically, PASYDY contends that it clarified consistently that the question at issue was not just the merits or demerits of the proposed NHS and/or PASYDY's support or opposition to the Scheme. Rather, and mainly, it was the failure by the Government to conduct with PASYDY a serious dialogue concerning the possible effects from the introduction of the Scheme on such issues as: (a) the violation of the right of civil servants to free medical treatment by the state services; (b) employment status; (c) security of employment; (d) career prospects; and (e) terms and conditions of work of 4,000 state medical and paramedical employees, members of PASYDY.

245. PASYDY stresses that it raised these issues with the Government as early as 1994 and received written assurances from the former Minister of Finance that "the views and the suggestions of PASYDY … will be studied with the proper attention", and that "… Government will not disregard PASYDY … with which it will engage in the necessary discussions within the existing institutional organs". To emphasize the importance it attaches to the respect of the existing institutions, machineries and procedures for joint consultations and collective bargaining, PASYDY reminded the official side at the meeting of the JSC of 3 February 1999 of the assurances of the Minister of Finance. It also expressed its strong opposition to the tactics adopted by the Ministry of Health to bypass, repeatedly, the JSC so as to avoid discussion of the repercussions of the proposed Scheme upon industrial relations practices and procedures in the Cyprus Civil Service.

246. Seven days later, at the JSC meeting of 9 February 1999, PASYDY elaborated fully its position on the subject:

(a) it condemned the violation by the Government of both the letter and the spirit of the JSC;

(b) it expressed the view that dialogue concerning the Scheme had just begun;

(c) it warned that it would not accept the referral of the dispute to the Committee of Ministers, unless exhaustive negotiations in the JSC were conducted with a view to reaching acceptable and agreed solutions to the points at issue; and

(d) it advised the Government that the proposed Bill did not safeguard adequately the rights and interests of its members, and that these matters should be thrashed thoroughly within the existing machineries, before the Bill was submitted to the House of Representatives.

247. PASYDY points out that after only two abortive meetings which barely touched the surface of the main issues of the dispute the official side of the JSC concluded that "… as there are serious differences on questions of principle, there is no other alternative to submitting the matter to the Committee of Ministers", and it turned around to accuse PASYDY for its refusal to accept the proposed "alternative". Furthermore, the official side stopped the JSC procedure short – by failing to refer the dispute for settlement to arbitration as provided for the by JSC regulations and proceeded arbitrarily and unilaterally to submit the Bill to the House of Representatives, with the lame justification that "… pending differences could well be discussed after the enactment of the Bill into law", or before its enactment within the framework of the appropriate House committee.

248. PASYDY explains that Cyprus industrial relations practice respects the principle that no dispute is referred either to mediation or to arbitration unless the parties directly concerned exhaust every means for its settlement in direct negotiations. Unfortunately, in the case in point, the Government chose to violate this principle, thus setting a bad example not only for the public sector but also for the semi-public and private sectors.

249. It is evident from this behaviour that the Government had long decided to introduce a NHS; that it promoted, in PASYDY's view, popular support for it; and that it is determined to steamroll its implementation – without regard to the rights and interests of its employees who are directly affected by it. Still, despite this unwarranted provocation, PASYDY reacted with considerable restraint and sought the solution of the dispute through the established practices and procedures – it appealed in writing to the President of the House of Representatives to convene, even at this late stage, the Tripartite Liaison Committee (Executive, Legislature, PASYDY) to discuss the issue with a view to reaching an amicable solution. (The Liaison Committee was established a few years ago on the recommendation of the Committee of Experts on the Application of Conventions and Recommendations of the ILO so as to minimize possibilities for conflict in the Cyprus Civil Service.)

250. Unfortunately, despite repeated reminders and direct contacts both with members of the legislative and the executive authorities, PASYDY's appeals remain unanswered up to this moment. In the light of these events and developments, PASYDY has come to the conclusion that personal commitments and prestige and/or political party considerations and expediencies prevent the Government from reversing its position on the dispute and that the House is trapped into enacting the Bill before it into law by popular – but uninformed – pressure groups which demand "action" in this field.

251. Consequently, PASYDY earnestly requests the Committee to mobilize, as a matter of urgency, every means at its disposal to suspend the enactment of the NHS Bill and to promote its reconsideration within the existing industrial relations machinery in the Cyprus public service for the benefit of the civil servants concerned and the system of industrial relations in Cyprus as a whole.

B. The Government's reply

252. In its reply, the Government refutes the allegation that the Bill for the introduction of a NHS was submitted to the Legislature without adequate consultation and/or negotiation with PASYDY. This Bill, introducing a major reform in the health care sector, was submitted to the House of Representatives after extensive consultations and discussions with the social partners during the last eight years. PASYDY and the other unions of public sector employees were involved in this process right from the beginning, including the conceptual stage, and were given every opportunity to express their views on the proposed Scheme and put forward their claims on aspects which were of direct concern to them.

253. According to the Government, between 17 April 1991 and 9 February 1999, PASYDY took part in the following meetings and/or seminars, either alone or together with other interested organizations, during which the principles and the provisions of the Scheme were analysed and discussed:

(a) *17 April 1991*. The General-Secretary of PASYDY and other members of the secretariat of PASYDY had a meeting with the Permanent Secretary of the Ministry of Health and the members of the Technical Committee the object of which was the examination of the Government's proposals for the introduction of a NHS.

(b) *16-17 January 1994.* A two-day seminar was held in Paphos during which the basic principles regarding the financing and the organization of medical care under the proposed NHS were explained and discussed. Participants in this seminar were all trade unions, including PASYDY, the employers' organizations, the organizations of health professionals, political parties and members of the Parliamentary Committees for Health and Economics.

(c) *28 February 1994.* The organizations of the social partners, including PASYDY were invited to a meeting at the Ledra Hotel and expressed their positions on the Government's proposals for the NHS.

(d) *October 1994 and March 1995.* Two meetings were held with the social partners' organizations including PASYDY. At these meetings the social partners' organizations were briefed on the developments and exchanged views about future action for the introduction of the NHS.

(e) *November 1995.* A new round of consultations on the NHS was held in the form of separate meetings of the Minister of Health with each organization concerned. PASYDY met with the Minister on 21 November 1995.

(f) *10 July 1997.* The organizations of the social partners, including PASYDY, were invited to a meeting during which the consultants of the project analysed the findings of the surveys carried out for updating the costing of the NHS.

(g) *28 December 1998.* The Bill, in its final form, was discussed at a special meeting of the National Advisory Committee for Health. PASYDY, which is a member of the Committee, was represented at the meeting by its General Secretary. Unlike other organizations, PASYDY refused to express any views on the Scheme as a whole and instead demanded from the Government the suspension of any action towards the introduction of the Scheme, until the issues in which public employees were directly interested were discussed and resolved.

The same stand was taken by PASYDY at a meeting with the Minister of Health on 18 January 1999.

254. The Government explains that it rejected the demand of PASYDY but agreed to follow the established procedures for examination of the terms and conditions of employment of public employees. The two issues, identified as being of direct concern to public sector employees, namely:

(a) the existing right of public employees to medical care and their contribution to the NHS; and

(b) the safeguarding of the conditions of employment of existing employees of the state health services,

were thus referred to the JSC.

255. The Government points out that the Constitution and Rules of the JSC provide that a binding agreement requires the consensus of both sides. Such agreements usually take the form of recommendations to the Council of Ministers which are subsequently promoted to implementation in accordance with the existing procedure. If consensus is not reached on any issue, the conflicting views are recorded and referred to the Ministerial Committee for further consideration and submission to the Council of Ministers. (A translated copy of the relevant provisions of the Constitution and Rules of the JSC is attached to the Government's reply.) In accordance with the above procedure, the issue of the introduction

of a new NHS was discussed in two meetings of the JSC (3 and 9 February 1999) where, unfortunately, the two parties failed to bridge their differences. Moreover, PASYDY reiterated its position that the time was not ripe for the reform of the health care sector in Cyprus. Following this development, the Chairman of the JSC decided to submit the matter to the Ministerial Committee, as provided by the rules of the JSC. The Ministerial Committee was convened for 17 February 1999, but PASYDY and other organizations of public sector employees refused to attend contrary to the rules and practice of the JSC. At the same time, PASYDY declared its intention to proceed to industrial action. According to the Government, industrial action was prematurely declared before a labour dispute had been officially proclaimed.

256. In view of the above development and bearing in mind the pressure from the trade unions of private sector employees and other interested organizations, the Ministerial Committee decided to recommend to the Council of Ministers to proceed with the discussion of the relevant Bill. The Council of Ministers, considering that the rights of existing employees were sufficiently protected by section 65 of the Bill, proceeded with the approval of the Bill. Section 65 of the Bill reads as follows:

> 65. The operation of this Law shall in no manner prejudice the rights of civil servants employed in the medical services, the public health services, the pharmaceutical and other services of the Ministry of Health, who will be serving on the date of enactment of this Law by the House of Representatives.

The Bill was submitted to the House of Representatives on 25 February 1999.

257. With reference to the allegations of PASYDY that the Government failed to refer the dispute to the Disputes Examination Board, the Government indicates the following. Firstly, this Board is appointed only in cases where "… all procedures provided are exhausted in the examination of an issue and no agreement is reached, a deadlock is declared and a labour dispute proclaimed …". As shown by the previous arguments, not all procedures were exhausted and this is attributed to the persistent refusal of PASYDY to follow the procedure provided for by the Constitution and Rules of the JSC. It should also be noted that for the appointment of this Board, the consent of both parties is required. Furthermore, the terms of reference of this Board must again be co-decided. Secondly, the Government stresses that the official side had on several occasions suggested the appointment of such a Board for the final determination of matters of dispute; nevertheless PASYDY demonstrated repeatedly a clear unwillingness to commit itself to such a procedure. Furthermore, on the sole occasion when the Board was convened, PASYDY refused to comply with its recommendations. As a result of the negative approach of PASYDY, these provisions have become inapplicable.

258. Regarding the allegation of PASYDY that the issue was not discussed at the Tripartite Liaison Committee (Executive, Legislature and PASYDY), the Government states that had such a meeting been convened, the official side would have had no objection to attending it and expressing its views. In any event both sides have already been invited by the competent Parliamentary Health Committee to express their views.

259. From the above, it is clear that the Government has acted in compliance with the relevant provisions of the Constitution and Rules of the JSC thus fulfilling its obligations under Convention No. 151. In the Government's view, it has acted in a most responsible manner taking into account the public interest and the pressure for the reform of the health care sector.

C. The Committee's conclusions

260. *The Committee notes that the allegations in this case concern the lack of adequate prior consultation and negotiation with the complainant (PASYDY) prior to the submission to Parliament of a Bill concerning the introduction of a National Health Scheme (NHS) which affects the social and economic interests of more than 4,000 public servants.*

261. *The Government contends for its part that this Bill was submitted to the House of Representatives after extensive consultations and discussions with the social partners during the last eight years. It then describes a number of meetings and/or seminars in which PASYDY took part between 1991 and 1999 during which the principles and provisions of the proposed Scheme were analysed and discussed. The Committee notes that the complainant does not deny that such seminars or meetings took place over the years on the introduction of such a scheme. However, the complainant insists that the Government refused to conduct serious and good-faith negotiations on this matter in the Joint Staff Committee (JSC), the official body responsible for the examination of terms and conditions of employment of public sector employees.*

262. *In this regard, the Committee notes the Government's statement to the effect that in accordance with* ***the established procedures for examination of the terms and conditions of employment of public employees****, the issue of the introduction of a new NHS was first discussed in the JSC on 3 February 1999. Hence, the Committee notes that the appropriate forum for discussion on the introduction of a new NHS was the JSC. The Committee further notes that under the terms of the Constitution and Rules of the JSC furnished by the Government that "The Joint Staff Committee is the recognized official consultative body in the Public Service", and that "The field of competence of the Joint Staff Committee comprises joint consultations on the following: (iv) Proposed legislation or amendment of existing legislation in so far as such legislation affects conditions of employment of the public servants" (see annex).*

263. *In this respect, the Committee would stress that where a government seeks to alter bargaining structures in which it acts directly or indirectly as employer, it is particularly important to follow an adequate consultation process, whereby all objectives perceived as being in the overall national interest can be discussed by all parties concerned, in keeping with the principles established in the Consultation (Industrial and National Levels) Recommendation, 1960 (No. 113). In accordance with Paragraph 5 of the Recommendation, such consultation should aim at ensuring that the public authorities seek the views, advice and assistance of these organizations, particularly in the preparation and implementation of laws and regulations affecting their interests [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, paras. 856 and 928]. Finally, such consultations imply that they be undertaken in good faith and that both partners have all the information necessary to make an informed decision [see* ***Digest****, op. cit., para. 941]. As regards the situation at hand, the Committee notes that while meetings and/or seminars were held on the introduction of a new NHS as far back as 1991, the issue was discussed in the JSC only twice. The Committee considers that more effective and meaningful consultations, in line with the principles enunciated above, could have been promoted within the framework of the JSC, the official organ for collective consultations between the Government and PASYDY for determining general conditions of service (see annex). The Committee trusts that in future the Government will follow an adequate consultation procedure when it seeks to alter bargaining structures in which it acts actually or indirectly as employer.*

264. *Turning to the allegation that the Government violated the collective bargaining rights of 4,000 state medical and paramedical employees, members of PASYDY, the Committee notes that the Bill respecting the NHS was referred to the Ministerial Committee on*

17 February 1999. PASYDY contends that this was done after two abortive meetings within the JSC on 3 and 9 February 1999, whereas it had demanded that exhaustive negotiations be conducted in the JSC on the proposed Bill before its referral to the Ministerial Committee. The Government for its part indicates that, following the failure by the two parties to bridge their differences on the issue of the introduction of a new NHS in two meetings of the JSC (3 and 9 February 1999), the matter was submitted to the Ministerial Committee which then decided to recommend to the Council of Ministers to proceed with the discussion of the relevant Bill. Finally, the Council of Ministers, considering that the rights of existing employees were sufficiently protected by section 65 of the Bill, proceeded with the approval of the Bill which was submitted to the House of Representatives on 25 February 1999.

265. *In this respect, the Committee is bound to remind the Government that public service workers other than those engaged in the administration of the State should enjoy collective bargaining rights, and priority should be given to collective bargaining as the means to settle disputes arising in connection with the determination of terms and conditions of employment in the public service [see **Digest**, op. cit., para. 793]. The Committee has also considered it important that both employers and trade unions bargain in good faith and make every effort to reach an agreement; moreover, genuine and constructive negotiations are a necessary component to establish and maintain a relationship of confidence between the parties [see **Digest**, op. cit., para. 815]. The Committee fails to see how the above conditions could have been fulfilled during the course of two meetings held within the space of one week (3 and 9 February 1999), over an issue as important as the introduction of a National Health Scheme affecting the employment conditions of 4,000 employees of the state health services. The Committee further notes with concern that the Bill respecting the NHS was submitted to the House of Representatives by the Council of Ministers on 25 February 1999, barely three weeks after negotiations on the issue began in the JSC. In these circumstances, the Committee considers that in submitting the Bill for the introduction of a National Health Scheme to the House of Representatives, the Government violated the principle of free and voluntary collective bargaining established in Article 4 of Convention No. 98.*

266. *In view of the foregoing, the Committee regrets that the Government did not give priority to collective bargaining as a means of determining the employment conditions of its public servants, and that it did not attempt to reach consensus with the complainant before submitting the Bill for the introduction of a National Health Scheme to the House of Representatives. The Committee expects that the Government will refrain from taking such measures in the future.*

267. *Finally, the Committee notes that, according to the complainant, it had requested that the Tripartite Liaison Committee (composed of the Executive, Legislature and PASYDY) be convened to discuss the issue with a view to reaching an amicable solution but to no avail. The Government indicates that had such a meeting been convened, it would have had no objection to attending it. Noting that the Tripartite Liaison Committee was established a few years ago on the recommendation of the Committee of Experts so as to minimize possibilities for conflict in the public service, the Committee would urge the Government to ensure that this body is convened so that serious and meaningful discussions are held between the parties concerned with a view to reaching a solution in respect of the NHS Bill. It requests the Government to keep it informed of developments thereof.*

The Committee's recommendations

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

(a) The Committee trusts that in future the Government will follow an adequate consultation procedure when it seeks to alter bargaining structures in which it acts directly or indirectly as employer.

(b) The Committee regrets that the Government did not give priority to collective bargaining as a means of determining the employment conditions of its public servants, and that it did not attempt to reach consensus with the complainant before submitting the Bill for the introduction of a National Health Scheme (NHS) to the House of Representatives. The Committee expects that the Government will refrain from taking such measures in the future.

(c) The Committee urges the Government to ensure that the Tripartite Liaison Committee is convened so that serious and meaningful discussions are held between the parties concerned with a view to reaching a solution in respect of the NHS Bill. It requests the Government to keep it informed of developments thereof.

Annex

Constitution and rules of the Joint Staff Committee (main provisions)

The Joint Staff Committee is the official organ for collective consultation between the Government, on the employer's side, and the whole of the public servants, on the staff side, for determining general conditions of employment in the public service. The staff side is represented by the union of the public servants, PASYDY.

Objectives and jurisdiction

The general objectives of the Joint Staff Committee are to safeguard maximum cooperation on matters affecting the public service between the Government of the Republic, in its capacity as employer, and the public service as a whole with a view to achieving increased efficiency in the public service in conjunction with the welfare of the employees, and the provision of mechanisms for examination of representations by the union of the public servants, and for gathering experiences by its members for the common interest of the two parties and the public in general.

The Joint Staff Committee is the recognized official consultative body in the public service. It has jurisdiction to discuss the terms of employment of the public servants and submit proposals on such affairs to Government for consideration and approval.

The field of competence of the Joint Staff Committee comprises joint consultations on the following:

(i) General principles on:

- appointments
- working hours
- promotions
- leave of absence

- medical and pharmaceutical treatment
- discipline
- emoluments for isolated posts, grouping of posts or the public service as a whole
- retirement benefits
- any other subjects affecting the terms of employment and conditions of service regarding any post or grouping of posts, or the public service as a whole.

(ii) Training and educational projects for public servants.

(iii) Ways and means for utilization of the ideas and experiences of public servants.

(iv) Proposed legislation or amendment of existing legislation in so far as such legislation affects conditions of employment of the public servants.

(v) Matters connected with the welfare of public servants.

Joint Departmental Committees

Special subjects not affecting general principles and without any effect on other services may be discussed in the relevant joint departmental staff committees provided that their findings are submitted to the JSC plenary for final decision.

The subjects discussed at the departmental joint staff committees are first submitted to the JSC in the usual procedure and the JSC decides whether to refer them to the departmental committee for consideration at that level in the first instance. (For more details on Departmental JSC's see Appendix B.)

Composition of JSC

The Joint Staff Committee comprises official and staff sides:

(a) The members of the official side are:

The Permanent Secretary of the Ministry of Finance;

The Director of the Public Administration and Personnel Service.

(b) The staff side comprises two representatives of the Public Servants Trade Union) PASYDY). These are appointed by the General Council of the Union and may be either elected or permanent appointed officials.

The secretary

The secretary of the Joint Staff Committee is a public servant and is posted to this office by the official side, and the duties of the post are his/her main duties.

The duties of the secretary are:

- to prepare the agenda in consultation with the Chairman;
- to keep correct minutes of discussions at every meeting of the Committee;
- to convene the meetings of the Committee in consultation with the Chairman and to issue the necessary notices to its members;

- to submit draft minutes to the Chairman for approval;
- to provide to both sides statistical and other data necessary of the objective examination of any item on the agenda;
- to ensure implementation of the decisions of the Committee and its subcommittees.

The official side also makes available to the JSC any necessary additional staff to help the secretary in fulfilling his/her duties.

Subcommittees

A standing subcommittee, chaired by the Director of the Public Administration and Personnel Service, was set up to deal with all matters under the jurisdiction of the Joint Staff Committee, for facilitating its tasks. It operates under similar rules and in case of disagreement between the two parties, the matter is submitted to the JSC plenary for decision.

The Joint Staff Committee may also appoint subcommittees for examination of any item and submission of its findings to the plenary. Persons not on the Committee may be called upon to serve on any of the subcommittees.

Advisers and experts

Either side may invite any person to attend any meeting as adviser, provided that the number of such advisers or experts does not exceed three on each side.

Meetings

The JSC is a standing committee.

It meets regularly on the last working Friday of every month for regular meetings. When the last Friday of the month coincides with a public holiday the meeting is fixed for the following Friday.

The Committee may be convened on any date for an emergency or extraordinary meeting, by the Chairman at his own initiative or at the request of PASYDY.

Two members of the Committee with at least one from each side form a quorum.

The representatives of PASYDY are given all necessary facilities to attend the meetings of the JSC and to fulfil effectively their duties as trade union cadres. Such facilities cover time both within and outside normal office hours.

Procedure of JSC

A 15-day notice is required for submission of any item for discussion by the Committee. The notice is given in writing to the secretary by either side. This is accompanied by a memorandum in which the reasons are stated with details of the proposal.

The secretary includes in the agenda all items in respect of which due notice has been given. Items fully discussed in the Committee cannot be raised again for discussion within the next 12 months from such discussion unless both sides are agreed on this.

The secretary notifies the agenda of the meeting to the members at least seven days prior to such a meeting.

The examination of any item on the agenda of a meeting is not put off to the next meeting for discussion without the agreement of all parties represented. The Chairman may allow discussion of urgent affairs which are not on the agenda.

Minutes

The Committee keeps minutes for every meeting and these are confidential. Following every meeting the secretary sends a copy of the draft minutes to each side who in seven days from receipt of the draft returns this to the secretary with any comments. The secretary then submits the draft to the Chairman for approval. The secretary sends copies of the approved minutes to all members. Following the circulation of the minutes the Chairman proceeds to any action required or arising from the minutes.

The minutes of every meeting are ratified at the following meeting.

Recommendations

The decisions and findings of the Committee are set out, following a consensus of the two sides, in the form of recommendations to the Council of Ministers and are promoted to implementation in accordance with existing procedure. The recommendations are normally binding for each side but this in no way is interpreted as violating the inalienable authority of the Council of Ministers to reach final decisions contrary to the unanimous recommendation of the Committee when the Council of Ministers deems this necessary or expedient.

If a consensus is not reached on any one item, the conflicting views are recorded and referred to a ministerial committee (see below) for further consideration and submission to the Council of Ministers.

Unanimous decisions of the JSC are submitted to the Council of Ministers by the Minister of Finance, provided that before such submission to the Council the views of the JSC Ministerial Committee may also be asked.

The decision of the Council of Ministers on any matter dealt with at the Joint Staff Committee is notified to the public service by the Public Administration and Personnel Service of the Ministry of Finance in a circular which is official and binding for the Government.

In case of disagreement of the Council of Ministers with any recommendation of the JSC the latter is informed of this and if it consents, the procedure mentioned above is followed regarding notification of the decision to the public service. If the JSC sticks to its original stand and the disagreement persists the matter is referred to a Disputes Examination Board as provided in the rules for the JSC.

The Committee of Ministers

The JSC Committee of Ministers comprises the Ministers of Finance, Labour and Social Insurance and a third ad hoc member named by the Council of Ministers. The Committee of Ministers acts as liaison between the JSC and the Council of Ministers with a view to speeding up and facilitating the consideration by the cabinet of any topic previously dealt with at the Joint Staff Committee.

The Minister of Finance presides over the meetings of the Committee of Ministers.

During the examination of any matter referred to the Committee of Ministers, the Chairman of the JSC and two of the members of the staff side are invited to take part.

The Committee of Ministers may be authorized by the Council of Ministers to proceed within specified terms of reference to a binding agreement on any subject:

- not involving additional government expenditure;
- likely to cause additional government expenditure provided that such expenditure will be within limits set by the Council of Ministers.

Settlement of disputes

In cases where all procedures provided are exhausted in the examination of an issue and no agreement is reached a deadlock is declared and a labour dispute proclaimed which is referred to a Disputes Examination Board (see below).

General

(a) After every meeting the JSC decides unanimously as to the subjects about which a communiqué will be issued or not.

(b) The rules of the Joint Staff Committee may be amended with the unanimous consent of the Committee. The amendments decided are submitted for final approval to the Council of Ministers. The application of any particular rule of procedure may be waived if the circumstances so require provided the Committee unanimously decides for this.

(c) Service in connection with the meetings and other requirements of the JSC is deemed as official duty for all purposes.

Disputes Examination Board

A Disputes Examination Board is established for the settlement of disputes arising between the official and the staff side of the JSC, as provided by the rules of the Committee.

The Board is set up ad hoc and comprises one to three members. The members of the Board must be independent and impartial persons and must enjoy the trust of both sides of the JSC. They are appointed to serve on the Board with the unanimous consent of both sides. The Board is appointed by the Minister of Finance and the document of appointment also sets out the terms of reference which are decided jointly by the two sides of the JSC.

The members of the Board must necessarily be persons with thorough knowledge and experience in labour relations and with a broad conception of matters connected with the dispute in question.

A labour dispute is declared when all processes are exhausted and the discussions end in disagreement or deadlock, in accordance with the rules of the JSC.

The dispute is referred to the Board within 15 days from the recording of the dispute between the two sides of the JSC.

For each dispute referred to the Board, a joint report is prepared by the two sides setting out the background of the issue, the details in the deliberations for the JSC and the points of difference. The Board, after considering the report, invites the representatives of the two sides, either separately or jointly, to further expound their views. The Board, after completing the consideration of the issue and after taking into account all factors connected with the dispute, issues its own independent verdict. The verdict must be fully documented and includes the views of the Board for settlement of the dispute, which are not binding. The verdict is placed before the two sides which make a final effort to resolve their differences.

The Board may at any stage during the deliberations, if it deems this expedient, exert efforts for compromise and agreement between the two sides.

The whole procedure for the examination of a dispute referred to the Board is completed within 30 days at the latest from the date it is referred to it. The verdicts and decisions of the Board are published within 45 days from such a date, at the latest.

The consultations and discussions in the Board are confidential. But the final verdict of the Board is made public through publication.

In case of need for further data or for finding out all necessary information on the case under consideration the abovementioned time limits are extended by 15 days. A further extension may be given following consultation between the two sides.

No strike action is resorted to while a labour dispute is before a Board as well as during the 15 days after the publication of the verdict.

The expenses for the operation of the Board are borne by the Government.

CASE NO. 2068

INTERIM REPORT

Complaints against the Government of Colombia presented by
— the General Confederation of Democratic Workers (CGTD)
— the General Confederation of Democratic Workers (CGTD), Antioquia branch)
— the Single Confederation of Workers of Colombia (CUT), Antioquia executive board and
— several Colombian trade unions

Allegations: Violation of the right to organize; denial of trade union leave; violation of the right to strike; withholding of trade union dues; acts of anti-union discrimination; acts of interference in trade union activities; violation of the right to collective bargaining

269. The complaints in this case are contained in communications of the National Trade Union of Public Employees of the Ministry of Labour and Social Security (SINALMINTRABAJO) dated 24 January, 10 April and 2 June 2000, of the Trade Union of Loaders of Antioquia (SINTRACOAN) dated 26 January, 6 April and 26 July 2000, of the General Confederation of Democratic Workers (CGTD) dated 20 January, 15 February and 17 July 2000, of the Association of Workers of Banco Central Hipotecario (ASTRABAN) dated 25 January 2000, of the National Union of Banking Employees (UNEB) dated 1 February 2000, of the Trade Union of Workers of Lorencita Villegas de Santos University Children's Hospital (SINTRAINFANTIL) dated 2 February 2000, of the Trade Union of Workers of Setas Colombianas (SINTRASETAS) dated 2 and 9 February, 18 April 2000 and 23 January 2001, of the Trade Union of Health Workers and Employees of Magdalena (SINTRASMAG) dated 10 February 2000, of the National Union of the Textile Industry Workers (SINTRATEXTIL), Medellín branch, dated 10 February and 2 May 2000, of the Colombian Association of Banking Employees (ACEB) dated 10 February and 24 March 2000, of the Trade Union of Textile Industry Workers of Colombia (SINTRATEXTIL), Sabaneta branch, dated 11 February, 11 April and 15 November 2000, of the Public Employees' Association of the Municipality of Medellín (ADEM), of the Trade Union of Workers of the Department of Antioquia (SINTRADEPARTAMENTO), of the Association of Departmental Employees of Antioquia (ADEA), of the Trade Union Association of Municipal Education Workers (ASDEM), of the Trade Union of Workers and Employees of Public and Autonomous Services and Decentralized Institutes of Colombia (SINTRAEMSDES) and the National Trade Union of Workers of the ISS (SINTRAISS) dated 11 February 2000, of the General Confederation of Democratic Workers (CGTD), Antioquia branch, dated 11 February 2000, of the Trade Union of Public Employees of the Transit and Transport Secretariat of Santa Fé de Bogotá, D.C. (SETT) dated 14 and 15 February 2000, of the Colombian Association of Flight Attendants (ACAV) dated 15 February 2000, of the Trade Union of

Workers of Quibi S.A. (SINTRAQUIBI) dated 9 and 16 February 2000, of the Trade Union of Workers of Valle University Hospital (SINSPUBLIC) dated 6 March 2000, of the Trade Union of Workers of the Water Supply and Sewerage Enterprise of Bogotá (SINTRACUEDUCTO) dated 17 April 2000, of the National Association of Workers of Banco de la República (ANEBRE) dated 25 April 2000, of the National Trade Union of Colombian Charitable Institutions (SINTRABENEFICENCIAS) dated 20 May 2000, of the National Trade Union of Workers of Alcalis de Colombia Limitada, Alco Ltda. (SINTRALCALIS), dated 26 May 2000, of the Single Confederation of Workers of Colombia (CUT), Antioquia branch, dated 9 June and 7 July 2000, and of the Trade Union of Public Servants of the FAVIDI District Housing Fund (SINTRAFAVIDI) dated 24 May and 8 August 2000.

270. The Government sent partial observations in communications dated 19 July 2000 and 31 January, 7 February and 28 March 2001.

271. 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), as well as the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154).

A. The complainants' allegations

National Trade Union of Public Employees of the Ministry of Labour and Social Security (SINALMINTRABAJO)

272. In its communications of 24 January, 10 April and 2 June 2000, the National Trade Union of Public Employees of the Ministry of Labour and Social Security (SINALMINTRABAJO) states that the Ministry of Labour and Social Security has not appointed a negotiating committee to embark on talks and engage in collective bargaining, despite the fact that a list of petitions was presented to it on 10 December 1999 in accordance with Act No. 411 of 1997 ratifying ILO Convention No. 151. The list of demands had been drawn up at the National Assembly of Delegates held from 4 to 6 November 1999. After repeated requests to the Ministry to begin talks, the latter stated that a committee had been appointed to hear the negotiators designated by SINALMINTRABAJO. A meeting was scheduled for 20 January 2000. On that date, according to the complainant, it turned out that no negotiating committee had been set up to discuss the list of petitions, but that the abovementioned committee merely acted as spokespersons of the Ministry and there was no intention to appoint a committee or negotiate the petitions given that ILO Convention No. 151 (Act No. 411 of 1997) was not binding as it had not been registered by the Government of Colombia. The complainant instituted enforcement proceedings with the judiciary to bring the Ministry of Labour to the bargaining table, but its action was rejected in every instance. The complainant adds that, in violation of Presidential Directive No. 02 of 2 March 1999, the Ministry did not allow the trade union to participate in the restructuring process initiated on 11 February 2000 under Decree No. 1128 of 1999, which involved the dismissal of 350 out of a total of 1,450 officials. Of these 350 officials, 105 were members of the organization, including the chairperson of the Santander executive board. The complainant maintains that this violates the guarantees of trade union immunity.

Trade Union of Loaders of Antioquia (SINTRACOAN)

273. In its communications dated 26 January, 6 April and 26 July 2000, the Trade Union of Loaders of Antioquia (SINTRACOAN) alleges that, since a local executive of a loaders' trade union was established at the Cervecería Unión enterprise in the municipality of Itagüí in December 1997, the loaders have been denied access to the workplace and security guards were ordered to deny entry to at least 40 loaders, most of whom were members or officers of the Trade Union of Loaders, Itagüí executive board. The complainant states that the Office of the Attorney-General of the Nation investigated the case and only held the head of the team of loaders responsible for violating the right of assembly and of association. The complainant alleges that on the date on which the enterprise was notified of the establishment of the trade union, 30 workers were dismissed, ten of whom were trade union officers. The complainant states that the enterprise denies the above, arguing that there is no employment relationship between the loaders and Cervecería Unión, since these workers are considered to be self-employed. Lastly, the complainant states that the enterprise only recognizes the existence of one trade union, the Trade Union of Workers of Cervecería Unión (SINTRACERVUNION) and that after proceedings had been instituted by some of the loaders, the labour courts ruled that there was no employment relationship between the loaders and Cervecería Unión S.A.

General Confederation of Democratic Workers (CGTD)

274. In its communications of 20 January, 15 February and 17 July 2000, the General Confederation of Democratic Workers (CGTD) alleges: (1) that the Government issued a document infringing freedom of association and the right to collective bargaining by providing that persons who receive more than twice the statutory minimum wage will not be granted a pay increase in view of the economic crisis. According to the CGTD this is in violation of Conventions Nos. 87 and 98 as it prevents trade unions from agreeing on wage increases; (2) failure to register new members of the national executive board, the executive committee and the complaints committee of the national federation of state employees UTRADEC, which prevents them from carrying out their activities in the new trade union bodies until they have been registered in the Register of Trade Unions; (3) dismissal of trade union officers (Ms. Sandra Patricia Russi and Ms. María Librada García of the SINTRAYOPAL trade union, by Decree No. 228 of 24 December 1994; (4) dismissal of trade union leader Ms. Gladys Padilla of the Arauca town hall on 28 January 2000; (5) dismissal of Mr. Juan de la Rosa Grimaldos, president of the ASEINPEC trade union, and of the chairperson, vice-chairperson, auditor and first, third and fifth substitute members of the executive board of the Medellín branch of ASEINPEC, as well as two workers who had been appointed to replace the vice-chairperson and the auditor.

Association of Workers of Banco Central Hipotecario (ASTRABAN)

275. In its communication of 25 January 2000, the Association of Workers of Banco Central Hipotecario (ASTABAN) alleges that since 1996 the bank has been promoting voluntary retirement plans and that the vast majority of staff whose employment relationship has been terminated by this means are members of ASTRABAN. The complainant adds that under cover of "operational integration" (involving the transfer of homogeneous assets and liabilities totalling approximately 1.5 billion pesos to an entity called Granahorrar, as well as the transfer of 30 offices) it is intended to dismiss 2,176 workers, most of whom are

members of the trade union, which would render ineffective the obligations laid down in 18 collective agreements concluded since 1958 and four arbitration awards.

National Union of Banking Employees (UNEB)

276. In its communication of 1 February 2000, the National Union of Banking Employees (UNEB) alleges that: (1) in Citibank, after a list of demands had been presented, trade union officers charged with the task of reporting to the workers on the progress of negotiations once the direct settlement stage had ended were prevented from entering the bank by placing the offices under military control and requisitioning staff. The complainant alleges that, in this context, an attempt was made to detain trade unionists Ms. Ana Julia Becerra and Mr. Julio César Benjumea, who were reporting to the workers, and the police physically attacked trade unionists Mr. Carlos Parada and Ms. Nubia Rodríguez. In addition, the workers were threatened with dismissal if they listened to the trade union officers and exercised the right to organize; (2) in Banco Popular, after a list of demands had been submitted, the bank put forward a proposal that was 60 per cent less favourable than the collective agreement, as a result of which the direct settlement stage was exhausted and it was decided to hold polls to decide between recourse to an arbitration tribunal and declaring a strike in order to settle the dispute. The complainant alleges that the bank wished to prevent the vote, arguing that it could not be carried out in the workplace, but under pressure from the Office of the Ombudsman and the Office of the Procurator-General, as well as the Ministry of Labour, the workers and their organization, the vote was held. The bank subsequently made the workers indicate on pre-printed documents whether they had voted for the arbitration tribunal or for the strike, in violation of section 61 of the Labour Code. Although 85 per cent of the workers had voted in favour of a strike, planned to begin on 25 November 1999, it was prevented by the security forces, which took control of the offices and forced the workers to stay at their workstations. The trade union representatives were evicted from the premises and some were arbitrarily detained. Workers who did not return to work were threatened with dismissal. On 30 November the strike was suspended owing to the absence of the necessary guarantees. Lastly, the complainant alleges that bank security guards physically attacked trade unionist Ms. Claudia Fabiola Díaz Riascos; (3) in Banco Bancafé, after the direct settlement stage had expired (the enterprise denounced the collective agreement in force in its entirety) it was decided to hold a strike. Before this occurred, the bank made a large number of workers sign a commitment obliging them to vote for recourse to an arbitration tribunal instead of a strike, under threat of closure of the enterprise. Moreover, workers who were not members of the organization were encouraged to protest against not having been able to participate in the voting process. The complainant adds that on 24 November 1999, by means of a resolution of the Ministry of Labour and Social Security disregarding the vote in favour of the strike, the Government ordered the constitution of a compulsory arbitration tribunal to settle the collective labour dispute, in violation of the provisions of international labour standards.

Trade Union of Workers of Lorencita Villegas de Santos University Children's Hospital (SINTRAINFANTIL)

277. In its communication of 2 February 2000, the Trade Union of Workers of the University Children's Hospital (SINTRAINFANTIL) states that on 4 January 1999 it submitted a list of demands without obtaining a response from management. The complainant adds that the Ministry of Labour and Social Security was accordingly requested to convene an arbitration tribunal. On 9 July 1999, the Ministry issued resolution No. 1616 denying the right to collective bargaining. Lastly, the complainant alleges that in addition to the

abovementioned situation, trade union officers are constantly harassed by means of intimidation and persecution by state bodies.

Trade Union of Workers of Setas Colombianas (SINTRASETAS)

278. In its communications of 2 and 9 February and 18 April 2000, the Trade Union of Workers of Setas Colombianas (SINTRASETAS) alleges that since the trade union was established on 7 October 1998, the enterprise has committed various acts of discrimination against its members and has refused to bargain with the trade union. In a communication dated 8 February 2001, the complainant reports that on 23 January 2001 a settlement was reached with the Setas Colombianas S.A. enterprise, whereby it withdrew the complaint presented to this Committee. (The complainant attaches a copy of the agreement with its communication.)

Trade Union of Health Workers and Employees of Magdalena (SINTRASMAG)

279. In its communication of 10 February 2000, the Trade Union of Health Workers and Employees of Magdalena (SINTRASMAG) alleges that, as part of the restructuring and modernization of state bodies: (1) 600 workers were dismissed, including the trade union officers, from the Magdalena local government at the end of 1998; (2) 350 workers were dismissed from the Magdalena Health Service; (3) 310 workers were dismissed from Julio Méndez Barreneche Central Hospital, including nearly the entire executive committee, on 31 January 2000. The complainant reports that 115 of these 310 workers were entitled to immunity by virtue of their trade union office or other circumstances. The complainant alleges further that, since the notification of the dismissals, the Government has deployed troops and subsequently placed the hospital under military control, preventing the SINTRASMAG officers from entering it. In addition, the Santa Marta regional labour directorate has not issued any decision on these acts, although a complaint was lodged over a year ago against the management of the Central Hospital for breach of the collective agreement.

National Union of Textile Industry Workers (SINTRATEXTIL), Medellín branch

280. In its communications of 10 February and 2 May 2000, the National Union of Textile Industry Workers (SINTRATEXTIL), Medellín branch, alleges that the following acts occurred in two textile enterprises: (1) in 1992, in the Confecciones Leonisa S.A. enterprise, before the submission of a list of demands which was in the course of being drafted, the enterprise called on all the workers to sign a collective agreement that could not be unilaterally denounced, awarding a pay increase six months ahead of time along with other non-statutory benefits, offering the workers all the benefits provided for in the collective agreements as well as a cash bonus. In order to be able to sign this contract, workers were required not to belong to the trade union or, if they did, to withdraw from it. As a result, after three days (the time limit given to employees to sign the contract) only 70 members remained in the trade union, out of a former membership of 250. Workers who did not sign the contract did not receive the abovementioned economic benefits, which meant that they lost three months' pay increase between 1993 and 1995. At the end of this period the trade union only had 40 members left. It instituted proceedings for protection of constitutional rights *(tutela)* with the Constitutional Court, claiming recognition of the right to equality, which was obtained in August 1995. Nonetheless, to date the enterprise is still imposing the collective contract on the workers every two years

without any participation by the trade union; and (2) in the Textiles Rionegro enterprise, 34 workers who had peacefully and legally demanded their wages during the course of 1999 were dismissed; an application was made to lift the trade union immunity of eight officers for having demanded the workers' wages, and union dues withheld by the enterprise are not being transferred to the trade union. SINTRATEXTIL also presented allegations concerning the Everfit-Indulana enterprise, which have already been dealt with in Case No. 2051 and will therefore not be examined by the Committee in this case.

Colombian Association of Banking Employees (ACEB)

281. In its communications dated 10 February and 24 March 2000, the Colombian Association of Banking Employees (ACEB) states that the workers employed by Banco Santander-Colombia are members of four trade unions: the ACEB, the Association of Democratic Workers of the Banking and Financial Sector (ADEBAN), the Association of Workers of Banco Santander Colombia S.A. (ASTRABANSAN) and the UNEB. The complainant adds that since none of the trade unions has an absolute majority, the Ministry of Labour issued resolution No. 002142 of 1 September 1999 providing for the application of Decree No. 1373 of 1966, section 11(4), clause A. In this context, the ACEB convened the other trade unions to a meeting on 7 October 1999 to set up the drafting committee, which the UNEB did not attend. Nonetheless, despite the absence of the UNEB and since the majority were in attendance, the drafting committee proceeded to prepare a unified list of demands, which was submitted for approval to the trade union assemblies. Subsequently, again in accordance with Decree No. 1373, a negotiating committee composed of three members was appointed, which was elected at the joint assembly held on 16 October 1999 in the presence of the labour inspector appointed by the Ministry. This assembly was not attended by the UNEB, which requested the Ministry of Labour for the Antioquia region to apply clause B of Decree No. 1373 which provides that the procedure set forth in clause A having been exhausted, a vote shall be called to determine which trade union is to represent all of the workers. The Antioquia regional Ministry of Labour convened a general assembly for this purpose on 21 October 1999. However, two votes were held on that date: one by the UNEB and the Ministry of Labour on the enterprise premises, which was prolonged until 26 October 1999, and another by the other trade unions which, although they had carried out the abovementioned procedures, decided to comply with the Ministry of Labour's decision to hold a vote. The Antioquia regional Ministry of Labour produced a "report on the counting of the votes held in Banco Santander-Colombia S.A. with the trade unions ACEB, UNEB, ASTRABANSAN and ADEBAN", which declared the UNEB to be the majority union. This document was never made official, which meant that it was impossible to challenge it. The UNEB presented a copy of this document to Banco Santander demanding that it begin negotiations, which it agreed to, disregarding what had been done by the other three trade unions, and not allowing them to present demands or their representatives to participate in bargaining in accordance with the law.

282. The complainant states that the collective agreement was signed on 9 December 1999 between the UNEB and the enterprise. This agreement undermines the guarantees with regard to trade union leave obtained by the ACEB. It also provides for a deduction of 20 per cent of the wage increase for all non-unionized staff covered by the agreement for the month of September during the first two years of its term. It should be pointed out that members only have a 15 per cent deduction. This deduction, which was not approved by the workers in the general assembly, is paid only to the UNEB even though it does not account for the majority of the workers. It means that workers who wish to continue to be members of a trade union other than the UNEB will have to pay double dues, placing them at a disadvantage and impairing the free exercise of the right to organize.

Trade Union of Textile Industry Workers of Colombia (SINTRATEXTIL), Sabaneta branch

283. In its communications of 11 February, 11 April and 15 November 2000, the Trade Union of Textile Industry Workers of Colombia (SINTRATEXTIL), Sabaneta branch, alleges that since it was first established the management of the Quintex S.A. enterprise has pursued a policy aimed at eliminating the organization. Specifically, it alleges the dismissal of nine trade union officers on 28 November and 24 December 1998 and on 22 January 1999 and states that beginning on 25 September 1999 the enterprise proceeded to dismiss the rest of the trade union's members.

Public Employees' Association of the Municipality of Medellín (ADEM), Trade Union of Workers of the Department of Antioquia (SINTRADEPARTAMENTO), Association of Departmental Employees of Antioquia (ADEA), Trade Union Association of Municipal Education Workers (ASDEM), Trade Union of Workers and Employees of Public and Autonomous Services and Decentralized Institutes of Colombia (SINTRAEMSDES) and the National Trade Union of Workers of the ISS (SINTRAISS)

284. In their communication of 11 February 2000, the Public Employees' Association of the Municipality of Medellín (ADEM), the Trade Union of Workers of the Department of Antioquia (SINTRADEPARTAMENTO), the Association of Departmental Employees of Antioquia (ADEA), the Trade Union Association of Municipal Education Workers (ASDEM), the Trade Union of Workers and Employees of Public and Autonomous Services and Decentralized Institutes of Colombia (SINTRAEMSDES) and the National Trade Union of Workers of the ISS (SINTRAISS) criticize Act No. 549 adopted by the Congress of the Republic of Colombia. Specifically, they object to section 13, which establishes machinery making it practically impossible to carry out collective bargaining by requiring that the territorial public corporation authorize bargaining if it involves committing resources under more than one budgetary period, as well as section 14, which provides for the obligation of the employer to denounce collective agreements on matters relating to social security. Moreover, it does not leave any room for collective bargaining on this subject.

General Confederation of Democratic Workers (CGTD), Antioquia branch

285. In its communication of 11 February 2000, the General Confederation of Democratic Workers (CGTD), Antioquia branch, alleges: (1) the dismissal, on 14 December 1999, of 57 unionized workers, including the members of the executive committee and the complaints committee of the Trade Union of Municipal Workers of Puerto Berrío, in retaliation for the trade union's having initiated the process of denouncing the collective agreement; (2) the dismissal of 32 members of the Association of Employees of the Municipality of Puerto Berrío; (3) that in September 1998 the Association of Radio and Television Workers (ANALTRARADIO-TV) presented the enterprise Radial Circuito Todelar with a list of demands and since that date the enterprise has challenged previous negotiations, preventing the constitution of a compulsory arbitration tribunal and made an application to the courts for lifting the trade union immunity of the members of the executive of ANALTRARADIO-TV.

Trade Union of Public Employees of the Transit and Transport Secretariat of Santa Fé de Bogotá, D.C. (SETT)

286. In its communications of 14 and 15 February 2000, the Trade Union of Public Employees of the Transit and Transport Secretariat of Santa Fé de Bogotá, D.C. (SETT), alleges that the administration of Santa Fé de Bogotá, D.C., has violated the right to organize and to freedom of association by denying trade union leave requested by the president, the public relations secretary and the general secretary of SETT. The complainant adds that the enterprise subsequently applied for authorization from the judicial authorities to dismiss the abovementioned trade union officers, alleging dereliction of duty, which was granted. The complainants state that they were finally dismissed on 9 November 1998.

Colombian Association of Flight Attendants (ACAV)

287. In its communication of 15 February 2000, the Colombian Association of Flight Attendants (ACAV) alleges that the American Airlines enterprise has failed to comply with several of the provisions of its current collective agreement with the organization. Specifically, the complainant alleges the following violations of the agreement by the enterprise: (1) non-compliance with the provisions of clause 11, under which it is obliged to continue its policy of hiring Colombian flight attendants to work on flights departing from Colombia, by not assigning Bogotá-based crew to flights operating between Miami and Cali, on which foreign crew members are used; moreover, the enterprise has not hired Colombian staff for these operations for the past two years; (2) unilateral imposition of a system of itineraries which is different from that agreed upon in clause 12 of the agreement; (3) non-compliance with clause 29, which provides that as of 1 January 1999 the enterprise shall adjust flight attendants' basic pay by a percentage equal to the Consumer Price Index (CPI) for 1998, by unilaterally interpreting its scope in a restrictive manner, resulting in a lower increase than that agreed upon; (4) non-compliance with clause 32, which provides that American Airlines shall observe the labour provisions in force in Colombia with regard to remuneration for Sundays and holidays, by interpreting the law in a manner which suits them. The complainant adds that the abovementioned violations have a negative impact on the exercise of freedom of association since they undermine members' confidence in the organization and in its ability to represent them and, as a result, a number of workers have withdrawn from the union, while others have expressed their disagreement and declared their intention to withdraw. The complainant states that, despite the fact that complaints have been lodged to this effect, the administrative labour authorities have not taken the necessary measures to ensure compliance with obligations under the agreement. In this respect, the complainant states that the Ministry of Labour, by means of resolution No. 001881 of 2 August 1999 and resolution No. 003015 of 6 December 1999, refrained from declaring that there had been a violation of the agreement and taking the necessary corrective measures, with regard to clauses 11 and 29. Concerning clause 12, the Ministry of Labour sanctioned American Airlines by means of resolution No. 0040 of January 2000, against which the enterprise has filed an appeal.

Trade Union of Workers of Quibi S.A. (SINTRAQUIBI)

288. In its communications of 9 and 16 February 2000, the Trade Union of Workers of Quibi S.A. (SINTRAQUIBI) alleges that, in the course of successive rounds of collective bargaining carried out in the enterprise, the workers have had to systematically give up their rights in order to keep their jobs, which even then they did not succeed in doing, and

that, faced with a new round of bargaining, the enterprise is calling for definitive termination of the collective agreement and a three-year freeze on wage increases

Trade Union of Workers of Valle University Hospital (SINSPUBLIC)

289. In its communication of 6 March 2000, the Trade Union of Workers of Valle University Hospital (SINSPUBLIC) alleges that, on 23 December 1999, the Evaristo García Valle University Hospital E.S.E. denied trade union leave requested by a number of officers of the organization, based on resolution No. 057 of the same date requiring that applicants for such leave provide justification and proof that they are trade union officers, as well as a schedule of their activities. The complainant adds that this measure was taken in retaliation for the information meeting held on 22 December of the same year, there having been no objection to the grant of such leave until that date, and explains that the holding of this meeting did not prevent the normal delivery of services in the institution.

Trade Union of Workers of the Bogotá Water Supply and Sewerage Enterprise (SINTRACUEDUCTO)

290. In its communication of 17 April 2000, the Trade Union of Workers of the Bogotá Water Supply and Sewerage Enterprise (SINTRACUEDUCTO) states that, on 19 November 1999, a labour dispute broke out after the agreement concluded with the enterprise was denounced and a list of demands submitted. The dispute culminated in collective bargaining between 3 December 1999 and 28 January 2000 and the signing of a new collective agreement. The complainant pointed out that, at the outset of the dispute and in view of the enterprise's reluctance to bargain, the trade union filed complaints with the Procurator-General and the district human rights ombudsman, an administrative complaint with the labour relations division of the Ministry of Labour and Social Security and a criminal complaint with the Office of the Attorney-General for violation of the right to organize. Up to 9 April 2000 the enterprise had failed to comply with the agreements, citing section 13 of Act No. 549 of 28 December 1999, which, according to the enterprise, prevented immediate application of the agreement until authorization was given by the Bogotá City Council. This section does in fact provide that prior authorization must be obtained from the departmental assembly or district or municipal council in order to conclude collective agreements in territorial bodies or their decentralized units which involve a commitment of resources under more than one budgetary period. As a result, the enterprise withheld the 7 per cent pay increase applicable as of 1 January 2000. The complainant adds that this provision is not applicable in this case, since it was adopted after the collective dispute arose and because resources under more than one budgetary period were not committed for pensions as this item was withdrawn from bargaining by the enterprise. This had already been obtained in previous negotiations which are still in force, according to the Supreme Court of Justice's approval of the arbitration award which settled the collective dispute in 1996. Moreover, sections 13, 14 and 15 of Act No. 549 constitute a limitation on the right to collective bargaining, contrary to ILO Convention No. 98 and national jurisprudence.

291. The complainant adds that, in order to express their disagreement with the measures taken by the enterprise, the workers held a peaceful work stoppage on 30 and 31 March 2000, while continuing to provide basic services. This demonstration was violently repressed by riot police at the request of the enterprise and physical attacks were perpetrated on officers of the organization and other demonstrators, and 12 workers were detained. The complainant states further that the enterprise failed to comply with its obligations under the collective agreement concerning the following other points: (1) the intention to dismantle the Ramón B. Jímeno mixed high school for children of the enterprise's employees and

retirees; (2) failure to comply with clause 42 of the agreement, under which the enterprise undertook to maintain the 2,700 established posts and, in the event that this number would have to be changed, the necessary technical studies would be carried out with the participation of an industrial relations committee that would include members of the trade union (by means of contracts for services, consultancies and contracts for minor works, the enterprise has hired nearly the same number of workers again, creating a parallel workforce that is displacing the established staff of the enterprise); and (3) non-recognition of the staff committee comprised of representatives of the trade union and the enterprise, replacing it by a disciplinary inquiries unit, which does not allow trade union participation at any stage of its procedures. Lastly, the complainant adds that, despite the fact that shifts had been scheduled on 1 and 2 April 2000 to deliver water supply and sewerage services in the southern district of the city, the enterprise did not allow the workers to carry out their duties, depriving 3 million persons of services, in order to prevent the workers from continuing the protest action on Monday, 3 April 2000. Moreover, on 4 April the enterprise ordered that the workers' pay for 30 and 31 March 2000 be docked as a consequence of the protests held.

National Association of Workers of Banco de la República (ANEBRE)

292. In its communication of 25 April 2000 the National Association of Workers of Banco de la República (ANEBRE) alleges that Banco de la República disregarded the provisions of the arbitration award issued in 1965 in the course of the collective bargaining process, and made provision for the establishment of a non-statutory benefit consisting of a special pension for dismissal without just cause of workers with more than ten years' length of service. According to the complainant, at no point did the parties agree on an exception or condition with regard to the length of service or age for entitlement to this benefit. The complainant adds that, surprisingly, the bank, contrary to the terms of the agreement, cited in court the existence of a length-of-service or age requirement, which was rejected in a ruling of 5 October 1988. Nonetheless, according to the complainant, on 11 February 2000, the Labour Chamber of the Supreme Court of Justice ruled that the parties "agreed that entitlement [to the pension] would arise when the worker reached the [age] established by the law for similar cases …". The complainant denies that the parties have explicitly agreed on an age restriction for entitlement to this benefit.

National Trade Union of Colombian Charitable Institutions (SINTRABENEFICENCIAS)

293. In its communication of 20 May 2000, the National Trade Union of Colombian Charitable Institutions (SINTRABENEFICENCIAS) states that, in the exercise of the right to collective bargaining, a list of demands was submitted to the Cundinamarca charitable institution, pursuant to the provisions of articles 1, 2, 3 and 8 of the Labour Relations (Public Service) Convention, 1978 (No. 151), approved by Act No. 411 of 1997 and declared enforceable by the Constitutional Court in a ruling handed down on 27 July 1998, but the charitable institution refused to initiate bargaining. The trade union then initiated enforcement proceedings before the Council of State, which ordered the Cundinamarca charitable institution to negotiate. Once negotiation had taken place without a settlement to the dispute being reached, the trade union requested the Ministry of Labour to constitute an arbitration tribunal. In resolution No. 00525 of February 2000, the Ministry turned down the request, citing the absence of a legal procedure for collective bargaining by public employees' trade unions. The complainant alleges that this assertion is without legal basis, since section 3 of the Labour Code provides that the collective or trade union side also replies to the official sector, which includes public employees.

National Trade Union of Workers of Alcalis de Colombia Limitada, Alco Ltda. (SINTRALCALIS)

294. In its communication of 26 May 2000, the National Trade Union of Workers of Alcalis de Colombia Limitada, Alco Ltda. (SINTRALCALIS), states that, on 11 February 1991, the Alcalis de Colombia Limitada, Alco Ltda., enterprise dismissed 81 workers from its Cartagena workforce, citing the enterprise's economic and financial situation. In the same way, on 26 February 1993 the enterprise dismissed its entire workforce both in Cajicá and Cartagena, unilaterally, unjustly and unlawfully terminating contracts of employment concluded for an indefinite period, on grounds that the enterprise was going into final liquidation. In accordance with Colombian legislation, which requires authorization from the administrative authorities in the case of public employees, the decision was made official on 3 March 1993.

295. Although all of the workers claimed the right to reinstatement laid down in the collective agreement, to be decided by the labour issues committee provided for in the agreement, the enterprise prevented the committee from taking a decision on the workers' request. In the absence of a decision by the labour issues committee, the workers proceeded to file claims with the labour jurisdiction for recognition of their right under the agreement and reinstatement in accordance with the clause of the collective agreement providing for the workers' right to be reinstated in the event of dismissal without just cause or in breach of the procedure laid down in the agreement. The complainant states that the labour courts ordered reinstatement of the workers and consequent payment of the remuneration and benefits that they had not received from the moment of their dismissal up to their definitive reinstatement. The enterprise appealed against this decision before the Superior Court of Cartagena, whose Labour Chamber issued an initial ruling ordering reinstatement, which was challenged in review proceedings before the Labour Chamber of the Supreme Court of Justice. In this initial case, the Supreme Court upheld the ruling of the Superior Court of Cartagena and the workers were reinstated. Subsequently, ruling on a new appeal concerning other workers, the Supreme Court of Justice reversed its stance on the viability of reinstatement and overturned the court ruling, ordering that reinstatement, which was found to be impossible, be replaced by compensation. From this decision on, in its subsequent decisions, the Superior Court of Cartagena reiterated the argument that reinstatement was impossible, without taking account of the collective agreement which was in force at the time of the dismissal and which obliged the enterprise to reinstate the workers. Dismissal of the entire workforce by the enterprise violates the principle of freedom of association, since its immediate consequence is the destruction of the trade union. Moreover, the guarantees for the workers laid down in the collective agreements were terminated. This violation was committed not only by the enterprise but also by the labour courts. Lastly, the complainant adds that, when it ordered the mass lay-off of its workers, the enterprise acted in a manner contrary to the principle of good faith which informs the employment relationship, since the collective agreement in force had been signed by the trade union which accepted an increase in retirement age in exchange for an undertaking by the enterprise that it would not close down its operations during the term of the agreement, as provided in clause 178 of the collective agreement.

Single Confederation of Workers of Colombia (CUT), Antioquia branch

296. In its communications of 9 June and 7 July 2000, the Single Confederation of Workers of Colombia (CUT), Antioquia branch, states that on 5 December 1991 a collective agreement was signed between the SINTRAUTO and the Sofasa-Renault Metalcol S.A. enterprise for the period from 1 August 1991 to 31 July 1993, following a 90-day strike. The complainant alleges that a few days after signing the collective agreement the

enterprise requested the Ministry of Labour and Social Security for authorization to dismiss 414 workers employed under contracts for an unspecified period, which was granted and, in August 1992, over 169 contracts of employment were terminated. According to the complainant, the following week the enterprise proceeded to hire 200 workers under fixed-term contracts and subsequently recruited more workers until it had replaced 80 per cent of the former workers. The enterprise thus violated clause 12 of the collective agreement, which prohibits hiring temporary staff to perform production tasks, and clause 54, under which the enterprise undertook not to retaliate against the workers for acts related to the presentation of demands, given that it dismissed all of them.

297. The workers filed judicial proceedings for reinstatement and recognition of their entitlement to remuneration and social benefits, both under the legislation and under the collective agreement, which had accrued since the termination of their employment.

298. The complainant adds that, in January 1992, the enterprise had brought psychological pressure to bear on 245 workers who were members of the SINTRAUTO trade union to persuade them to join a voluntary retirement plan and that, as a result, there were only 320 members of the organization at the time so that, by the time the collective agreement had expired (July 1993), it was a minority trade union. The enterprise then signed a collective contract with the non-unionized workers which was without legal basis since the trade union accounted for over one-third of the total workforce of the enterprise. Moreover, pursuant to section 478 of the Labour Code, the collective agreement, not having been denounced by either of the parties, was automatically extended for a further six months. According to the complainant this means that the enterprise violated the provisions of that agreement, since it explicitly prohibited collective contracts. Lastly, the complainant states that in 1994 the trade union only had 40 members and the enterprise continued to bring pressure to bear on trade union activists and officers; in January 1995 there were three trade union officers left, who had to give in to pressure by the enterprise so that to all intents and purposes the trade union had ceased to exist. The enterprise still exists but does not have any trade union defending the workers' interests.

Trade Union of Public Servants of the FAVIDI District Housing Fund (SINTRAFAVIDI)

299. In its communications of 24 May and 8 August 2000, the Trade Union of Public Servants of the FAVIDI District Housing Fund (SINTRAFAVIDI) states that on 13 April 2000 the FAVIDI District Savings and Housing Fund was presented with demands to determine terms and conditions of employment and engage in collective bargaining pursuant to the provisions of Convention No. 151, approved by Act No. 411 of 1997 and declared enforceable (in accordance with the national Constitution) by the Constitutional Court in a ruling handed down on 27 July 1998. In a letter dated 25 April 2000, FAVIDI refused to engage in collective bargaining, alleging that "in accordance with legislation and jurisprudence … it is not possible to enter into discussions, since the SINTRAFAVIDI consists of public employees who are not allowed to present lists of demands or conclude collective agreements …".

300. The complainant alleges further that on 29 December 1997 five members of the trade union's executive committee were dismissed with a view to eliminating the trade union. The workers and trade union members instituted proceedings in the ordinary courts and, although three of them were reinstated, the suits of two others, Ms. Lucy Jannet Sánchez Robles and Ms. Ana Elba Quiroz de Martin, were turned down on grounds that they had not gone through the previous administrative procedure.

B. The Government's reply

301. In its communication of 19 July 2000, in reply to the complaint represented by the National Trade Union of Public Employees of the Ministry of Labour and Social Security (SINALMINTRABAJO), the Government states that, as a consequence of Decree No. 1128 of 1999, the organizational structure of the Ministry of Labour and Social Security was changed in order to adapt it to the tasks required of it in today's world. The new staff list of the Ministry, with a total of 1,223 posts, was adopted by resolution No. 2567 of 23 December 1999. As a result of the restructuring process, 327 officials were not included in the new staff list. The Government explains that 113 of these, who were in the administrative career system, voluntarily accepted the compensation offered by the employer, 32 others requested to be included in the new staff list of this or another state body, 20 did not meet the requirements for the posts or for entitlement to a retirement pension, and 162 officials who had been recruited temporarily or by free appointment were not included. Of these 162 officials, the Ministry included 26. Ultimately, only 156 officials were not included in the staff list (and not 305 as asserted by the complainant), of whom only 32 were members of the trade union. The Government states that the restructuring process is not aimed at violating freedom of association. This is clear, states the Government, from the fact that 67 out of a total of 68 workers covered by trade union immunity were reincorporated in the staff during the restructuring process. As regards Mr. Alvaro Rojas, chairperson of the Santander executive board, he was dismissed as a result of the elimination of the post of security guard, code 5320, grade 7. He was informed that he could take up another similar post within a six-month period, and accepted this option. He was subsequently informed that he had not been included in the new staff list as it did not comprise a post that was the same or equivalent to that he had been occupying, and therefore a request was sent to the National Civil Service Commission to consider the possibility within the next six months of employing him in another body where there was the same or an equivalent post. Concerning the alleged violation of the right to collective bargaining perpetrated by the Ministry of Labour and Social Security, the Government states that the latter has sought ways of reaching agreement, receiving trade union representatives in order to follow up on the petition submitted by SINALMINTRABAJO. A number of meetings were held in the course of the year 2000. The Government states that the provisions in force concerning the right to collective bargaining do not, at the time of writing, cover public employees. It adds that Act No. 411 of 1997 approving Convention No. 151 makes its entry into force conditional on its ratification, which has not yet taken place at the time of writing. As regards the enforcement proceedings instituted by the complainants, the Government states that the court of first instance rejected them on the grounds that the arguments presented did not constitute proof of the Ministry's unwillingness. This decision was upheld by the Council of State on 27 April 2000.

302. In its communication of 7 February 2000, as regards the allegations presented by the Trade Union of Loaders of Antioquia (SINTRACOAN), the Government states that the Ministry of Labour and Social Security, through its Antioquia territorial directorate, has carried out two administrative labour inquiries in which the parties are Cervecería Unión and SINTRACOAN. It adds that, in the first, the Ministry refrained from sanctioning the Cervecería Unión S.A. enterprise for alleged violation of the right to organize. This decision was declared enforceable on 2 June 1998. As regards the second administrative inquiry, the case was closed by order of 8 June 1999, in accordance with the request of the president of SINTRACOAN. Lastly, as regards the complaint presented by the trade union to the ILO, an administrative inquiry is currently under way and is now in the evidence-gathering stage.

303. As regards the complaint presented by the Colombian Association of Banking Employees (ACEB), the Government states that the Ministry of Labour and Social Security, through its Antioquia territorial directorate, issued an order dated 13 October 1999 to the effect that

Banco Santander would have to negotiate the list of demands with the trade union National Union of Banking Employees (UNEB), given that the majority of banking workers who were members of the various organizations had selected the latter to represent them in the negotiations. It adds that the ACEB instituted proceedings before the tenth municipal criminal court of the Bogotá judicial district claiming protection of the right to organize, but the court rejected its claims on grounds that democratically conducted votes by all the unionized employees had determined that it would be the UNEB which would be legitimately entitled to negotiate the demands, having obtained an absolute majority (845 out of 1,216 votes). Lastly, the Government states that this decision was appealed by the ACEB but the appeal was turned down and the decision of the tenth penal court upheld.

304. As regards the complaint presented by the Trade Union of Workers of Valle University Hospital (SINSPUBLIC) and the Single Confederation of Workers of Colombia (CUT), Valle branch, the Government states that the Ministry of Labour and Social Security through the inspection and monitoring unit of the Valle del Cauca territorial directorate, carried out an administrative labour inquiry instituted by the SINSPUBLIC against the Evaristo García ESP Valle University Hospital for alleged irregular labour practices consisting in denial of trade union leave to various officers of that organization, in which it did not sanction the hospital on grounds that the acts at issue did not constitute violations of the right to organize. The Government points out that this decision has not yet been declared enforceable and appeals may still be filed against it.

305. In reply to the complaint presented by the National Association of Workers of Banco de la República (ANEBRE), the Government states that the organization's complaints had been examined in a number of courts, culminating in a ruling by the Supreme Court of Justice on the appeal filed against the conviction handed down by the Bogotá Superior Court, overturning the judgement of the 19th labour court of the Bogotá circuit. The Government adds that the complainant filed *tutela* proceedings against the abovementioned ruling, which were rejected by the Disciplinary Chamber of the Sectional Council of the Cundinamarca judiciary on grounds that they were inadmissible; no other appeal lies against these decisions.

306. In its communication of 31 January 2001, in reply to the complaint presented by the Single Confederation of Workers of Colombia (CUT), Antioquia branch, the Government states that under Colombian labour legislation (Act No. 50, section 67), the Ministry of Labour and Social Security is empowered to authorize employers to carry out collective dismissals caused by serious economic or technical changes affecting the enterprise. In the light of the above, and pursuant to a request by the Sofasa-Renault Metalcol S.A. enterprise, the Ministry of Labour and Social Security carried out a technical study, as a result of which the enterprise was authorized on 8 May 1992 to carry out a collective dismissal of its employees, subject to an upper limit of 169 workers. Appeals were launched against this decision, which were turned down in July and August 1992, thus exhausting administrative procedures. The trade union lodged an action for nullity with the Council of State against the administrative orders issued by the Ministry of Labour and Social Security, which was turned down. Concerning the dismissals of trade union officers and members, there are records of judicial and administrative conciliation procedures which state that the parties consented to the termination of the employment relationship freely and by mutual agreement. As regards violation of labour law and the collective agreement as a result of the conclusion of a collective contract, SINTRAUTO filed a complaint with the judiciary. This process culminated in a special public conciliation hearing between the parties on 21 May 1997, at which a settlement was reached with respect to all of the facts at issue in the complaint. This conciliation settlement is now binding, and no appeal lies against it. A copy of the settlement is enclosed. The Government adds that, in a letter dated 19 October 2000, the Antioquia territorial directorate certifies that no complaint is pending or any

labour administrative inquiry under way against the Sofasa-Renault Metalcol S.A. enterprise.

307. In its communication of 28 March 2001, in reply to the complaint presented by the trade unions SINTRABENEFICENCIAS and SINTRAFAVIDI concerning violations of Convention No. 151 with regard to the determination of terms and conditions of employment in the public administration, the Government states that, at the time the complaint was presented the abovementioned international instrument had not been deposited with the ILO and therefore it could hardly be alleged that the Government failed to observe a Convention by which it was not bound. The Convention was deposited by the Government on 8 December 2000.

308. Also in its communication dated 28 March 2001, as regards the allegations presented by the General Confederation of Democratic Workers (CGTD) concerning anti-union dismissals of officers of ASEINPEC, the Government states that: (1) the Ministry of Labour and Social Security, through the Bogotá and Cundinamarca territorial directorate, is carrying out an administrative inquiry into the alleged dismissal of the trade union's president, Mr. Juan de la Rosa Grimaldos; and (2) as regards the dismissal of ASEINPEC officers in Medellín, the Antioquia territorial Directorate of Labour and Social Security issued resolution No. 002024 of 30 November 2000 stating that it was not competent to decide on the matter at issue in the inquiry since this involved making a value judgement and interpreting labour legislation in parallel with Decree No. 407 of 1994 establishing special regulations for INPEC staff; the Government adds that no appeal has been lodged against this administrative resolution, which became enforceable on 18 January 2001.

309. In its communication of 28 March 2001, the Government indicates, as regards the allegations presented by the Trade Union of Workers of the Water Supply and Sewerage Enterprise of Bogotá (SINTRACUEDUCTO), that the Ministry of Labour and Social Security launched an administrative inquiry on 27 November 2000, and that the Committee will be informed of its results.

C. The Committee's conclusions

310. *The Committee notes that the complainants in this case allege the following acts: harassment and attacks by the public authorities, police intervention and occupation by the armed forces of work centres, violation of freedom of association, denial of trade union leave, violation of the right to strike, withholding of trade union dues, acts of anti-union discrimination, interference by the employer or the authorities, denial of the right to collective bargaining, restrictions on the content of collective agreements, non-observance of the collective agreement or arbitration awards, violation of the right to collective bargaining through the conclusion of collective contracts and dismissals or other anti-union measures carried out in the context of restructuring processes.*

Violation of freedom of association

311. *As regards the allegations concerning the unjustified prolongation of the procedure of registering of new members of the national board, executive committee and complaints committee of the UTRADEC presented by the General Confederation of Democratic Workers (CGTD), the Committee regrets that the Government has not provided its observations in this respect. The Committee recalls that the registration of the executive boards of trade union organizations should take place automatically when reported by the trade union, and should be contested only at the request of the members of the trade union in question [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 365]. The Committee requests the Government to take*

the necessary measures to proceed with registration of the new members of the executive of the UTRADEC as soon as possible and to keep it informed in this respect.

Denial of trade union leave

312. *As regards unjustified denial of trade union leave in Evaristo García ESE Valle University Hospital, alleged by the Trade Union of Workers of Valle University Hospital (SINSPUBLIC), the Committee notes that the Government states that the administrative inquiry carried out determined that the acts at issue do not constitute violations of the right to organize. In this respect, the Committee recalls that Paragraph 10, subparagraph 1, of the Workers' Representatives Recommendation, 1971 (No. 143), provides that workers' representatives in the undertaking should be afforded the necessary time off from work for carrying out their representation functions; subparagraph 2 of the same Paragraph adds that, while workers' representatives may be required to obtain permission from the management before taking time off, such permission should not be unreasonably withheld [see* ***Digest****, op. cit., para. 952]. The Committee requests the Government and the complainant to inform it whether a judicial appeal has been lodged against the administrative decision in question and, if so, to communicate the content of the court decision.*

313. *As regards the allegations concerning denial of trade union leave and subsequent dismissal for having taken such leave in the Santa Fé de Bogotá administration, presented by the Trade Union of Public Employees of the Transit and Transport Secretariat of Santa Fé de Bogotá (SETT), the Committee regrets that the Government has not communicated its observations in this respect. The Committee recalls the principle mentioned in the previous paragraph concerning trade union leave, and 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,*** *op. cit., para 696]. The Committee requests the Government to take the necessary measures to ensure that an inquiry is carried out into these allegations and, if they are found to be true, to proceed with the immediate reinstatement of the dismissed officers.*

Violation of the right to strike

314. *As regards the allegations concerning: (1) use of security forces by placing offices under military control in order to prevent the exercise of the right to strike, threats of dismissal against workers who do not return to work and detention of and attacks on officers of the National Union of Banking Employees (UNEB) in Banco Popular; and (2) attacks on and detention of officers and members of the Trade Union of Workers of the Water Supply and Sewerage Enterprise of Bogotá (SINTRACUEDUCTO) who were exercising the right to strike, the Committee regrets that the Government has not sent its observations. In this respect, the Committee recalls that "the authorities should resort to calling in the police in a strike situation only if there is a genuine threat to public order" and "should not resort to arrests and imprisonment in connection with the organization of or participation in a peaceful strike; such measures entail serious risks of abuse and are a grave threat to freedom of association" and "in the event of assaults on the physical or moral integrity of individuals, the Committee has considered that an independent judicial inquiry should be instituted immediately with a view to fully clarifying the facts, determining responsibility, punishing those responsible and preventing the repetition of such acts" [see* ***Digest****, op. cit., paras. 53, 582 and 601]. The Committee requests the Government to take measures to ensure that the necessary inquiries are initiated immediately into all of these allegations and, in the light of the information obtained, to send its observations in this respect.*

Withholding of trade union dues

315. *As regards the allegations concerning failure to transfer to the trade union the dues withheld by the Textiles Rionegro enterprise (presented by the National Union of the Textile Industry Workers (SINTRATEXTIL), Medellín branch), the Committee regrets that the Government has not sent its observations on this subject. The Committee recalls that "non-payment of trade union dues can result in serious financial difficulties for trade union organizations" [see 307th Report, Case No. 1899, para. 85]. In this context, the Committee requests the Government to take measures to ensure that the necessary inquiries are carried out and, if the allegations are found to be true, to see that the Textiles Rionegro enterprise transfers without delay to the SINTRATEXTIL the dues of its members which have been withheld. The Committee requests the Government to keep it informed in this respect.*

Anti-union discrimination and violence

316. *The Committee expresses its concern at the numerous allegations concerning dismissals and other acts of discrimination against trade union officers and members. In this respect, the Committee recalls in general terms that "no person shall be prejudiced in his employment by reason of his trade union membership or legitimate trade union activities, whether past or present" and 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****, op. cit, paras. 690 and 702].*

317. *As regards the allegations of anti-union discrimination in the Cervecería Unión enterprise presented by the Trade Union of Loaders of Antioquia (SINTRACOAN) concerning: (1) dismissals of trade union officers and members; (2) denial of access to the workplace to trade union officers and members; and (3) non-recognition of the employment relationship between the employees and the enterprise, the Committee notes the Government's observation to the effect that this complaint gave rise to an administrative inquiry which is at the evidence-gathering stage. The Committee expresses the hope that the inquiry in question will be completed in the near future and requests the Government to send its observations in the light of the inquiries carried out.*

318. *As regards the allegations presented by the CGTD, SINTRATEXTIL, Sabaneta branch, CGTD, Antioquia branch, SINTRATEXTIL, Medellín branch, the Trade Union of Public Servants of the FAVIDI District Housing Fund (SINTRAFAVIDI) and the Trade Union of Workers of Lorencita Villegas de Santos University Children's Hospital (SINTRAINFANTIL), concerning the following anti-union acts: (1) dismissal of the trade union officers of SINTRAYOPAL (Ms. Sandra Patricia Russi and Ms. María Librada García); (2) dismissal of a trade union officer of Arauca town hall (Ms. Gladys Padilla); (3) dismissal of nine trade union officers and members of Quintex S.A.; (4) dismissal of trade union officers and members in the municipality of Puerto Berrío (57 members, including the members of the executive committee of the Trade Union of Municipal Workers of Puerto Berrío and 32 members of the Association of Employees of the Municipality of Puerto Berrío); (5) dismissal of 34 workers of Textiles Rionegro who had peacefully and legally demanded their wages; (6) dismissal of and refusal to reinstate trade union officers Ms. Lucy Jannet Sánchez Robles and Ms. Ana Elba Quiroz de Martín of FAVIDI on grounds that the previous administrative procedure had not been exhausted; (7) application to lift the trade union immunity of eight officers of Textiles Rionegro for having demanded the workers' wages; (8) application to lift the trade union immunity of members of the trade union executive committee of the Radial Circuito Todelar de Colombia enterprise; (9) persecution, harassment and intimidation of the trade union officers of Lorencita Villegas de Santos University Children's Hospital by the public authorities; (10) physical attacks on the union member Claudio Fabiola Diáz Riascos by*

the security agents at Banco Popular; and (11) occupation by the armed forces of the Central Hospital Julio Mendez Barrencha, the Committee regrets that the Government has not sent the relevant observations. In this context, the Committee requests the Government to take the necessary measures to ensure that inquiries are initiated immediately in order to ascertain whether the allegations are true and, if the allegations of anti-union discrimination and persecution are found to be true, to take the necessary measures for such acts to cease and to remedy their consequences. The Committee requests the Government to communicate its observations in this regard.

319. *As regards the allegations presented by the UNEB concerning the repression (military occupation of offices, requisitioning of staff, physical attacks on trade unionists Mr. Carlos Parada and Ms. Nubia Rodríquez and attempt to detain trade unionists Ms. Ana Julia Becerra and Mr. Julio César Benjumea who were reporting on the progress of negotiations) carried out against trade union officers after a list of demands was submitted and threats to dismiss workers if they listened to the trade union officers or availed themselves of the right to organize in Citibank, the Committee regrets that the Government has not sent its observations. The Committee observes that the right of petition is a legitimate activity of trade union organizations and persons who sign such trade union petitions should not be reprimanded or punished for this type of activity [see* ***Digest****, op. cit., para. 719]. In these circumstances, the Committee requests the Government to initiate inquiries into these allegations and to communicate its observations in this respect.*

320. *As regards the allegations presented by the CGTD concerning the dismissal of the president of the ASEINPEC, Mr. Juan José de la Rosa Grimaldos, and the dismissal of the chairperson, vice-chairperson, auditor, first, third and fifth substitute members and substitute vice-chairperson and auditor of the executive committee of ASEINPEC, Medellín branch, the Committee notes that the Government states that: (1) as regards the dismissal of Mr. Juan José de la Rosa Grimaldos, an administrative inquiry is under way; and (2) as regards the dismissal of ASEINPEC officers in Medellín, an administrative inquiry was carried out which ruled that it was not competent to decide on the subject of the inquiry. In this respect, the Committee requests the Government: (1) in the light of the information obtained in the course of the administrative inquiry under way, to communicate its observations concerning the dismissal of Mr. Juan José de la Rosa Grimaldos, president of ASEINPEC; and (2) to take the necessary measures to ensure that the competent authorities initiate an inquiry immediately into the dismissal of officers of ASEINPEC, Medellín branch, and to communicate its observations in this respect.*

Interference by the employer

321. *As regards the allegations of the UNEB concerning the following acts of interference in trade union activities: (1) an attempt to prevent a vote to determine whether to hold a strike or to have recourse to an arbitration tribunal, in Banco Popular; and (2) the imposition of a compromise obliging the workers, to have recourse to an arbitration tribunal instead of a strike, in Banco Bancafé, the Committee regrets that the Government has not provided the relevant observations. The Committee recalls that "Article 2 of Convention No. 98 establishes the total independence of workers' organizations from employers in exercising their activities" [see* ***Digest****, op. cit., para. 759] and requests the Government to initiate the relevant inquiries and to communicate its observations in this respect.*

322. *As regards the allegations concerning non-recognition of the right of representation of several trade union organizations in Banco Santander, presented by the ACEB, the Committee observes that according to the Government: (1) the Ministry of Labour and Social Security, through its Antioquia territorial directorate, established on 13 October 1999 that, given that the UNEB was the majority organization (determined by democratic*

vote by 845 out of 1,216 votes), it is with this organization that the list of demands should be negotiated; (2) the ACEB instituted proceedings before the criminal courts but they were rejected on grounds that the UNEB had obtained the absolute majority by vote; and (3) the ACEB instituted ***tutela*** *proceedings, which were rejected in every instance. The Committee takes note of this information.*

Collective bargaining

Denial of the right to collective bargaining

323. *As regards the allegations concerning refusal to engage in collective bargaining in the public administration despite the entry into force of Act No. 411 of 1997 approving ILO Convention No. 151, presented by the National Trade Union of Public Employees of the Ministry of Labour and Social Security (SINALMINTRABAJO), SINTRAINFANTIL, SINSPUBLIC, the National Trade Union of Colombian Charitable Institutions (SINTRABENEFICENCIAS) and SINTRAFAVIDI, the Committee notes the Government's reply to the allegations of SINALMINTRABAJO, SINSPUBLIC, SINTRABENEFICENCIAS and SINTRAFAVIDI to the effect that the provisions in force concerning the right to collective bargaining do not cover public servants, since Act No. 411 makes its entry into force conditional upon ratification of the Convention and since at the time the complaint was presented the instrument of ratification of Conventions Nos. 151 and 154 had not been deposited with the ILO. The Committee observes that, while some categories of public servants must have already enjoyed the right to collective bargaining under Convention No. 98, this right is recognized in general for all public servants as of the ratification of Convention No. 154 on 8 December 2000. In these circumstances, recalling that special modalities of application may be fixed with regard to collective bargaining in the public service, the Committee requests the Government to take the necessary measures to ensure that the right of public servants to collective bargaining is respected in accordance with the provisions of the Convention which has been recently ratified.*

Restrictions on the content of collective agreements

324. *As regards the allegations presented by the CGTD concerning the limits imposed by the Government on the right to bargain collectively through a government document preventing the parties from agreeing on wage increases for persons receiving more than twice the statutory minimum wage, the Committee regrets that the Government has not provided its observations on the subject. In order to make an informed decision in full knowledge of the facts, the Committee requests the Government and the complainant to send a copy of the document in question.*

325. *As regards the allegations presented by the Public employees' Association of the Municipality of Medellín (ADEM), the Trade Union of Textile Industry Workers of the Department of Antioquia (SINTRADEPARTAMENTO), the Association of Departmental Employees of Antioquia (ADEA), the Trade Union Association of Municipal Education Workers (ASDEM), the Trade Union of Workers and Employees of Public and Autonomous Services and Decentralized Institutes of Colombia (SINTRAEMSDES) and the National Trade Union of Workers of the ISS (SINTRAISS) criticizing Act No. 549 in view of its restrictions on the right to collective bargaining: section 13 requires authorization by the territorial public corporation if bargaining involves the commitment of resources under more than one budgetary period; and section 14 lays down the obligation for the employer to denounce collective agreements on matters relating to social security, the Committee regrets that the Government has not sent observations on the subject. As regards section 13, the Committee recalls that on previous occasions when it examined similar allegations, it has emphasized that it "is aware that collective bargaining in the public sector calls for*

*verification of the available resources in the various public bodies or undertakings, that such resources are dependent on state budgets and that the period of duration of collective agreements in the public sector does not always coincide with the duration of the State Budgetary Law – a situation which can give rise to difficulties" [see **Digest**, op. cit., para. 898]. The Committee therefore considers that section 13 does not violate the principles of freedom of association and collective bargaining. As regards section 14, the Committee considers that a legal provision obliging the employer to modify unilaterally the content of signed collective agreements is contrary to the principles of collective bargaining, unless authorized by such agreements. In these circumstances, the Committee requests the Government to take the necessary measures to amend the provision at issue so as to ensure that the right to free and voluntary collective bargaining is respected. 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.*

326. *As regards the allegations presented by the Trade Union of Workers of Quibi S.A. (SINTRAQUIBI) concerning the refusal of the enterprise to grant a wage increase over a three-year period as a condition for engaging in collective bargaining, the Committee regrets that the Government has not sent its observations on this subject. 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" [see **Digest**, op. cit., para. 817].*

327. *As regards the allegations of the UNEB concerning the setting up of a compulsory arbitration tribunal in order to settle a collective dispute in Banco Bancafé on the order of the Ministry of Labour and Social Security, the Committee regrets that the Government has not provided the relevant observations. In this respect, recalling that recourse to compulsory arbitration in cases where the parties do not reach agreement through collective bargaining is permissible only in the context of essential services in the strict sense of the term (i.e. services the interruption of which would endanger the life, personal safety or health of the whole or part of the population) and in cases of disputes in the public service concerning public servants exercising authority in the name of the State, and bearing in mind that the workers of Banco Bancafé do not fall into either of the abovementioned categories, neither have they agreed with the enterprise on the establishment of an arbitration tribunal, the Committee requests the Government to take the necessary measures to rescind the constitution of the compulsory arbitration tribunal in Banco Bancafé in order to ensure that the will of the parties concerning the settlement of the collective dispute is respected.*

Non-compliance with the collective agreement or arbitration awards

328. *As regards the allegation presented by the National Association of Workers of Banco de la República (ANEBRE) concerning non-compliance with the current collective agreement (which provides for the establishment of a non-statutory benefit consisting of a special pension in the event of dismissal without just cause of a worker with over ten years' length of service) by Banco de la República, the Committee notes the Government's observations to the effect that the courts have turned down all of the appeals filed by ANEBRE with regard to these allegations. The Labour Chamber of the Supreme Court of Justice ruled that the parties "agreed that entitlement (to the pension) would arise when the worker reached the (age) established by the law for similar cases". The Committee notes that this ruling and the decision rejecting **tutela** proceedings instituted by the ANEBRE have been declared enforceable and no other appeal lies against them.*

329. *As regards the allegations presented by the complainants SINTRACUEDUCTO and the Colombian Association of Flight Attendants (ACAV) concerning non-compliance with the current collective agreements by the Bogotá Water Supply and Sewerage Enterprise (failure to pay the agreed wage increase, dismantling of the Ramón B. Jímeno High School, recruitment of new employees displacing former workers (non-recognition of the staff committee) and American Airlines (failure to hire Colombian employees, imposition of flight itineraries, adjustment of the basic wage and remuneration for Sundays and holidays other than that agreed upon), the Committee notes that the Government indicates that an administrative inquiry has been launched on 27 November 2000 as regards the allegations presented by the trade union SINTRACUEDUCTO. The Committee regrets that the Government has not provided its observations on the allegations submitted by the trade union ACAV. The Committee recalls that the Collective Agreements Recommendation, 1951 (No. 91), provides in Part III that "collective agreements should bind the signatories thereto and those on whose behalf the agreement is concluded" and emphasizes therefore that "agreements should be binding on the parties" and that "mutual respect for the commitment undertaken in the collective agreements is an important element of the right to bargain collectively and should be upheld in order to establish labour relations on stable and firm ground" [see **Digest**, op. cit., para. 818, and Case No. 1919 (Spain), para. 325]. The Committee requests the Government to keep it informed of the results of the administrative inquiry made about the allegations of non-compliance with the collective agreement by the Bogotá Water Supply and Sewerage Enterprise and to initiate an inquiry into the alleged non-compliance with the agreement at American Airlines and, if they are found to be true, to ensure compliance with the terms of the agreements. The Committee requests the Government to keep it informed in this respect.*

330. *As regards the allegations presented by the National Trade Union of Workers of Alcalis de Colombia Limitada, Alco Ltda. (SINTRALCALIS) concerning violation of the collective agreement by the Alcalis de Colombia Ltda. enterprise, which dismissed all the workers employed under a contract for an unspecified period, the Committee regrets that the Government has not sent its observations. The Committee observes nonetheless that, according to the information provided by the complainant, the judicial authorities have deemed it impossible to reinstate the workers owing to the liquidation of the enterprise and have ordered that compensation accordingly be paid to the dismissed workers. In these circumstances, the Committee requests the Government to take the necessary measures to ensure that the workers of Alcalis de Colombia, Alco Ltda., are paid full compensation without delay, in accordance with the ruling of the judicial authorities. The Committee requests the Government to keep it informed in this respect.*

Violation of the right to collective bargaining through the conclusion of collective contracts

331. *As regards the allegations of the Single Confederation of Workers of Colombia (CUT), Antioquia branch, concerning the conclusion of a collective contract with non-unionized staff, in violation of the current collective agreement, in the Sofasa-Renault Metalcol S.A. enterprise, the Committee notes with interest the Government's observation to the effect that the parties signed a conciliation settlement in court which concludes the dispute (the Government sends a copy of this issue and that of a number of dismissals which occurred in 1992). The Committee also notes that the Government states that the Antioquia Territorial Directorate of Labour and Social Security certified on 19 October 2000 that no complaint is currently pending against the Sofasa-Renault Metalcol S.A. enterprise.*

332. *As regards the allegations presented by SINTRATEXTIL, Medellín branch, concerning the conclusion of a collective contract granting more advantages to non-members than to the members of the trade union in the Confecciones Leonisa S.A. enterprise, the Committee*

regrets that the Government has not sent its observations. The Committee recalls that when it examined similar allegations in the context of a complaint presented against the Government of Colombia, it emphasized that "the principles of collective bargaining must be respected taking into account the provisions of Article 4 of Convention No. 98" and "that direct negotiation with the workers must not undermine the position of the trade unions [see 324th Report, Case No. 1973 (Colombia)]. In these circumstances, the Committee requests the Government to take the necessary measures to ensure that inquiries are initiated into the case in Confecciones Leonisa S.A. and to communicate its observations on the subject.

Dismissals and other anti-union measures in the context of restructuring processes

333. *As regards the allegations presented by SINALMINTRABAJO concerning non-compliance with Presidential Directive No. 02 of 2 March 1999 (on consultation of the persons concerned in restructuring processes), in the context of the process of restructuring the Ministry of Labour and Social Security, the Committee notes that in its reply the Government does not refer to the non-compliance alleged by the complainants. In this respect, the Committee recalls that on similar occasions, when examining allegations on dismissals in the context of a restructuring process, it has emphasized "that it is important that governments consult with trade union organizations to discuss the consequences of restructuring programmes on the employment and working conditions of employees" [see **Digest**, op. cit., para. 937]. In these circumstances, the Committee regrets that Presidential Directive No. 02 of 2 March 1999 has not been applied and expresses the firm hope that in future the trade unions concerned will be fully consulted in restructuring processes.*

334. *As regards the allegations presented by SINALMINTRABAJO concerning the dismissal of Mr. Alvaro Rojas, chairperson of the Santander executive committee, in the context of the restructuring process mentioned in the previous paragraph, the Committee notes the Government's reply to the effect that Mr. Alvaro Rojas was dismissed owing to the elimination of the post which he occupied and that the necessary measures have been taken to consider the possibility of employing him in another body. In this respect, recalling the importance which it attaches to the principle that in the event of staff reductions under state restructuring programmes it is advisable to give priority to workers' representatives with regard to their retention in employment in case of reduction of the workforce, to ensure their effective protection [see **Digest**, op. cit., para. 961], the Committee requests the Government, bearing in mind Mr. Alvaro Rojas's position as chairperson of an executive committee, to consider the possibility of his reinstatement.*

335. *As regards the allegations presented by the Trade Union of Health Workers and Employees of Magdalena (SINTRASMAG) concerning the dismissal of workers and trade union officers of the Magdalena local government (600 workers, including the trade union officers), the Magdalena district health service (350 workers) and Julio Méndez Barreneche Central Hospital (310 workers, including nearly all of the members of the executive committee), and the filing of a complaint with the Santa Marta regional directorate over one year ago for violation of the collective agreement by Julio Méndez Barreneche Hospital, the Committee regrets that the Government has not sent its observations on the subject. The Committee reiterates the principle set forth in the previous paragraph, requests the Government to inquire whether this principle has been respected and to communicate its observations in this respect.*

336. *As regards the allegations concerning anti-union discrimination in the restructuring processes undertaken in Banco Central Hipotecario (dismissals) and in the Magdalena local government (military control of the offices), presented by the Association of Workers of Banco Central Hipotecario (ASTRABAN) and SINTRASMAG, the Committee regrets*

that the Government has not sent the relevant observations. The Committee requests the Government to take measures to ensure that an inquiry is initiated and, in the light of the information obtained, to communicate its observations in this respect.

The Committee's recommendations

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

(a) As regards the allegations concerning refusal to register the new members of the national board, the executive committee and the complaints committee of UTRADEC, the Committee requests the Government to take the necessary measures to ensure that they are registered and to keep it informed in this respect.

(b) As regards the allegations concerning denial of trade union leave in Evaristo García ESE Valle University Hospital, presented by the Trade Union of Workers of Valle University Hospital (SINSPUBLIC), the Committee requests the Government and the complainant to inform it whether a judicial appeal has been lodged against the administrative decision which found that the denial of trade union leave did not constitute a violation of the right to organize and, if so, to communicate the content of the court decision.

(c) As regards the allegations concerning denial of trade union leave and subsequent dismissal of trade union officers for having taken such leave in the Santa Fé de Bogotá administration, presented by the Trade Union of Public Employees of the Transit and Transport Secretariat of Santa Fé de Bogotá (SETT), the Committee requests the Government to take the necessary measures to ensure that inquiries are initiated into these allegations and, if they are found to be true, to proceed with the immediate reinstatement of the dismissed officers.

(d) As regards the allegations concerning violation of the right to strike presented by the National Union of Banking Employees (UNEB) (use of security forces, threats of dismissal, detention of and attacks on trade union officers) and the Trade Union of Workers of the Water Supply and Sewerage Enterprise of Bogotá (SINTRACUEDUCTO) (attacks on and detention of officers and members), the Committee requests the Government to take the necessary measures to ensure that the necessary inquiries are initiated immediately and, in the light of the information obtained, to send its observations in this respect.

(e) As regards the allegations concerning failure to transfer to the trade union the dues withheld by the Textiles Rionegro enterprise, presented by the National Union of the Textile Industry Workers (SINTRATEXTIL), Medellín branch, the Committee requests the Government to take measures to ensure that the necessary inquiries are carried out and, if the allegations are found to be true, to ensure that the Textiles Rionegro enterprise transfers without delay to the SINTRATEXTIL the dues of its members

which have been withheld. The Committee requests the Government to keep it informed in this respect.

(f) As regards the allegations of anti-union discrimination (dismissals of officers and members, denial of access to the workplace, non-recognition of the employment relationship between employees and the enterprise) in the Cervecería Unión enterprise, presented by the Trade Union of Loaders of Antioquia (SINTRACOAN), the Committee requests the Government to keep it informed of the final outcome of the inquiry which has been initiated.

(g) As regards the allegations presented by the General Confederation of Democratic Workers (CGTD), SINTRATEXTIL, Sabaneta branch, CGTD, Antioquia branch, SINTRATEXTIL, Medellín branch, the Trade Union of Public Servants of the FAVIDI District Housing Fund (SINTRAFAVIDI) and the Trade Union of Workers of Lorencita Villegas de Santos University Children's Hospital (SINTRAINFANTIL), concerning the following anti-union acts: (1) dismissal of the trade union officers of SINTRAYOPAL (Ms. Sandra Patricia Russi and Ms. María Librada García); (2) dismissal of a trade union officer of the Arauca town hall (Ms. Gladys Padilla); (3 dismissal of (nine) officers and members of Quintex S.A.; (4) dismissal of officers and members of the trade union of Puerto Berrío municipality (57 members, including the members of the executive board of the Trade Union of Municipal Workers of Puerto Berrío and 32 members of the Association of Employees of the Municipality of Puerto Berrío); (5) dismissal of 34 workers of Textiles Rionegro who had peacefully and legally demanded their wages; (6) dismissal of and refusal to reinstate trade union officers Ms. Lucy Jannet Sánchez Robles and Ms. Ana Elba Quiroz de Martín of FAVIDI, on grounds that the previous administrative procedure had not been exhausted; (7) application to lift the trade union immunity of eight officers of Textiles Rionegro for having demanded the workers' wages; (8) the application to lift the trade union immunity of members of the executive board in the Radial Circuito Todelar de Colombia enterprise; and (9) persecution, harassment and intimidation of the trade union officers of Lorencita Villegas de Santos University Children's Hospital by the public authorities; (10) physical attacks on the union member Claudia Fabiola Diáz Riascos by the security agents at Banco Popular; and (11) occupation by the armed forces of the Central Hospital Julio Mendez Barrenech, the Committee requests the Government to take the necessary measures to ensure that inquiries are initiated immediately in order to ascertain whether the allegations are true and, if the allegations of anti-union discrimination and persecution are found to be true, to take the necessary measures for such acts to cease and to remedy their consequences. The Committee requests the Government to communicate its observations in this regard.

(h) The Committee requests the Government: (1) in the light of the information obtained in the course of the administrative inquiry under way, to communicate its observations concerning the dismissal of Mr. Juan José de la Rosa Grimaldos, president of ASEINPEC; and (2) to take the necessary measures to ensure that the competent authorities initiate an inquiry

immediately into the dismissal of the officers of ASEINPEC, Medellín branch, and to communicate its observations in this respect.

(i) As regards the allegations presented by the UNEB concerning the repression of trade union officers after submitting a list of demands in Citibank, the Committee requests the Government to initiate inquiries into these allegations and to communicate its observations in this respect.

(j) As regards the allegations of the UNEB concerning the following acts of interference: (1) an attempt to prevent a vote to determine whether to hold a strike or to have recourse to an arbitration tribunal in Banco Popular; and (2) the imposition of a compromise obliging the workers to have recourse to an arbitration tribunal instead of a strike, in Banco Bancafé, the Committee requests the Government to initiate the necessary inquiries and to communicate its observations in this respect.

(k) As regards the allegations concerning denial of the right to collective bargaining in the public administration presented by the National Trade Union of Public Employees of the Ministry of Labour and Social Security (SINALMINTRABAJO), SINTRAINFANTIL, SINSPUBLIC, the National Trade Union of Colombian Charitable Institutions (SINTRABENEFICENCIAS) and SINTRAFAVIDI, the Committee requests the Government to take the necessary measures to ensure that the right of public servants to collective bargaining is respected, in accordance with the provisions of Conventions Nos. 151 and 154 which have been recently ratified.

(l) The Committee requests the Government and the complainant CGTD to send a copy of the document which, according to the CGTD, prevents wage increases from being agreed upon for persons receiving more than twice the statutory minimum wage.

(m) As regards section 14 of Act No. 549, which obliges the employer to modify unilaterally the content of signed collective agreements, the Committee requests the Government to take the necessary measures to repeal it so as to ensure that the right to free and voluntary collective bargaining is respected. 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.

(n) As regards the constitution of a compulsory arbitration tribunal in Banco Bancafé, the Committee requests the Government to take the necessary measures to rescind it, in order to ensure that the will of the parties concerning the settlement of the collective dispute is respected.

(o) As regards the allegations concerning non-compliance with the collective agreement by the Bogotá Water Supply and Sewerage Enterprise (failure to pay the agreed wage increase, dismantling of the Ramón B. Jímeno High School, recruitment of new employees displacing former workers, non-recognition of the staff committee) and American Airlines (failure to hire Colombian employees, imposition of flight itineraries, adjustment of the

basic wage and remuneration for Sundays and holidays other than that agreed upon), presented by SINTRACUEDUCTO and the Colombian Association of Flight Attendants (ACAV), the Committee requests the Government to keep it informed of the results of the inquiry made into the allegations presented by the SINTRACUEDUCTO, and to initiate the necessary inquiries into the allegations presented by ACAV and, if the allegations are found to be true, to ensure compliance with the terms of the agreements. The Committee requests the Government to keep it informed in this respect.

(p) The Committee requests the Government to take the necessary measures to ensure that the workers of Alcalis de Colombia, Alco Ltda., dismissed in accordance with judicial decisions which declared reinstatement to be impossible, are paid full compensation without delay, in accordance with the ruling of the judicial authorities. The Committee requests the Government to keep it informed in this respect.

(q) As regards the allegations presented by SINTRATEXTIL, Medellín branch, concerning the conclusion of a collective contract in the Confecciones Leonisa S.A. enterprise granting more advantages to non-members than to the members of the trade union, the Committee requests the Government to take the necessary measures to ensure that inquiries are initiated into this matter and to communicate its observations.

(r) As regards non-compliance with Presidential Directive No. 02 of 2 March 1999 on consultation of trade unions during the restructuring process in the Ministry of Labour and Social Security, the Committee expresses the firm hope that in future the trade unions concerned will be fully consulted in restructuring processes.

(s) The Committee requests the Government, bearing in mind Mr. Alvaro Rojas' position as chairperson of a local trade union executive committee, to consider the possibility of reinstating this worker, who was dismissed in the context of the restructuring process in the Ministry of Labour and Social Security.

(t) As regards the allegations presented by the Trade Union of Health Workers and Employees of Magdalena (SINTRASMAG) concerning the dismissal of trade union officers in the Magdalena local government, the Magdalena district health service and the Julio Méndez Barreneche Central Hospital, in the context of a restructuring process, the Committee requests the Government to take the necessary measures to ensure that an inquiry is carried out to determine whether priority has been given to workers' representatives concerning their retention in employment and to communicate its observations in this respect.

(u) As regards the allegations of anti-union discrimination in restructuring processes presented by the Association of Workers of Banco Central Hipotecario (ASTRABAN) and SINTRASMAG, the Committee requests the Government to take the necessary measures to ensure that an inquiry is

initiated and, in the light of the information obtained, to communicate its observations in this respect.

CASE NO. 2097

INTERIM REPORT

Complaint against the Government of Colombia presented by
— the Trade Union of Workers of Antioquia Department (SINTRADEPARTAMENTO, currently SINTRATEXTIL)
— the National Trade Union of Workers of AVINCO S.A. (SINTRAVI),
— the National Trade Union of Workers of Procter and Gamble Colombia (SINTRAPROCTERG), and
— the Trade Union of Workers of "Manufacturas de Colombia" (SINTRAMANCOL)

Allegations: Dismissals and other anti-union acts – declaration of a strike to be illegal by the administrative authority – refusal by an enterprise to bargain collectively

338. The complaints in the present case are contained in a communication dated 18 August 2000 from the Trade Union of Workers of Antioquia Department (SINTRADEPARTAMENTO), in communications dated 24 November 2000 and 3 January 2001 from the National Trade Union of Workers of AVINCO S.A. (SINTRAVI), in a communication dated 12 March 2001 from the Trade Union of Workers of Procter and Gamble Colombia (SINTRAPROCTERG) and in a communication dated 27 February 2001 from the Trade Union of Workers of "Manufacturas de Colombia" (SINTRAMANCOL). SINTRAPROCTERG sent additional information in a communication dated 14 May 2001. The Government sent partial observations in a communication dated 7 February 2001.

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

A. The complainants' allegations

340. In its communication of 8 August 2000, the Trade Union of Workers of Antioquia Department (SINTRADEPARTAMENTO) alleges the dismissal of 48 workers, including three trade union officials, following a stoppage that was declared illegal by the Antioquia Ministry of Labour and Social Security in 1992. The complainant states that the stoppage was motivated by the illegality of the deduction of 5 per cent of workers' wages ordained by the Governor's Decree No. 3789 for the purpose of establishing a fund with legal capacity to comply with obligations in respect of benefits. According to the complainant, the Antioquia authorities failed to observe the dismissal procedures provided for in the collective agreement or the legal provisions which permit collective stoppages for unjustified salary deductions. The complainant also alleges that the ruling by the administrative authorities that the strike was illegal was contrary to the provisions of Convention No. 87. Lastly, the complainant states that the judicial authorities ordered the reinstatement of 35 of the 48 workers dismissed in 1992.

341. In its communications of 24 November 2000 and 3 January 2001, the National Trade Union of Workers of AVINCO S.A. (SINTRAVI) states that the union was established on 15 May 2000 and alleges that on the 17th and 18th of the same month, five workers with trade union immunity were dismissed. The complainant also alleges in this connection that on 18 May 2000 the company presented the workers with a collective agreement and put pressure on them, in the form of blackmail, bribes and promises, to sign it. Unionized workers were suddenly deprived of many non-statutory benefits (such as transport at night, paid leave for marriage or childbirth, etc.). The complainant adds that, as a result of the pressure brought to bear by the company, more than 30 workers resigned from the union. Lastly, the complainant alleges that in August 2000, a list of demands was presented and that, in view of the company's intransigence in refusing to negotiate, it petitioned the Ministry of Labour in September 2000 to set up an arbitration tribunal in accordance with legislation.

342. In its communications of 12 March and 14 May 2001, the Trade Union of Workers of Procter and Gamble Colombia (SINTRAPROCTERG) alleges numerous anti-union acts on the part of the company against union members. Those alleged acts included: pay rises for non-unionized workers; suspension of union members for inadvertent errors in clocking in; dismissal of 25 workers in 1996 after they had joined the union; dismissal of a worker in 1998 after he had joined the union; dismissal in 1999 of a worker who had enjoyed trade union immunity after he had presented a list of demands; offers of money to the union's president, vice-president and executive secretary to make them leave the company and thus weaken the union; a request to suspend the trade union immunity of the president, based on a report which accused him of sleeping during work-hours; surveillance of the union secretary by company guards; moves to concentrate union members in a single work area; disciplinary summonses of workers joining the union with a view to intimidating them; pressure on the President, Mr. Juan Manuel Estrada, which led to his resignation from the union presidency; refusal to grant trade union licences; and offers of cash to unionized workers to encourage them to leave the company.

343. In its communication of 27 February 2001, the Trade Union of Workers of Manufacturas de Colombia (SINTRAMANCOL) explains that the owners of the enterprise Mancol Popayán S.A. decided to liquidate the said enterprise and requested an authorization from the public authorities in order to close it definitely. On 4 May 1999, the Ministry of Labour authorized the closing of the enterprise and all the workers were dismissed. The complainant alleges that with regard to the trade union leaders, the enterprise initiated proceedings with the judicial authorities in order to obtain the authorization for their dismissals. However, on 4 December 2000 and without having obtained the said authorization, the enterprise dismissed the 12 leaders of the SINTRAMANCOL. The complainant indicates that it initiated legal proceedings against this decision but since the enterprise does not exist anymore, it is impossible to execute any judgement. Therefore, the complainant considers that the Government should bear the responsibility for these violations of trade union rights and should compensate the workers accordingly.

B. The Government's reply

344. In its communication of 7 February 2001, the Government states that section 451 of the Substantive Labour Code empowers the Ministry of Labour and Social Security to issue an administrative ruling that a collective labour stoppage is illegal. By virtue of that power, the Ministry, in its Decision No. 0678 of March 1992, declared illegal a number of stoppages involving employees of Antioquia Department on 12, 13 and 14 February 1992. The arguments cited by the Ministry included the following:

> Collective stoppages carried out by employees of Antioquia Department, in Medellín and other municipalities in the Department, were confirmed by officials

> of the Regional Labour and Social Security Directorate of Antioquia, by departmental and municipal police inspectors and municipal representatives …
>
> Section 430 of the Substantive Labour Code, as amended by section 1 of Decree No. 753 of 1956, provides that under the terms of the National Constitution, strikes in the public services shall be prohibited. For the purposes of this provision, public services are deemed to be any organized activity undertaken with the purpose of satisfying the basic needs of the community in a regular and uninterrupted manner, in accordance with special laws, whether that activity is undertaken directly or indirectly by the State or by private individuals.
>
> Consequently, if workers considered that their labour rights had been violated, they should have applied to this Ministry and requested that pertinent inquiries be carried out, rather than resorting to the precipitate withdrawal of their labour.
>
> Under these circumstances, the collective work stoppages by employees of Antioquia Department are unlawful under the terms of the above provisions and of section 450 of the Substantive Labour Code, as amended by section 65 of Act No. 50 of 1990, according to which collective work stoppages in a public service are unlawful.

The Government adds that according to section 450(2) of the Substantive Labour Code:

> Once a suspension of work or stoppage has been declared illegal, the employer shall be at liberty to dismiss on those grounds any employee who may have contributed to or participated in it, and, with regard to workers covered by trade union immunity, no judicial approval for the dismissals shall be required.

345. The Government states that an appeal against the official Decision in question should have been lodged with the administrative disputes courts, but the workers in fact appealed to the Council of State. In a ruling of 18 April 1996, the Council of State rejected that appeal, arguing inter alia that a declaration of illegality of a stoppage was itself legal if the stoppage took place in a public service, under the terms of the first paragraph of section 65 of Act No. 50 of 1990. It considers that there are no provisions covering essential public services in accordance with article 56 of the 1991 Political Constitution.

346. With regard to the 48 workers who were dismissed, the Government states that, following the ruling by the Ministry of Labour that the stoppage was illegal, the governor of Antioquia, in Decision No. 0083 of 3 March 1992, ruled that there were sufficient grounds for terminating the contracts of employment of 48 workers. Thirty-five of the dismissed workers appealed against the decision and were reinstated. The remaining 13 did not apply for reinstatement, nor did they make any such application to the Department authorities or initiate legal proceedings.

347. Lastly, the Government indicates that through Decision No. 0067 of 3 April 1992, the Antioquia Regional Directorate of the Ministry of Labour ruled on a complaint made by employees of Antioquia Department concerning alleged violations by the Departmental authorities of Chapters IX, X and XI of the collective labour agreement in force; the authorities were fined 3,259,500 pesos on the grounds that "it was clear that a unilateral decision regarding the collective labour agreement in force had been taken by the Departmental authorities in determining that five per cent of workers' salaries should be paid into the benefits fund which, following the entry into force of Decree No. 3780, is required to cover benefits previously acquired under the collective agreement, in violation of Chapters IX, X and XI of said collective agreement". The Government states that through the relevant judicial and administrative authorities, it has heard the complaints and petitions of the workers of Antioquia Department and its decisions have been based on the

law. For this reason, as indicated previously, of the 48 workers dismissed by the Antioquia authorities, 35 were reinstated by judicial ruling and the Ministry of Labour fined the Antioquia authorities for infringing the collective labour agreement. At the same time, according to the Government, legislation requires that any administrative or legal action in response to violations of social laws be taken within three years.

C. The Committee's conclusions

348. *The Committee notes that in the present case the complainants allege the following: (1) the dismissal in 1992 of 48 workers employed by Antioquia Department following the declaration by the Ministry of Labour that a stoppage in protest at wage deductions was illegal; (2) various anti-union acts at the company AVINCO S.A. (dismissal of five workers covered by trade union immunity after they had formed a trade union organization at the company; pressure put on workers to accept a collective agreement and the subsequent withdrawal of non-statutory benefits from unionized workers; pressure on workers to leave the union; intransigence on the part of the company in refusing to negotiate a list of demands); and (3) numerous anti-union acts at the company Procter and Gamble Colombia (pay rises awarded to non-unionized workers; suspension of union members for inadvertent mistakes in clocking in; dismissal of 25 workers in 1996 after they had joined the union; dismissal of a worker in 1998 after he had joined a union; dismissal in 1999 of a worker with trade union immunity after he had presented a list of demands; offers of cash to the union president, vice-president and executive secretary to encourage them to leave the company and thereby weaken the union; a request to suspend the trade union president's trade union immunity on the basis of a document which accused him of sleeping during work-hours; surveillance of the union secretary by company guards; moves to concentrate unionized workers in a single work area; disciplinary summonses of workers who joined the union with a view to intimidating them; pressure on the union President, Mr. Juan Manuel Estrada, which led him to resign from the union presidency; refusal to grant trade union licences; offers of payment to workers in return for leaving the company).*

349. *As regards the allegation concerning the dismissal in 1992 of 48 workers employed by Antioquia Department following the declaration by the Ministry of Labour that a stoppage in protest at pay deductions affecting workers in the Department was illegal, the Committee notes that according to the Government: (1) it decided, under the terms of section 451 of the Substantive Labour Code, which empowers the Ministry of Labour to declare a work stoppage illegal, to declare that the stoppages carried out by employees of Antioquia Department were illegal on the grounds that under the terms of national law (sections 430 and 450 of the Substantive Labour Code), collective labour stoppages are illegal in public services; (2) the workers concerned applied to the Council of State to quash the administrative ruling that the stoppage had been illegal but the application was rejected; (3) while 35 of the dismissed workers took legal action and were reinstated, the remaining 13 workers brought no such action and the statutory deadline for doing so has elapsed; and (4) the administrative authorities fined the Antioquia Department authorities 3,259,500 pesos for violation of the collective agreement in force by deducting 5 per cent of workers' wages at source.*

350. *In this regard, the Committee duly notes that those workers who were dismissed for carrying out a stoppage because the company had failed to comply with the collective agreement in force – a fact confirmed by the administrative authorities, who fined the authorities accordingly – and who appealed to the courts were reinstated. On the other hand, as regards the ruling by the Ministry of Labour that the stoppage in question was illegal (under the terms of section 451 of the Labour Code), the Committee notes that it has had occasion to examine similar allegations in the past and on those occasions has indicated that "Responsibility for declaring a strike illegal should not lie with the*

government but with an independent body which has the confidence of the parties involved" [see ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 522], especially in the public sector, and has requested governments to "take measures to ensure that in future, declarations on the legal status of strikes are made by an independent body and not by the administrative authority" [see the 309th and 314th Reports of the Committee, Case No. 1916, Colombia, paras. 102, 103 and 105(a); and Cases Nos. 1948 and 1955, paras. 72 and 77(c)]. This view has also been supported by the Committee of Experts on the Application of Conventions and Recommendations in relation to Colombia [see Report III (Part 1A), ILC, 88th Session, 2000, pp. 172-73]. The Committee also emphasizes that the decision as to what constitutes an essential service should correspond to the principles of freedom of association so that strikes may only be prohibited or restricted in services, the interruption of which would endanger the life, personal safety or health of whole or part of the population.*

351. *The Committee regrets that the Government has not communicated its observations as regards the allegations presented by the National Trade Union of Workers of AVINCO S.A. concerning various anti-union acts at the company AVINCO S.A. (dismissal of five workers covered by trade union immunity after they had formed a trade union organization at the company; pressure put on workers to accept a collective agreement and the subsequent withdrawal of non-statutory benefits from unionized workers; pressure on workers to make them leave the union; intransigence on the part of the company in refusing to negotiate a list of demands). Under these circumstances, the Committee urges the Government to take steps to ensure that an independent inquiry is carried out, covering all the allegations made, and that it communicate its observations on the basis of the inquiry's findings.*

352. *The Committee requests the Government to communicate its observations on the allegations made recently by the Trade Union of Workers of Procter and Gamble Colombia (SINTRAPROCTERG). The Committee also requests the complainant to supply the names of the persons who, according to these allegations, have been victims of anti-union acts. Finally, the Committee asks the Government to send its observations on the recent allegations presented by the SINTRAMANCOL.*

The Committee's recommendations

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

(a) The Committee again requests the Government to take steps to ensure that in future, responsibility for declaring a strike illegal lies with an independent body, not with the administrative authorities and to further ensure that decisions concerning what constitutes an essential service are in conformity with the principles of freedom of association.

(b) The Committee urges the Government to take immediate steps to begin an independent inquiry covering all the allegations made by the National Trade Union of Workers of AVINCO S.A. concerning different anti-union acts in the company AVINCO S.A. (dismissal of five workers covered by trade union immunity after they had formed a trade union organization at the company; pressure put on workers to accept a collective agreement and the subsequent withdrawal of non-statutory benefits from unionized workers; pressure on workers to make them leave the union; intransigence on the

part of the company in refusing to negotiate a list of demands), and that it communicate its own observations on the basis of the inquiry's findings.

(c) The Committee requests the Government to communicate its observations on the allegations made recently by the Trade Union of Workers of Procter and Gamble Colombia (SINTRAPROCTERG). The Committee also requests the complainant to supply the names of persons who, according to the allegations, have been victims of anti-union acts. Finally, the Committee asks the Government to send its observations on the recent allegations presented by SINTRAMANCOL.

CASE NO. 2108

DEFINITIVE REPORT

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

Allegations: Violation of the right to participate in international trade union meetings

354. The complaint is contained in a communication from the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) dated 16 November 2000. The Government sent its observations in communications dated 15 January and 14 May 2001.

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

A. The complainant's allegations

356. In its communication of 6 November 2000, the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) alleges that the Latin American Coordinating Body of Banana Workers' Unions (COLSIBA), an organization made up of banana workers' unions from Guatemala, Honduras, Belize, Costa Rica, Colombia, Ecuador, Panama and Nicaragua, met on 18 and 19 August 2000 in San Pedro Sula, Honduras, with the Danish affiliate of the IUF, Specialarbejderforbundet i Danmark (SiD), and that on 24 August Mr. Orlando Paredes Valenzuela, Consul of Ecuador in Honduras, acting in his official capacity, contacted the coordinator of COLSIBA, Mr. Germán Edgardo Zepeda, to ask for the names of the Ecuadorians who had participated in this meeting. He also asked for information concerning the content of the discussions held at the meeting. Mr. Valenzuela said: "I am speaking on behalf of the Embassy of Ecuador and my Government has officially requested me to ask your organization the names of the Ecuadorians who participated in the regional meeting at San Pedro Sula, in order to contact them in Ecuador to find out about their activities; we wish you to know that our intention is to provide them with information for any future meeting they may participate in."

357. The IUF adds that it found out that the Government of Ecuador had formally contacted the Honduran authorities to ask if the Honduran immigration authorities would provide them with the same information. It appears that this request was most correctly refused.

358. The IUF considers that these investigations constitute improper interference in the right of assembly of trade unions at the international level and in their right to participate fully in the activities of organizations such as COLSIBA and the IUF. In its view, these investigations violate the right to freedom of association by threatening and intimidating the trade unionists of Ecuador for their participation in international trade union meetings.

B. The Government's reply

359. In its communications of 15 January and 14 May 2001, the Government states that Ecuador is the world's leading banana exporter, a fact that makes it possible to absorb a wide range of workers both directly and indirectly in the production, packing and transport of the product. In addition, banana exports constitute the second highest official source of foreign exchange revenue for the national economy. In this context, it is imperative to specify that in the interior of the country, there are no reports of individual or collective disputes between workers and employers in this sector, owing to the excellent contractual provisions and specific regulations currently in place, a fact that has made it possible to achieve the standards of production known worldwide.

360. As can be observed – the Government continues – only efficient foreign policy, the responsibility of the Ministry of Foreign Affairs, makes it possible to remain competitive and to retain Ecuador's position in the fruit markets. It also ensures that the production of the fruit, the economic income and the jobs generated from banana production are not destabilized. In this connection, the Ministry of Foreign Affairs only advises, channels and contributes to foreign policy on this subject at the state level, fundamentally respecting the banana producers, exporters and workers' forums and associations.

361. The Government categorically denies the unfounded allegations and assertions to which the complaint refers, maintaining that they are suppositions, that there is no basis to the insinuation of interference in trade union matters, that an attempt to arrange possible consular technical support has been blown out of proportion, twisting and distorting its true objective of providing technical and logistic assistance or support, and that an openly and unnecessarily hostile attitude has been shown towards the tripartite work enshrined in the international standards of the ILO. The Government confirms itself to be a faithful adherent of the precepts of ILO Conventions Nos. 87 and 98, and requests that the case be filed.

362. Documents from the Ministry of Foreign Affairs, which the Government appends, show that the Ecuadorian Consul in Tegucigalpa contacted a number of trade union leaders to request, without any type of threat or pressure, the public report on the meeting of the Latin American Coordinating Body of Banana Workers' Unions (COLSIBA); they also indicate that the Ministry of Foreign Affairs of Ecuador should take into account all the interests involved in shaping international policy relating to banana exports, should be informed and up to date on matters relating to banana production and should offer Ecuadorian trade unionists up-to-date material concerning the banana sector at any future events they may attend. The coordinator of COLSIBA offered to provide the information, although he did not do so, and he refused to give the names of the Ecuadorian delegates who attended the meeting in Tegucigalpa, claiming that it was confidential information. Neither the Ministry nor the Consulate requested the Honduran immigration authorities to provide a list of the Ecuadorian participants in the meeting and the Directorate of Migration of Honduras could be requested to provide a certificate in this respect. The Ministry of Foreign Affairs does not know the names of the Ecuadorian delegates who

attended the meeting in question. The Government submits a statement from the General Direction of Population of Honduras, mentioning that the staff of the Ecuadorian Embassy in Honduras did not intervene, and made no verification about Ecuadorian citizens who attended the COLSIBA meeting in San Pedro Sula.

C. The Committee's conclusions

363. *The Committee observes that in this complaint, the complainant organization alleges that the fact that the Consul of Ecuador in Honduras asked the coordinator of the Latin American Coordinating Body of Banana Workers' Unions (COLSIBA) and the Honduran immigration authorities about the content of the discussions that took place during an international trade union meeting and wanted to know the names of the Ecuadorian trade unionists who had participated, served to threaten and intimidate those trade unionists and violates the right to participate in international trade union meetings.*

364. *The Committee notes the Government's statement that: (1) requests for information from the coordinator of COLSIBA were intended to provide the Ministry of Foreign Affairs of Ecuador with information concerning all the interests involved in shaping international policy relating to banana exports, to inform and bring itself up to date on matters relating to banana production, and to provide Ecuadorian trade unionists with up-to-date material relating to banana production at any future events they may attend, possibly offering them technical and logistic consular support; (2) the Consul contacted the representatives of COLSIBA and not, as is maintained in the complaint, the Honduran immigration authorities; (3) there were no threats or pressure and there was no intention to interfere in trade union matters; (4) the staff of the Ecuadorian Embassy in Honduras did not make any verification about Ecuadorian citizens who attended the COLSIBA meeting.*

365. *The Committee stresses the importance it gives to the principle that the right to affiliate with international organizations of workers implies the right, for the representatives of national trade unions, to maintain contact with the international trade union organizations with which they are affiliated, to participate in the activities of these organizations and to benefit from the services and advantages which their membership offers [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 635], which includes the participation in international trade union meetings.*

366. *However, the Government having clarified that the request for information by the Consul of Ecuador in Honduras was intended to bring the Ministry of Foreign Affairs up to date on issues relating to banana production and that there were no anti-union designs but rather just a wish to receive information and possibly to provide technical and logistic support to Ecuadorian trade union delegates, the Committee will not pursue its examination of this case.*

The Committee's recommendation

367. ***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. 1888

INTERIM REPORT

Complaint against the Government of Ethiopia presented by
— Education International (EI) and
— the Ethiopian Teachers' Association (ETA)

Allegations: Death, detention and discrimination of trade unionists, interference in the internal administration of a trade union

368. The Committee previously examined the substance of this case at its November 1997, June 1998, June 1999, May-June 2000 and November 2000 meetings, presenting an interim report to the Governing Body in all these instances [308th Report, paras. 327-347; 310th Report, paras. 368-392; 316th Report, paras. 465-504; 321st Report, paras. 220-236; 323rd Report, paras. 176-200].

369. The Government provided further information in a communication dated 31 January 2001. Education International provided updated information in a communication dated 21 March 2001.

370. Ethiopia 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. Previous examination of the case

371. During its previous examinations of this case, the Committee addressed very serious allegations of violations of freedom of association, in particular the Government's refusal to continue to recognize the Ethiopian Teachers' Association (ETA), the freezing of its assets and the killing, arrest, detention, harassment, dismissal and transfer of ETA members and officials. The Committee expressed on several occasions its grave concern with respect to the extreme seriousness of the case and urged the Government to cooperate in providing the Committee with a detailed response to all the questions posed by the Committee.

372. At its November 2000 session, in the light of the Committee's interim conclusions, the Governing Body approved the following recommendations:

(a) Considering that serious doubts still persist as to whether all the guarantees of due process were afforded to Dr. Taye Woldesmiate and his five co-accused, the Committee requests once again the Government to keep it informed of developments in the situation, in particular as regards any measures taken to release them.

(b) The Committee requests the Government to keep it informed of developments concerning the transfer of ETA property and assets, and to provide it with the final judgement of the Federal High Court, as soon as it has been issued.

(c) The Committee urges the Government to ensure that the introduction of the evaluation system for teachers is not used as a pretext for anti-union discrimination, and to inform it of progress in this regard.

(d) The Committee requests the Government, once again, to take the necessary measures to ensure that all the ETA members and leaders detained or charged are released and all charges withdrawn, and to ensure that in future workers are not subject to harassment or detention due to trade union membership or activities. The Committee invites the complainant organizations to provide updated information on workers still considered as aggrieved by the Government's actions.

(e) The Committee again strongly urges the Government to take the necessary measures to ensure that the leaders and members of ETA who have been dismissed are reinstated in their jobs, if they so desire, with compensation for lost wages and benefits, and requests the Government to keep the Committee informed in this regard. The Committee invites the complainant organizations to provide updated information on those workers still concerned by these measures.

(f) Deploring that despite the extremely serious nature of the allegation, the Government has clearly indicated that it does not intend to establish an independent judicial inquiry into the killing of Mr. Assefa Maru, the Committee once again strongly urges the Government to ensure that an independent judicial inquiry be carried out immediately to determine the facts, establish responsibility, and appropriately punish the perpetrators if any wrongdoing is found. The Committee requests the Government to keep it informed regarding the establishment and outcome of the inquiry.

(g) Taking into account the lengthy period elapsed since the filing of this complaint, the seriousness of the situation as attested by the repeated interventions of the various supervisory bodies, as well as the Government's stated willingness to make progress, the Committee urges the Government to reconsider the whole situation, with a view to taking a fresh and global look at all the pending issues and working towards their early resolution, and recalls that the Government may avail itself for these purposes of the ILO's technical assistance.

B. The Government's new observations

373. In its communication of 31 January 2001, the Government states in general that it has repeatedly replied to the complainants' allegations, but that the Committee seems reluctant to accommodate some of its observations, particularly those relating to the leaders of the Ethiopian National Front and the detention and arrest of ETA members. The Government further states that, as far as it is concerned, the ETA has elected a new executive from which it has received no indication on how to proceed with the complaint, which has very much affected the possible earlier resolution of the case. While the Government is willing to reconsider the whole situation and has approached the ILO for possible technical assistance, it feels that the Committee's conclusions and recommendations relating to Dr. Taye Woldesmiate and his successor Mr. Assefa Maru, show antagonism towards the Government rather than promoting positive dialogue, and are not in line with the Committee's general concluding remarks and recommendation [323rd Report, para. 199, and recommendation 200(g)].

374. As regards the allegations of interference with the functioning of the ETA, the Government states that it has not interfered in the leadership controversies between the two executive committees, which have been resolved through judicial proceedings. The Government concludes that the new ETA executive committee was duly elected, without any

interference on its part, and rejects the Committee's conclusion in that respect [323rd Report, para. 192].

375. Regarding Dr. Taye Woldesmiate and Mr. Assefa Maru, the Government states that the Committee, without any factual substantiation, does not seem to accept the fact that the Federal High Court found these individuals and their co-accused guilty of conspiring to overthrow the State, based on testimonies, documents and exhibits. These cases are related to the activities of an anti-peace terrorist group, not to their membership in the ETA. The Constitution and the Criminal Procedure Code guarantee due process and the rights of the accused. The decision was made by an independent court without any Government interference. The Government deeply regrets this second-guessing of the decision and feels that the Committee's conclusions in this regard [323rd Report, para. 193 and recommendation 200(a)] reflect disrespect to the decisions and integrity of the Ethiopian courts, and amount to a request that the Government interfere in the functioning and independence of the judiciary. In connection with this, the Government rejects the Committee's conclusions concerning Mr. Assefa Maru and requests the revision of the related recommendation [323rd Report, para. 200(f)], so as to allow a fresh look at pending issues with ILO technical assistance. The Government also insists on the establishment of relations with the new ETA executive to resolve the complaint; to that effect it requests the Committee to contact the new ETA executive to assess its views on pending issues.

376. As regards the alleged detention of ETA members, the Government reiterates that there is no one arrested or detained in the country because of membership in the teachers' union. The Constitution guarantees freedom of association. The Government refers to its previous observations on these issues, submits that these unfounded allegations should have been disregarded, and rejects the Committee's conclusions in this respect [323rd Report, para. 200(d) and (e)].

377. With respect to the transfer of ETA's property and assets, the Government attaches to its communication a judgement of 19 July 2000 of the Federal Supreme Court confirming the lower court decision to transfer ETA's property to the new executive committee.

378. As regards the evaluation system for teachers, the Government reiterates its previous observations that this system was never used as a pretext for anti-union discrimination, but rather was introduced to promote academic efficiency. Union membership has no relevance in the functioning of this system.

C. The complainants' new allegations

379. In its communication of 21 March 2001, Education International (EI) provides an update of the situation of ETA with respect to freedom of association and the right to organize, and summarizes developments in the education sector which impact on those rights, based on information gathered during a mission undertaken in the country by EI from 10 to 16 March 2001. EI points out they have not been able to provide a complete answer and commentary on the Government submissions as reported in the 323rd Report of the Committee.

380. EI representatives were able to meet Dr. Taye Woldesmiate in his jail, where he has now been detained for over five years. His conditions remain very severe, close to solitary confinement; he is in a small compound with six or seven others; they have access to an outside area which is only 10 x 4 metres and walled. He is not allowed to work in the prison school, to have access to the prison library, or to talk with any other prisoner other than those in his own compound. He has been denied dental care, although he was willing to pay the necessary treatment. He is however allowed to receive mail and some reading material. The EI delegation insisted with the authorities that Dr. Taye Woldesmiate be

immediately released, on the grounds of several failings in the handling of the case. His lawyers appealed after his conviction in June 1999, but the Supreme Court has adjourned the case 12 times and has not ruled yet on the receivability of the appeal, a situation described as excessive even by the country's standards. Both Dr. Taye Woldesmiate's lawyers and officials made it clear that the Government would not act on any call for his release until all court procedures are exhausted. Dr. Taye Woldesmiate has been declared a prisoner of conscience by Amnesty International, after his case had been examined by their legal experts.

381. No action has been taken to establish an independent inquiry into the murder, in May 1997, of Mr. Assefa Maru, then Deputy General Secretary of ETA. While the complainants strongly support the Committee's recommendation in this respect, they have been told by Ministry of Justice officials that too much time had now elapsed to enable such an inquiry and that the police report on this issue was sufficient; the officials however agreed to consult further with the Prime Minister.

382. As regards, more generally, freedom of association and the right to organize, the complainants submit that there is no such freedom in Ethiopia. The current law allows only one union in any sector. Further, civil servants, including teachers, do not have the right to unionize but they may form professional associations as non-governmental organizations. The Minister of Labour discussed with the EI delegation the proposed legal changes, which will apparently provide for plurality of representation at the workplace level and allow for civil servants to form and join unions. Such changes would be warmly welcomed by EI and by the ETA. All the authorities emphasized that the present Constitution provides for freedom of association and that the Government welcomes the formation of non-governmental organizations; the authorities said that there is no impediment to the formation of such organizations, including by teachers, providing they meet certain requirements. For EI, however, those requirements are, in practice, significant obstacles to genuine freedom of association.

383. In the meantime, the situation in the education sector is totally in breach of Convention No. 87. Two organizations in fact exist. The first is the Ethiopian Teachers' Association headed by Dr. Taye Woldesmiate. The second, which now enjoys government recognition, is led by Ato Ahmed Ababulgu. Through the courts and also with support of the police and other state security forces, the organization led by Dr. Taye Woldesmiate has been deprived of all its regional offices. Its bank accounts were first frozen and then handed over to the other group. At present its one remaining Addis Ababa property has been sealed by court order. The ETA has no access to its equipment and files. Rents from other offices on the premises, which were essential to enable ETA to continue operating even with its bank accounts frozen, must now be paid in court.

384. Two of the court cases, including the remaining outstanding case (filed to deprive EI's affiliate of its last remaining property), were brought by the Ababulgu group against the executive led by Dr. Taye Woldesmiate. One was brought in defensive response by Dr. Taye Woldesmiate's organization against the "new" ETA. After an initial ruling in favour of Dr. Taye Woldesmiate's executive, an Appeal Court subsequently determined that there was only one Ethiopian Teachers' Association and that the General Assembly must determine the leadership, as provided for in the organization's statutes. Both groups held general assemblies and confirmed their leaderships. However the Government continues to recognize only the group led by Ato Ahmed Ababulgu.

385. The complainants submit that the Ethiopian Government has a responsibility to promote freedom of association under Convention No. 87. It should at the very least suggest that the new organization desist in its court action and encourage the two organizations to resolve

their differences through discussion. If this fails it should make clear the right of both to exist with a fair distribution of the property between them.

386. The government officials with whom the EI delegation met made a number of statements, summarized below and followed with an ETA or EI commentary:

– *The authorities doubted the existence of the EI-affiliated ETA and questioned whether it had any members.* In fact the EI mission met with more than 80 members of the Addis Ababa branch on 11 March 2001, and more would have been present had the mission been able to meet with them on the previous afternoon as they had expected. In 1997, EI was able to hold two meetings with ETA, Addis Ababa branch members; close to 300 members were present at each of these meetings.

– *The authorities suggested that if the EI-affiliated ETA had any members then they were limited to Addis Ababa*. In fact, since 1997 the ETA has held annual meetings and workshops attended by representatives from all but two regions. Further it has begun to restructure its organization in the regions but has been obstructed by regional and local authorities on the basis that the organization does not have the approval of the Federal Minister of Education; indeed ETA asserts that the Minister of Education instructed regional authorities not to deal with them or allow them access to schools. EI has requested, through the Vice-Minister of Education that the Minister write to the regions encouraging them to allow the EI and ETA to organize. This would not require a law change but could be done by administrative circular.

– *The authorities stated that there was no requirement for all teachers to pay association dues to the new ETA, it was done entirely voluntarily and 95 per cent of teachers choose to be members of the new ETA.* The EI delegation met a number of teachers who had attempted to stop dues deductions from their salaries going to the other organization. None had been successful despite written requests to the authorities. One teacher told of being transferred to a more distant school not long after having made such a request. EI also heard other accounts of similar experiences. A number of teachers and other people referred to a climate of fear, intimidation and politicization in the schools, with cadres of the ruling party appointed to dominant positions regardless of qualifications, service or experience.

– *The authorities stated that the old ETA would be free to organize provided it did so on the basis of the structure determined by the Government, that is independent organizations should be developed in each region and then be affiliated to a federal body*. The EI-affiliated ETA has begun the process of restructuring and rebuilding its organization at the regional level. However, the regional and local authorities impede it in that. Further, EI and ETA reject the Government's right to dictate the structure of the association. That is a matter for the members to determine. The ETA is also deeply opposed to the imposition of ethnically based structures, which appear to be a feature of current government policies.

387. Despite repeated requests to the Minister of Education, the authorities have refused to meet the ETA leaders even for discussions on any matter. The ETA and its members have many concerns relating to the implementation of the new education policy and to the present status and pay and conditions of teachers. They are denied access to any forum to present these concerns. The problems in the education sector are very serious at all levels. EI attaches to its communication a summary, by its ETA affiliates of the problems as they experience them. The refusal to recognize and involve the ETA in discussions on the development and implementation of education policy is not only in breach of Ethiopia's responsibilities in terms of Conventions Nos. 87 and 98, but it is also a major impediment to quality education for all in Ethiopia.

388. The implementation of the languages policy has created many difficulties and is perhaps the most contentious of the existing problems. Discontent not only amongst teachers but also amongst parents and students in some areas led to some serious disruptions during 1999 and 2000. As a result teachers were again subject to arbitrary dismissal, transfer and detention. To provide some indication of the extent of the problems when there is no social dialogue or participation of teachers or the wider community of parents and students in education policy development and implementation, EI attach a report from the Ethiopian Human Rights Council (EHRCO), covering the handling of the imposition of a particular language in the schools in the North Omo Zone.

389. EI concludes by welcoming the proposed law changes and stresses the importance of them being introduced without further delay. The recognition by the Government of the right to organize of the ETA led by Dr. Taye Woldesmiate is a matter of great urgency. Even before the law changes, EI and ETA believe that the Government could take some initial administrative measures by way of circulars reminding school authorities of the rights of staff to determine which if any union they will join and to which organization membership dues should be remitted. The Government could also suggest that the "new" ETA withdraws the remaining court case and use independent mediation to resolve the difficulties between the two organizations. If mediation fails then both organizations must be free to organize with a fair distribution of the properties.

390. There should also be: a halt to the continued harassment and intimidation of ETA members and activists; a halt to the politicization of decisions about teachers' careers, including their promotions and transfers; reinstatement and compensation for those teachers who have been dismissed or arbitrarily transferred because of their membership in ETA. Dr. Taye Woldesmiate must be released and an independent inquiry initiated into the murder of Assefa Maru.

D. The Committee's conclusions

391. *The Committee recalls that this complaint concerns extremely serious allegations of violations of freedom of association, and that it has already examined the substance of this case on no less than five occasions since November 1997, without being able to note much concrete progress. Given that it received recent information from the complainants, which give cause for concern but that the Government has not had yet an opportunity to comment, the Committee will only, at this stage, refer summarily to all its previous conclusions and recommendations, drawing attention to new or additional elements which have a bearing on them and calling, where necessary, for the Government's observations.*

Dr. Taye Woldesmiate and his co-accused

392. *The Committee notes that the Government reiterates its earlier position that Dr. Taye Woldesmiate and his co-accused were found guilty of terrorist activities and conspiracy to overthrow the State. Noting with deep concern that appellate proceedings have been adjourned 12 times without even a decision being issued on the receivability of the appeal, the Committee recalls that justice delayed is justice denied [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 56] and urges the Government to ensure that Dr. Taye Woldesmiate and his co-accused may enjoy, as soon as possible, the right to appellate proceedings, with all guarantees of due process. Referring to its previous conclusions and recommendation [323rd Report, para. 200(a)] in this respect, and taking into account the latest information on Dr. Taye Woldesmiate's conditions of detention, the Committee requests once again the Government to keep it informed of developments in the situation, in particular as regards measures taken to release Dr. Taye Woldesmiate and his co-accused.*

Inquiry into the killing of Mr. Assefa Maru

393. *While noting with regret the outright rejection, by the Government, of its conclusions and recommendation concerning Mr. Assefa Maru, the Committee notes that, according to the latest indications given by the complainants, further consultations may take place on this subject between officials of the Ministry of Justice and the Prime Minister. The Committee recalls that when trade union leaders or trade unionists are killed, seriously injured or disappear, it is imperative that independent judicial inquiries be instituted in order to shed full light, as rapidly as possible after the facts, to determine where responsibilities lie, punish the guilty parties and prevent the repetition of similar events [see* ***Digest****, op. cit., 4th edition, 1996, para. 51]. The Committee requests once again the Government to ensure that such an independent inquiry is held immediately, and to keep it informed of developments in this respect.*

Arrests, detentions and harassment of ETA members

394. *As regards the allegations related to the ETA members and leaders who have been charged and detained, and to the harassment of workers due to their trade union membership and activities, the Committee notes that the Government asserts that no one is being detained in the country because of membership in the teachers' union. The Committee refers to its previous recommendation in this respect [323rd Report, para. 200(d)] and requests the complainants to provide updated information on workers they consider as being still aggrieved by the Government's actions.*

Transfer or dismissal of ETA members

395. *The Committee notes that the Government has not submitted information concerning ETA members allegedly transferred or dismissed, and notes with concern the most recent information provided by EI in this respect. The Committee refers to its previous recommendation on these allegations [323rd Report, para. 200(e)], requests the Government to provide its observations on this subject, including as regards the latest allegations, and requests the complainants to provide updated information on workers still affected by these measures.*

The evaluation system

396. *The Committee notes that the Government essentially reiterates its previous comments concerning the evaluation system, but notes with concern the latest allegations relating to the climate of fear, intimidation and politicization in the schools, with cadres of the ruling party being appointed to management positions regardless of teaching qualifications, service or experience. Recalling that the introduction of the evaluation system should not be used as a pretext for anti-union discrimination, the Committee requests the Government to keep it informed of developments and to provide its observations on the complainants' latest allegations in this respect.*

Interference in the functioning of the ETA; freedom of association

397. *As regards the allegations of interference in the functioning of the ETA and the election of its executive committee, the Committee notes the Government's statement that it has never interfered in these matters, which have been resolved through judicial proceedings. The Committee further notes that the Government recognizes only one teachers' association led by the new executive committee, headed by Ato Ahmed Ababulgu. Given that under the*

current legislation, only one organization is allowed to exist in any sector, that prevents the establishment of another organization, be it led by the former ETA executive or by any other group of persons. In addition, the latest information provided to the Committee indicates that those teachers who attempted to stop their union dues from going to the new ETA were not successful, and that the old ETA would be free to organize if it did so on the basis of the structure determined by the Government (independent organizations developed in each region, then affiliated to a federal body). The Committee requests the Government to provide its observations on the latest information concerning these aspects, which raise a number of issues in relation to freedom of association principles, that it wishes to recall here:

– *workers should in practice be able to establish and join organizations of their own choosing in full freedom, which implies, in particular, the effective possibility of forming, in a climate of full security, organizations independent both of those which already exist and of any political party [see **Digest**, op. cit., paras. 273-274];*

– *while internal dissensions within workers' organizations do not lie within the competence of the Committee, governments should not intervene in a manner which might affect the exercise of trade union rights and the normal functioning of an organization party [see **Digest**, op. cit., para. 963];*

– *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; by doing so, a government violates the principle laid down in Convention No. 87 that public authorities shall refrain from any interference which would restrict the rights provided for in the Convention or impede their lawful exercise [see **Digest**, op. cit., para. 304].*

398. *The Committee further notes in relation to these issues, which have also been addressed by the Committee of Experts on the Application of Conventions and Recommendations in its last report [ILC, 2001, pp. 265-267] that the authorities discussed with the EI mission some proposed legal changes, which would provide for plurality of representation at workplace level and allow for civil servants and teachers to establish and join unions. Recalling to the Government that it may avail itself of the ILO's technical assistance in this respect, the Committee requests the Government to keep it informed of developments.*

ETA assets

399. *The Committee takes note of the judgement issued on 19 July 2000 by the Federal Supreme Court, which remitted the matter of assets ownership to the ETA general assembly. While recalling the general principles applicable in this respect (assets transferred to the members of the liquidated organization or to the succeeding organization; see **Digest**, op. cit., paras. 684-686), the Committee notes that, in the particular circumstances of this case, a fair resolution of this issue is closely linked to – if not dependent upon – the immediately preceding one, i.e. a real possibility for all workers concerned, in law and in practice, to establish and join freely an organization of their own choosing. If these conditions were met in practice, then – and only then – would it be possible to achieve an equitable division of assets. The Committee requests the Government to take these aspects into consideration when the ETA assets will be ultimately divided and appropriated.*

General

400. *Noting with interest the authorities' willingness to reconsider the whole situation, the Committee recalls once again that the Government may avail itself of the ILO's technical assistance on all the above subjects.*

The Committee's recommendations

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

(a) Recalling that justice delayed is justice denied, the Committee urges the Government to ensure that Dr. Taye Woldesmiate and his co-accused may enjoy, as soon as possible, the right to appellate proceedings, with all guarantees of due process, and requests once again the Government to keep it informed of developments in the situation, in particular as regards measures taken to release Dr. Taye Woldesmiate and his co-accused.

(b) The Committee requests once again the Government to take the necessary measures to hold an independent inquiry into the killing of Mr. Assefa Maru, and to keep it informed of developments in this respect.

(c) The Committee requests the complainants to provide updated information on workers they consider as being still aggrieved by the Government's actions, in respect of ETA members and leaders charged, detained or harassed due to their trade union membership and activities.

(d) The Committee requests the Government to provide its observations concerning ETA members allegedly transferred or dismissed, including as regards the latest allegations, and requests the complainants to provide updated information on workers still affected by these measures.

(e) Recalling that the introduction of the evaluation system should not be used as a pretext for anti-union discrimination, the Committee requests the Government to keep it informed of developments and to provide its observations on the complainants' latest allegations in this respect.

(f) The Committee requests the Government to provide its observations on the latest allegations of interference in ETA activities.

(g) The Committee requests the Government to ensure that freedom of association principles, in particular those relating to the right of workers to establish and join organizations of their own choosing, are fully taken into account in the final division and appropriation of ETA assets.

(h) Recalling that teachers, like other workers, should have the right to form and join organizations of their own choosing and to negotiate collectively, the Committee requests the Government to amend the legislation, and to keep it informed of the measures taken in this regard.

(i) Noting with interest the authorities' willingness to reconsider the whole situation, the Committee recalls once again that the Government may avail itself of the ILO's technical assistance on all the above subjects.

CASE NO. 2052

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

Complaint against the Government of Haiti presented by the International Confederation of Free Trade Unions (ICFTU)

Allegations: Attempted murder of trade union officials; detention of and physical assaults against trade unionists; dismissals of trade union leaders and members

402. The Committee had already examined this case at its June 2000 session and submitted an interim report to the Governing Body [see the Committee's 321st Report, paras. 237-251].

403. In the absence of a reply from the Government, the Committee was obliged on two occasions to postpone its examination of this case. At its March 2001 meeting [see 324th Report, para. 8] the Committee issued an urgent appeal to the Government, drawing its attention to the fact that, under the rule of procedure established in paragraph 17 of its 127th Report approved by the Governing Body, it could present a report on the substance of the case at its next meeting, even if the information and observations of the Government had not been received in due time.

404. 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. Previous examination of the case

405. At its June 2000 session, in the light of the Committee's interim conclusions, the Governing Body approved 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 through an urgent appeal, and it counts on an immediate reply on the Government's part.

(b) The Committee urges the Government to take all necessary measures to ensure that, in future, workers and their organizations can exercise their rights in a climate that is free from violence, pressure or threats of any kind, in particular by instigating independent judicial inquiries with a view to establishing the facts, punishing those responsible and preventing recurrences.

(c) The Committee requests the Government to begin independent judicial inquiries into the attempts to murder Mr. Laguerre and Mr. Léveillé and to keep it informed of the outcome of any such inquiries.

(d) The Committee insists that the Government take all necessary measures to prevent future recurrences of arrests or detentions of trade union leaders

and members for reasons connected with their activities in defence of workers' interests.

(e) The Committee requests the Government without delay to take all necessary measures to ensure that the Federation of Electricity Workers of Haiti (FESTRED'H) regains the free use of its premises and can carry out its legitimate trade union activities in full freedom, in particular the right of assembly, and to keep it informed of any measures taken in this regard.

(f) The Committee requests the Government to supply all relevant information on the dismissal of a large number of leaders and members of the complainant organization within the company Electricité d'Haïti.

B. The Committee's conclusions

406. *The Committee deplores the fact that, despite the time that has passed since the presentation of the complaint, and given the gravity 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, notably through an urgent appeal. Under these circumstances, 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.*

407. *The Committee reminds the Government, firstly, that the purpose of the procedure instituted by the International Labour Organization for examining allegations relating to violations of freedom of association is to ensure 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 First Report of the Committee, para. 31].*

408. *Lastly, the Committee deeply deplores the fact that, despite cases relating to Haiti being included in a special paragraph in the introduction to the Committee's most recent report under the heading "Serious and urgent cases which the Committee especially draws to the attention of the Governing Body" [see 324th Report, para. 10], the Government of Haiti still appears unwilling to cooperate with the Committee in relation to the complaints lodged against it.*

409. *The Committee recalls that the ICFTU's allegations concerned in particular various violations of the physical integrity of trade union leaders and members, including in some cases attempted murder. In the absence of any new information concerning this matter, the Committee is obliged to repeat its earlier conclusions. Thus it recalls that the rights of workers' 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 those 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, para. 47]. The Committee urges the Government to take all the necessary measures to ensure that this principle is respected in future, in particular by instigating independent judicial inquiries with a view to establishing the facts, punishing those responsible and preventing recurrences. In particular, it urges the Government to begin such inquiries into the attempts to murder Mr. Laguerre and Mr. Léveillé and to keep it informed of the outcome of any such inquiries.*

410. *With regard to the arrests and detentions in this case, the Committee once again deplores the detention of four national trade union leaders for two days without charge. It recalls that the detention of trade union leaders or members for reasons connected with their defence of workers' interests constitutes a serious interference with civil liberties in general and with trade union rights in particular [see* ***Digest****, op. cit., para. 71]. The Committee insists that the Government take all the necessary measures to prevent any recurrences of this in future.*

411. *The Committee once more emphasizes that the occupation or closure of trade union premises constitutes a serious violation of freedom of association and a serious interference in trade union activities [see* ***Digest****, op. cit., paras. 174-185]. The Committee requests the Government to take all the necessary measures without delay to ensure that FESTRED'H regains the free use of its premises and can carry out its legitimate trade union activities, in particular the right to hold meetings in full freedom. The Committee requests the Government to keep it informed of any measures taken to that end.*

412. *The Committee reiterates the importance which it attaches to the principle that governments should consult trade union organizations to discuss the consequences of restructuring programmes on employment and working conditions [see* ***Digest****, op. cit., para. 937]. The Committee, recalling that it can examine allegations concerning economic rationalization programmes and restructuring processes if they might have given rise to acts of discrimination or interference against trade unions [see* ***Digest****, op. cit., para. 935], again urges the Government to supply all relevant information on the dismissals of a large number of leaders and members of the complainant organization.*

The Committee's recommendations

413. ***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 through an urgent appeal. Moreover, the Committee deeply deplores that, despite the fact that cases relating to Haiti were included in a special paragraph in the introduction to the Committee's latest report under the heading "Serious and urgent cases which the Committee especially draws to the attention of the Governing Body", the Government of Haiti still appears unwilling to cooperate with the Committee with respect to the complaints lodged against it.

(b) The Committee again urges the Government to take all necessary measures to ensure that, in future, workers and their organizations can exercise their rights in a climate that is free from violence, pressure or threats of any kind, in particular by instigating independent judicial inquiries with a view to establishing the facts, punishing those responsible and preventing recurrences.

(c) The Committee requests the Government once again to begin independent judicial inquiries into the attempts to murder Mr. Laguerre and Mr. Léveillé and to keep it informed of the outcome of any such inquiries.

(d) The Committee again insists that the Government take all necessary measures to prevent future occurrences of arrests or detentions of trade

union leaders and members for reasons connected with their activities in defence of workers' interests.

(e) The Committee again requests the Government without delay to take all necessary measures to ensure that the Federation of Electricity Workers of Haiti (FESTRED'H) regains the free use of its premises and can carry out its legitimate trade union activities in full freedom, in particular the right of assembly, and to keep it informed of any measures taken in this regard.

(f) The Committee requests the Government to promptly supply all relevant information on the dismissal of a large number of leaders and members of the complainant organization within the company Electricité d'Haïti.

CASE NO. 2100

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

Complaint against the Government of Honduras presented by the International Textile, Garment and Leather Workers' Federation (ITGLWF)

Allegations: Refusal to grant workers the right to establish organizations of their own choosing without previous authorization and obstruction of trade union pluralism

414. The complaint in this case is contained in a communication from the International Textile, Garment and Leather Workers' Federation (ITGLWF) dated 18 August 2000. The Government provided its response in a communication of 8 January 2001.

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

A. The complainant's allegations

416. In its communication of 18 August 2000, the International Textile, Garment and Leather Workers' Federation (ITGLWF) states that the Government of Honduras refused to grant official recognition to one of its members, the Trade Union of Assembly and Allied Industries Workers of Honduras (SITRAIMASH). This industrial trade union was founded in July 1999 with more than 500 members employed in two factories: Yoo Yang and Kimi. The complainant states that the latter factory, which is now closed after having transferred its production to Guatemala, at that time already had a trade union, which on no occasion entered into competition with SITRAIMASH and strongly supported the establishment of an industrial trade union.

417. The decision to establish an industrial trade union reflected the commitment of SITRAIMASH to consolidate worker representation both inside and outside the industrial estate, by enabling workers to unionize themselves without having to rely on the recognition of a new trade union in each factory. Therefore, on 16 August 1999,

SITRAIMASH submitted its request for legal recognition to the Ministry of Labour. However, on 9 September 1999, that is, four days after the deadline had passed for assessing this request for legal recognition, the trade union sent a trade unionist, Ms. Enma Leal, to the Ministry of Labour to ascertain what stage had been reached in processing its request. The official responsible for social organizations informed Ms. Enma Leal that the request contained serious defects and persuaded her to withdraw it. The complainant organization indicates that the Ministry acted in violation of section 482 of the Labour Code, which states that the request should have remained in the legal system until the trade union had made the relevant amendments.

418. Therefore, on 22 November 1999, the trade union once again submitted its request for legal recognition. On 6 December 1999, and 17 and 24 January 2000, the trade union's lawyer, Mr. Féliz Suazo, travelled to Tegucigalpa to inquire about the status of the request, but was persistently refused any kind of information. On 25 February 2000, the trade union and ITGLWF wrote to the Minister of Labour, Ms. Rosa Miranda de Galo, requesting her intervention in the matter. On 6 March 2000, the Secretary-General of the State Department for the Labour and Social Security Offices wrote to the Minister of Labour in response to the letter from the trade union, and recommended that legal recognition of the trade union be refused for three reasons: a lack of documentation, discrepancies between the founding documents and the by-laws, and the fact that two trade unions could not exist at the same time at Kimi.

419. On the same day, that is, almost three months after the statutory deadline, the Director of Legal Services of the Ministry of Labour notified the trade union that its request had been rejected for not having followed the established legal procedure (by allowing the creation of an industrial trade union in one of the plants covered by a factory trade union which already existed) and that it was not appropriate for all of the 125,000 assembly industry workers of Honduras to be represented by the workers from two factories, given that 45 legally recognized trade unions already existed in that sector.

420. On 26 April 2000, SITRAIMASH lodged a remedy of appeal to the Ministry of Labour, requesting that the relevant body revoke its decision; the Ministry has yet to reply. Furthermore, the complainant organization states that, even though section 476 of the Labour Code prohibits simultaneous membership of several trade unions of the same kind, or involved in similar activities, in this case, SITRAIMASH and the Trade Union of Workers of Kimi Enterprise of Honduras, S.A (SITRAKIMI) belong to two different categories (one is a factory trade union and the other an industry trade union). In any event, the former does not include members of the latter.

B. The Government's reply

421. According to the Government, the official recognition of SITRAIMASH was refused under the following circumstances. On 16 August 1999, the provisional executive committee of SITRAIMASH submitted a request for recognition and the registration of legal personality before the General Directorate of Labour of the State Department for the Labour and Social Security Offices. However, the request to the Directorate-General of Labour was withdrawn with the endorsement of Ms. Magdalia Erazo Palma in her capacity as General Secretary of the new trade union's provisional executive committee, given that in accordance with section 508 of the Labour Code, "legal representation of the trade union shall be the function of the president of the executive committee and, in his or her absence, of the general secretary". The Government stresses that the aforementioned observations show that the file was voluntarily withdrawn by the General Secretary of the trade union organization, not as a result of informal or unofficial action.

422. However, on 22 November 1999, the new trade union submitted a new request through its representative. In January 2000, having assessed and studied the request, the Department of Social Organizations of the General Directorate of Labour issued the respective ruling in which it recommended the outright refusal of this request on the basis of sections 471, 472 (under which it is primarily for enterprise or primary trade unions to represent members in all labour relations), 481, 483, 2nd paragraph, and 510 of the Labour Code. The General Directorate of Labour approved this ruling on 31 January 2000, and the proceedings were sent to the Secretariat of Labour and Social Security for the corresponding legal formalities. On 9 February 2000, the Secretariat ordered the transfer of the proceedings concerning the request for recognition and the registration of legal personality of SITRAIMASH to the Directorate of Legal Services for the purposes of the ruling. It should be noted that the applicants' legal representative should have been personally informed of this decision and should, therefore, have known of the ruling issued by the Department of Social Organizations, so that the respective amendments could be made. However, the representative did not respond in this manner. Indeed, one of the main causes of the delay in dealing with the file was the lack of acknowledgement given by this representative of the decision made by the Secretariat of Labour.

423. This alleged violation of the right of defence can clearly be dismissed given that the time allowed for such action was not used, thus leading to the official notification to avoid a delay in the proceedings. On 3 March 2000, the Secretariat of Labour and Social Security issued a decision declaring that the request was unfounded since it was not in accordance with the law owing to errors of form, and because it sought to form this industrial trade union with workers from two enterprises, one of which (Kimi), at that time already had a registered trade union. The Government adds that this decision was made available to the legal representative for a period of one month, and, in view of the lack of action on his part, it made an official notification on 3 April 2000.

424. In accordance with the law, the Secretariat of Labour has two days in which to notify the applicants' legal representative of its definitive decision, when unfavourable to the parties involved, but, to their benefit, this was not done within the given period in order to make it easier for the trade union organization to lodge a relevant appeal. According to the law on administrative procedures, only a remedy of reconsideration would have been an appropriate response to the Secretariat's decision, not a remedy of appeal, which was wrongly pursued by the legal representative, and declared to be inadmissible.

425. Lastly, on 27 July 2000, the same applicants submitted a request for the recognition and registration of legal personality of the Trade Union of Workers of the Yoo Yang Enterprise, S.A. This request was processed and approved on 16 November 2000. The Government states that all workers who requested the establishment of the SITRAIMASH trade union enjoy the right of freedom of association through membership of the Yoo Yang Enterprise Trade Union (STEYY) or of the Trade Union of Workers of Kimi Enterprise of Honduras, S.A. (SITRAKIMI).

C. The Committee's conclusions

426. *The Committee notes that this case relates to allegations of refusal to grant workers the right to establish organizations of their own choosing without previous authorization, and the obstruction of trade union pluralism. The Committee takes note that in this regard the Government of Honduras received the request for legal personality of SITRAIMASH, submitted on 16 August 1999, which was withdrawn on 9 September 1999 by a member of the trade union, and then resubmitted on 22 November 1999.*

427. *The Committee observes that, according to the Government, the first application had not been processed when the General Secretary of the trade union prematurely withdrew it,*

whereas according to the complainant organization it was withdrawn, after the processing deadline had expired, by a trade union activist who was influenced by the official responsible for registration. The Committee takes note of these divergences, but notes that, in any event, the executive committee of the trade union submitted a second request.

428. *The Committee takes note that this new request for recognition and registration was rejected on the grounds of lack of form (missing documents and discrepancies between the registration of the founding instrument and the by-laws) and of content (the existence of a primary trade union and a trade union at the branch level at the same time).*

429. *With regard to the errors of form, the Committee notes that there is a lack of evidence to make a judgement, but emphasizes that if the rejection of this request is based on a few formal errors that are difficult to correct, and if the conditions for the granting of registration are tantamount to obtaining previous authorization from the public authorities for the establishment or functioning of a trade union, this would undeniably constitute an infringement of Convention No. 87. This, however, would not seem to be the case when the registration of trade unions consists solely of a formality where the conditions are not such as to impair the guarantees laid down by the Convention [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 259].*

430. *As for the substantive error invoked by the authorities to refuse legal recognition, namely the existence of a primary trade union and a trade union at the branch level at the same time, the Committee is bound to recall that under section 472 of the Labour Code even if it is primarily for enterprise or primary trade unions to represent members in all labour relations, this should not mean that an enterprise cannot have various trade unions of different levels at the same time. Indeed, the Committee recalls that workers should be able, if they so wish, to join trade unions at the branch level as well as the enterprise level at the same time [see **Digest**, 4th edition, 1996, para. 317]. Similarly, the Committee emphasizes that the free exercise of the right to establish and join unions implies the free determination of the structure and composition of unions, and that all workers should be free to decide whether they prefer to establish, at the primary level, a works union or another form of basic organization, such as an industrial or craft union [see **Digest**, 4th edition, 1996, paras. 275 and 279].*

431. *Finally, the Committee notes that on 27 July 2000 the applicants who had made the aforementioned request asked the relevant authorities to recognize the Trade Union of Workers of the Yoo Yang Enterprise, S.A. and to grant it legal personality. This request was processed and accepted on 16 November 2000. The Committee also notes that, according to the Government, all workers who requested the establishment of the SITRAIMASH trade union enjoy the right of freedom of association through membership of the YOO YANG Enterprise Trade Union (STEYY) or of the Trade Union of Workers of Kimi Enterprise of Honduras, S.A. (SITRAKIMI). However, bearing in mind the right of workers to join a trade union at the branch level and at enterprise level at the same time, the Committee requests the Government to amend its legislation to bring it into conformity with Conventions Nos. 87 and 98, and so that it guarantees that workers have the right to form and join organizations of their own choosing. Moreover, the Committee requests the Government in this case, to inform it of the course of action adopted by the labour administration in response to any new requests submitted by the complainant for legal personality.*

The Committee's recommendations

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

***(a) The Committee requests the Government to take into account the following principles**:*

(i) the free exercise of the right to establish and join trade unions implies the free determination of the structure and composition of unions; and

(ii) workers should be free to decide whether they prefer to establish, at the primary level, a works union or another form of basic organization, such as an industrial or craft union.

(b) The Committee requests the Government to amend its legislation to bring it into conformity with Conventions Nos. 87 and 98, and so that it guarantees that workers have the right to form and join organizations of their own choosing.

(c) The Committee requests the Government, considering the foregoing, to inform it of the course of action adopted by the labour administration in response to any new requests submitted by SITRAIMASH for legal personality.

CASE NO. 2082

INTERIM REPORT

Complaint against the Government of Morocco presented by the Democratic Confederation of Labour (CDT)

Allegations: Arrest and detention of workers following their participation in a strike

433. The complaint which is the subject of this case is contained in communications from the Democratic Confederation of Labour (CDT), dated 31 March, 10 May and 8 December 2000.

434. The Government sent its observations in communications dated 20 July 2000 and 8 January 2001.

435. Morocco has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98); however, it has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

A. The complainant's allegations

436. In its communication dated 31 March 2000, the Democratic Confederation of Labour (CDT) explains the context of the events which occurred at the Oulmes company, a mineral water-bottling enterprise at Tarmilet, a small village in an isolated region of the country. This private enterprise, which has been run for more than 30 years by the same family since the end of the Protectorate, employs 340 workers, of whom 240 are considered temporary – although they have been employed on a permanent basis for several years. According to the CDT, the basic problem is the temporary status of the workers despite their seniority which, for many of them, dates back for more than 20 years,

with the following consequences: they were deprived of a seniority bonus, did not have either a work permit or a payslip, until 1998 when the trade union affiliated to the CDT mobilized workers in order to attain these rights. The workers are suspended systematically every three, four or six months, without any legal justification or compensation, with the sole aim of maintaining their temporary status. Furthermore, the management refuses to organize elections of staff representatives and uses all possible means to prevent trade union organization: attempts at bribery, dismissals, lay-offs, ill-founded legal proceedings, etc.

437. Confronted with these repeated violations of basic trade union rights and infringements of a number of existing agreements, the trade union officials referred the matter to all state bodies, from the local authorities up to the Government, but to no avail. The management of the enterprise reacted negatively to the workers' claims, which concerned primarily the granting of tenure of temporary workers, and adopted a provocative attitude, dismissing six workers and threatening a further 150 with lay-off. The workers declared a 48-hour strike on 11 December 1999, to which the management reacted by closing the factory – the workers then organized a sit-in so that the factory would be reopened and work resumed. Rather than opting for conciliation, the Government sent in police who arrived in force at the end of Ramadan on 16 December 1999, spreading terror throughout the village. On 2 February 2000, 1,200 members of the police force and auxiliary forces, accompanied by four helicopters and approximately ten vehicles, invaded Tarmilet. According to the CDT, the police fired on the population with rubber bullets, used tear gas, broke down the doors of houses, tortured the inhabitants and arrested the men from the village; as a result of these "strong-arm" tactics, a woman had a miscarriage and a young girl was paralysed. Eight workers were arrested and held at the Salé prison: Abdeslam Driouich, Belhand Ghazi Belarbi, Lahoucine Tazi, Marah Bouazza, El Hachimi Saoudi, Jebbari Assou, Saksaou M'Hamed and Ouziane Amar. The CDT executive unsuccessfully tried to calm the situation as the army prevented access to the factory. Subsequently, the management called in foreign labour to the enterprise to take out the existing stocks under the protection of the authorities charged with public order. In its communication dated 10 May 2000, the CDT points out that the eight imprisoned trade unionists were released on 5 May 2000, following an agreement reached on 23 April between the Government, the employers and the CDT and UGTM trade union federations.

438. In its communication of 8 December 2000, the CDT states that the situation has not changed at the Oulmes factory, that 200 workers were expelled in an abusive manner, and that the management still refuses to engage in any dialogue with the union, despite the steps taken by the authorities.

B. The Government's reply

439. In its communication dated 20 July 2000, the Government points out that six temporary workers had been laid off on 10 December 1999 as a result of a slowing down in activities during the winter. The employees in the enterprise had, on the following day, declared a solidarity strike with the six workers, and 50 employees occupied the premises. As the CDT had called a 48-hour strike, the enterprise continued to produce at 50 per cent of its capacity for the winter season. As the lorries could neither enter nor leave the enterprise, the management lodged a complaint with the authorities based on constraints upon freedom to work. The authorities thus intervened to guarantee the freedom to work, expelling those occupying the factory and allowing the lorries to move. This resulted in clashes with the workers, who threw stones at members of the police force, several of whom were wounded. As a result of these actions, three workers were arrested, charged and sentenced to three months' imprisonment. On 17 December, the CDT declared a strike for an indefinite period and submitted a list of claims: a 30 per cent wage increase; a bonus for the Sacrificial Feast; an ambulance; a cafeteria; establishment of a cooperative; issuing

of employment certificates; the setting up of a trade union board; establishment of timetables for security guards.

440. In an attempt to settle the dispute, the labour inspection services and local authorities organized meetings with all the parties concerned in order to ease the tension in the enterprise and guarantee the workers' rights. During a meeting held on 28 December, the management agreed to put up the trade union board but refused to grant a wage increase, on the ground that wages had already been reviewed in September 1999. Dissatisfied with the outcome of the meeting, the trade union decided to continue the strike and organize a sit-in to prevent lorries from entering or leaving the Oulmes company and other enterprises dealing with the company. Nevertheless, about 50 managers and technicians of the company continued to guarantee production. The National Review and Conciliation Board held two meetings on 20 and 21 January 2000 and submitted proposals for settlement that the parties refused. The director of employment services called two further meetings on 21 and 24 January, during which the management of the enterprise promised to pay six months' wages to those employees suspended, provided that they did not start work again before a solution had been found concerning their reinstatement. Despite these efforts, the strikers refused to return to work since the management had refused a number of their claims. The prefect and the director of employment services continued their efforts to try and find a solution to the dispute, but to no avail. Given this deadlock, the management of the company lodged a new complaint to guarantee the freedom to work and the free movement of lorries.

441. The police intervened on 2 February 2000 in order to enforce the judicial decision ordering the lifting of pickets and the free movement of lorries and goods. The police tried to convince the strikers to withdraw calmly and return to work; they were then violently attacked by the strikers and their families with stones, clubs and knives, and 40 members of the police force were wounded. Following these violent clashes, eight strikers were arrested and tried. They subsequently benefited from a royal pardon and were released.

442. As regards the enterprise's alleged infringements of the Labour Code, the visits carried out by the labour inspection services to the enterprise and the auditing of its books showed that the seniority bonus had been paid to all 100 employees and managers. The situation of temporary employees was regularized and they also benefited from the seniority bonus starting from the date upon which it was due. As regards the employment certificates, the inquiry carried out by the labour inspection services revealed that all managers, permanent and temporary workers in the enterprise were bound by contracts, either fixed-term or permanent. The elections of the workers' representatives had been held as planned; three titular members and three substitute members had been elected. As regards respect for freedom of association, the management of the enterprise regularly held meetings with the trade union executive, attended by the labour inspection services or local authorities, in order to examine various problems. For instance, the enterprise had always provided employees and their families with school transport, childcare, two sections for illiterates and a canteen; furthermore, the management had financed a pilgrimage for some employees to holy shrines. Wages were increased by 5 to 10 per cent annually. As regards the persons arrested and sentenced, they have all been released under a royal pardon and are entirely free. Work has resumed normally at the enterprise and there is no more social tension; the village is now calm.

443. As regards the miscarriage and paralysis allegedly caused by the police intervention, information provided by the labour inspection services shows that these facts are unrelated as the miscarriage had occurred three days before the intervention and the young girl had been paralysed from a very young age.

444. In its communication of 8 January 2001, the Government states that it continues its efforts to find a solution to the dispute and to create a stable social climate at the Oulmes company; many meetings have been held to bring the parties' views closer and to find a solution to the problem of the dismissed workers. The regional conciliation committee held a meeting on 22 September 2000, with the leaders of the company and the union in attendance; both sides maintained their positions, resulting in the dispute moving to the national level. The National Investigation and Reconciliation Committee held a meeting with the parties on 29 September 2000, under the chairmanship of the Director of the Department of Labour, in an attempt to bring about a solution that would guarantee that the dismissed workers could return to work. The Committee submitted many proposals, and the Ministry continued its efforts to resolve the dispute.

C. The Committee's conclusions

445. *The Committee notes that this case concerns various incidents, in particular a police intervention and the arrests and sentencing of trade unionists during a labour dispute in a private company.*

446. *The Committee points out in this respect several contradictions between the versions of the complainant and the Government concerning respective responsibilities during this dispute, in particular as concerns the police intervention and the company's use of labour from outside the enterprise during the strike. Furthermore, the Committee notes that the Government refers to a judicial decision justifying the police intervention without giving further details about this decision. In these circumstances, the Committee considers itself obliged to request additional information on the allegations, including the matters noted above both from the Government, after consultation with the company concerned, and from the complainant.*

The Committee's recommendation

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

> ***The Committee requests the Government to transmit the text of the judicial decision justifying the police intervention in February 2000 at the Oulmes company. It also invites the Government to provide, after consultation with the company concerned, further information on the allegations, including those concerning the use of labour from outside of the company during the dispute at the Oulmes company. The Committee requests the complainant to transmit any additional information it may consider useful.***

CASE NO. 2109

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

Complaint against the Government of Morocco presented by — the Moroccan Labour Union (UMT) and — the International Confederation of Free Trade Unions (ICFTU)

Allegations: dismissal of trade unionists following the establishment of a trade union committee; anti-union repression

448. The complaint is contained in a communication from the Moroccan Labour Union (UMT) dated 4 December 2000. In a communication dated 11 January 2001, the ICFTU supported the UMT's complaint.

449. The Government sent its observations in communications dated 17 and 29 January 2001.

450. Morocco has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), but has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

A. The complainants' allegations

451. In its communication dated 4 December 2000, the UMT explains that the complaint concerns the dismissal of eight officers of the trade union of the Fruit of the Loom company in the town of Salé, a branch of Fruit of the Loom's manufacturing plant in Ireland that employs 1,200 men and women workers in Morocco. On 19 November 2000, the workers held a general assembly at the UMT headquarters in Rabat and elected their officers. The UMT alleges that on Saturday, 25 November 2000, the general manager of the company recruited members of the militia, who intimidated the workers attending the assembly. On Monday, 27 November 2000, immediately after receiving the list of trade union officers, the company dismissed the following eight officers: Mr. Khalid Llalmaoui, General Secretary; Mr. Mohamed Bakkacha, Deputy Secretary; Ms. Salima Laoui, Treasurer; Mr. Abdellah Sainane, Deputy Treasurer; Mr. Lahcen Toufik, Assessor; Mr. Abdelfettah Lasfar, Officer; Mr. Abdelhafid El Hachi, Officer; and Ms. Asia Atla, Officer.

452. The complainant adds that the general manager of the company stated that he did not recognize the right to organize. Moreover, he put up a banner with the words "No to the trade union" at the entrance to the company premises and declared that he enjoyed the support of the local authorities. The complainant points out that a regional delegation of the UMT in Rabat has made a series of representations to the Wali and the governor of the town of Rabat-Salé and to the Ministry of Labour, with a view to having the dismissed trade unionists reinstated, but to no avail so far.

453. In a communication dated 11 January 2001, the ICFTU explains that since the dismissals in November 2000 the situation in the company has seriously deteriorated, with an atmosphere of terror reigning among the workers; each of them is under watch and forbidden to enter into contact with the dismissed trade unionists outside the factory. The eight dismissed officers are being harassed and subjected to physical assaults by militia members, and several of them were even arrested and held in custody by the police for

several hours. The ICFTU is deeply concerned about the Governor of the town of Salé declaring not to want any trade union in his prefecture. The ICFTU states that, according to the most recent reports, the General Secretary of Fruit of the Loom's UMT trade union was compelled to hand in his resignation, while the other officers remain dismissed. Moreover, workers who had attended the general assembly were allegedly compelled to sign statements of resignation from the union drawn up by factory management.

B. The Government's reply

454. In its communication dated 17 January 2001, the Government points out that as soon as the Ministry of Employment's external services were advised of the dispute at the Fruit of the Loom company and the dismissal of the eight trade union officers, they immediately intervened at the workplace and attempted to enter into contact with the employer. In spite of their efforts, the general manager has always refused to meet the other party to the dispute.

455. The Government explains that, in view of the above, the labour inspectors placed on record, pursuant to the provisions of the legislation in force (a copy of the record was enclosed), that there had been an infringement of freedom of association and an unauthorized collective dismissal. The record was transmitted to the relevant court on 26 December 2000, once again in accordance with the legislation in force. The Government also encloses a copy of a letter to the employer, requesting the latter to reinstate the dismissed workers and to respect the free exercise of the right to organize.

456. As part of the efforts made to ensure protection of the right to organize, to settle the dispute and to promote social dialogue, the Government reports that the Ministry of Employment placed the dispute in question on the agenda of the National Fact-Finding and Conciliation Commission, with a view to holding a meeting between the parties on 5 January 2001. The general manager of the company was convened to appear before the Commission in person. In its communication dated 29 January 2001, the Government states, however, that the employer failed to attend the meeting and that the trade union refused to negotiate with Fruit of the Loom's legal adviser. It encloses a copy of a letter dated 12 January 2001 from the company's legal adviser, strongly objecting to the measures taken by the Ministry of Employment and the labour inspectors.

457. The Government stresses the fact that the Moroccan authorities are doing their utmost to protect the right to organize and have used all legal remedies with a view to ensuring respect for that right in the Fruit of the Loom company. It specifies that the court dealing with the record drawn up by the labour inspectorate is shortly expected to hand down its ruling on the matter.

C. The Committee's conclusions

458. *The Committee notes that this case concerns the dismissal of eight trade unionists following the establishment of a trade union committee in the Fruit of the Loom company and acts of intimidation and anti-union repression. The Committee observes that the Government does not in any way challenge the facts that gave rise to the complaint. The Committee notes that on 27 November 2000, upon receiving the list of the eight members of the newly established committee, Fruit of the Loom management dismissed the eight officers in question. It appears, moreover, that the atmosphere within the company has deteriorated since their dismissal, that the workers who attended the general assembly during which the committee was to be set up are being subjected to harassment and acts of intimidation, and that factory management compelled them to sign statements of*

resignation from the new trade union. Finally, several of the dismissed unionists were allegedly arrested and held in custody by the police for several hours.

459. *The Committee observes that, in the light of these incidents, the Government has manifestly taken steps to attempt to settle the dispute. It takes note, in particular, of the efforts made by the Ministry of Labour to mediate between the parties concerned. The Committee also takes note of the record drawn up by the labour inspectorate, which condemns violations of freedom of association in the company and the unauthorized dismissal of the trade unionists and demands that the latter be reinstated in their jobs. The Committee observes, moreover, that the Government convened a meeting of the National Fact-Finding and Conciliation Commission on 5 January 2001 but that the general manager of the company refused to attend the meeting, despite the fact that he had been invited to appear in person. The Committee notes that the Government transmitted to the relevant court the record drawn up by the labour inspectorate, which concludes that violations of freedom of association were committed in the Fruit of the Loom company, and that the court is shortly to give its ruling on the matter.*

460. *While taking due note of the steps taken by the Moroccan authorities to reach a settlement of the dispute, the Committee nevertheless reminds the Government of its responsibility to ensure full compliance – throughout the national territory, and in fact as well as in law – with the provisions of the Conventions that it has freely ratified. In this regard, the Committee stresses that the possibility, both in fact and in law, of establishing organizations constitutes the most fundamental of all trade union rights and the essential prerequisite without which the other rights relating to freedom of association would remain a dead letter. On several occasions already, the Committee has emphasized the importance which it attaches to the fact that workers should, in practice, enjoy full freedom to establish and join organizations of their own choosing. Such a right cannot be said to exist unless such freedom is fully established and respected in law and in fact [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, paras. 271 and 274]. The Committee consequently requests the Government to take all necessary measures to ensure that the ruling handed down by the relevant court – if the ruling confirms the labour inspectorate's conclusion that a violation of freedom of association has been committed in the Fruit of the Loom company – is fully respected and effectively applied; and that the eight trade union officers are reinstated in their respective jobs without loss of pay and with full compensation. The Committee asks the Government to provide it with a copy of the decision of the court as soon as the latter hands down its ruling.*

461. *With reference to the acts of intimidation against the company's workers and the detention of the dismissed trade unionists, the Committee reminds the Government that measures depriving trade union officials and members of their freedom on grounds related to their trade union activity, even where they are merely summoned or questioned for a short period, constitute an obstacle to the exercise of trade union rights [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 77]. The Committee requests the Government to take steps to ensure that the relevant authorities receive appropriate instructions to prevent the risk to union activity represented by measures aimed at depriving trade unionists of their freedom and acts of intimidation, as well as, more generally, by anti-union attitudes that could be adopted by the local public authorities. The Committee asks the Government to keep it informed of developments in this regard, and in particular with regard to the attitude of the Governor of the town of Salé.*

The Committee's recommendations

462. ***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 all necessary measures to ensure that the ruling handed down by the relevant court – if the ruling confirms the labour inspectorate's conclusion that a violation of freedom of association has been committed in the Fruit of the Loom company – is fully and effectively applied; and that the eight trade union officers are reinstated in their respective jobs without loss of pay and with full compensation. The Committee asks the Government to inform it of the decision of the court as soon as the ruling is handed down.

(b) The Committee requests the Government to take steps to ensure that the relevant authorities receive appropriate instructions to prevent the risk to union activity represented by measures aimed at depriving trade unionists of their freedom and acts of intimidation, as well as, more generally, by anti-union attitudes that could be adopted by the local public authorities. The Committee asks the Government to keep it informed of developments in this regard, and in particular with regard to the attitude of the Governor of the town of Salé.

CASE NO. 2106

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

Complaints against the Government of Mauritius presented by — the Mauritius Labour Congress (MLC) — the International Confederation of Free Trade Unions (ICFTU) and — the Federation of Civil Service Unions (FCSU)

Allegations: Revocation of interim pay increase; non-application of negotiated agreement

463. This complaint was presented in a communication dated 23 October 2000 from the Mauritius Labour Congress (MLC), supported by the International Confederation of Free Trade Unions (ICFTU) in a communication of 25 October 2000. The Federation of Civil Service Unions (FCSU) joined the complaint as a party by communications dated 16 and 22 May 2001.

464. The Government provided its observations in communications dated 9 January, 5 March and 23 April 2001.

465. Mauritius has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). It has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

A. The complainants' allegations

466. In its communication of 23 October 2000, the Mauritius Labour Congress (MLC) submits two distinct sets of allegations the first of which relates to civil servants and is supported by the Federation of Civil Service Unions (FCSU). Firstly, on 22 September 2000, the new Government elected on 11 September 2000 cancelled the payment of a Rs.300 monthly increase to all public officers. That advance payment had been decided by the previous Government following a request made by the FCSU for the payment of three increments to all civil servants, pending the submission of the report of an Ad Hoc Committee on Anomalies (the "Heeralall" report) arising out of the 1998 and 1999 reports of the Pay Research Bureau, and which was supposed to be issued by May 2000. After consultations, the former Government had decided not to grant the three increments but opted in favour of granting an interim increase of Rs.300 to all public officers.

467. The complainant adds that there exists in the country a general practice to issue official circulars to all ministries and departments after the announcement of such decisions. In the present case, the Ministry for Civil Service Affairs sent such a circular note (No. 2 of 2000) dated 8 September 2000, announcing the Rs.300 monthly interim increase, with effect as of 1 September 2000. Provisions had already been made for that payment but the decision was annulled in a circular of 22 September 2000. According to the complainant, the new Government, which came to power after the elections of 11 September 2000, decided to cancel the payment on the assumption that it had been agreed as a form of electoral bribe. The Government stated that it could not afford the increase due to the difficult financial situation of the country.

468. The complainant considers that this decision is arbitrary and unfair, and goes against well-established labour practices and collective bargaining principles in the country. It submits that the Government's assertion regarding the difficult situation of the country is an excuse to justify its refusal to effect the payment, since economic indicators (growth rate for year 2000; actual and projected growth rates in the tourism and financial sectors) augur well for the future. Federations and unions have complained to the Government, the FCSU organized a protest march, and one trade union has launched judicial proceedings in this connection, without any reaction from the Government.

469. Secondly, the MLC alleges the non-respect of an agreement reached on 9 September 2000 at a meeting of the Rose Belle Sugar Estate Board (which belongs to the State), whereby the unions and management agreed on the payment of arrears and on the implementation of a 40-hour week, with effect the same day. It was also agreed that the case of retired and deceased employees would be submitted to the Board for decision. The agreement signed that day specified that the Minister of Agriculture had undertaken, on behalf of the Government, to honour the balance of payments due to employees. Unfortunately, the Government has not implemented this agreement.

B. The Government's observations

470. In its communication of 5 March 2001, the Government states that the complaint is not receivable because the complainant failed to:

(i) allege specific infringements of freedom of association, or of specific articles of Conventions Nos. 87 and 98;

(ii) submit any proof to support their allegations: that the Government's decision was unfair and arbitrary or was against well-established labour practices in the country; that the difficult financial situation mentioned by the Government was merely an excuse; and that one trade union had filed judicial proceedings.

471. In its communication of 9 January 2001, as regards the first issue, the Government recapitulates the events as follows:

(i) In August 1998, the reports of the Pay Research Bureau (PRB) on the review of pay and grading structures and conditions of service in the public sector were released for implementation. In view of the complexity of the exercise, the PRB undertook to examine any genuine errors and omissions identified; in this context, its report on "Errors, omissions and clarifications of the 1998 report of the PRB" was published in June 1999 and the Government agreed to its implementation.

(ii) Following representations made by the unions regarding alleged anomalies contained in the abovementioned reports, the Government set up, in August 1999, an Ad Hoc Committee (the "Heeralall" Committee) to look into "alleged anomalies", if any, arising out of the 1998 and 1999 PRB reports.

(iii) On 22 August 2000, whilst the Ad Hoc Committee was still carrying out its exercise, the Federation of Civil Service Unions (FCSU) requested the Government to grant, as an interim measure and with immediate effect, three increments to *all* civil servants, if the report of the "Heeralall" Committee was not published by 29 August 2000. Following this request, the Government published a press communiqué on 25 August 2000 bringing, inter alia, to the notice of the general public and, in particular, all civil servants, that the request could not be granted in view of the fact that the Ad Hoc Committee was in the process of writing its report which was expected to be ready by mid-October 2000 and that the Committee was looking into *anomalous cases only* and was not carrying out a full-scale revision of salaries in the public service.

(iv) The FCSU reiterated its request for an interim salary increase pending the publication of the report of the Ad Hoc Committee. On 8 September 2000, i.e. a few days before the general elections held on 11 September 2000, the then Government agreed to grant an overall increase of Rs.300 to all civil servants. This decision was conveyed to the President of the FCSU by the Secretary to the Cabinet and Head of the Civil Service on the same day. The Ministry for Civil Service Affairs and Administrative Reform issued a circular letter to supervising officers in charge of ministries/departments informing them that the Government decision would be effective as from 1 September 2000. This decision was also extended to all employees of parastatal bodies, local authorities and private secondary schools.

(v) In view of the difficult financial situation of the country arising, inter alia, out of the electoral measures announced on the eve of the general elections, the Government decided on 20 September 2000 that the decision taken by the previous Government on 8 September 2000 be revoked. A circular to that effect was issued by the Ministry for Civil Service Affairs and Administrative Reform on 22 September 2000. The Ad Hoc Committee on alleged anomalies submitted its report on 1 November 2000. The Government, after taking cognizance of the report, agreed to its release and implementation on 3 November 2000.

472. The Government points out, however, that:

(i) the terms of reference of the Ad Hoc Committee were to look into "alleged anomalies", if any, arising out of the PRB reports for 1998 and 1999; the grant of Rs.300 to *all employees* of the public sector and the private secondary schools fell outside the terms of reference of the Ad Hoc Committee;

(ii) the decision to grant the Rs.300 was revoked in view of the difficult financial situation of the country arising, inter alia, out of the electoral measures announced on the eve of the general elections;

(iii) the Government has agreed to implement the report of the Ad Hoc Committee *in toto*; the President of the FCSU had written to the Rt. Hon. Prime Minister on 7 November 2000 regarding, inter alia, the setting up of an appropriate forum to correct the anomalies arising out of the various PRB reports and the Ad Hoc Committee report; the Federation's request was not acceded to and it was informed that it would be given the opportunity to put across its case to the Pay Research Bureau in the context of the next exercise for the review of pay and grading structures in the public sector.

473. In its communications of 5 March and 23 April 2001, the Government describes the existing system of wage determination, including the Pay Research Bureau (PRB) which is mandated to determine wages and terms and conditions of employment in the civil service and other public bodies. The PRB makes recommendations to the Government for decision after consultation with trade unions and ministries concerned. In addition, there is a national Tripartite Committee where representatives of employers and of all trade union confederations are represented; it meets annually, under the chairmanship of the Deputy Prime Minister and other senior ministers, to discuss wage compensation with social partners, and submits its recommendations to the Government which then legislates through the Additional Remuneration Act. Any wage compensation that is granted comes into force as from July every year. In 2000, this process led to a 5 per cent increase, reflecting the cost-of-living increase. The Government is holding another round in May 2001, which demonstrates its commitment to collective bargaining.

474. On the merits of the first issue, the Government adds that: (i) the pay raise decided by the previous Government would have cost an additional Rs.210 million for financial year 2000-01 and Rs.250 million annually thereafter; (ii) the decision to pay Rs.300 monthly to all civil servants was taken hastily, in an electoral context, in clear breach of well-established industrial relations practices; that decision called into question the very mandate of the Ad Hoc Committee on Anomalies, which was mandated to look into the question of compensation for loss of purchasing power; (iii) under Article 8 of Convention No. 87, the complainant should have used first national procedures, e.g. section 79 of the Industrial Relations Act; (iv) the complainant did not take into account a judgement delivered in 1996 in a somewhat similar case by the Supreme Court which ruled that: "… a government is not necessarily bound by any decision taken by its predecessor, still less one which needs other sanction, legislative, administrative or otherwise to be fully implemented …" (a copy of the judgement is attached to the Government's communication); (v) whilst the FCSU served notice on 4 October 2000 of its intention to file proceedings in order to enforce the payment of the monthly Rs.300, the matter was never pursued before any court or industrial tribunal.

475. With regard to the second issue, i.e. the alleged breach of agreement by the Rose Belle Sugar Estate Board, the Government offers the following observations:

(i) The agreement has been drafted in an inappropriate manner and it appears that the entire terms of the agreement have not been properly incorporated in the document. Furthermore, in relation to the "undertaking given by the Minister", as set out in the agreement, the Government has been advised that this agreement does not bind it inasmuch as no representative of the Government was privy to the agreement.

(ii) The financial situation of the Rose Belle Sugar Estate Board and the Rose Belle Sugar Milling Co. Ltd. is precarious. At the time the agreement was signed, these two

organizations had an overdraft amounting to Rs.32.5 million and had just renewed a core overdraft limit of Rs.14.5 million up to April 2001. The projected profit and loss of the group for 2000 amounts to losses of Rs.46.8 million, and the projected accumulated losses for the year ending 2000 would amount to Rs.197.5 million.

(iii) The cost of implementation of the decision to pay arrears and the 40-hour week works out to Rs.32.8 million: the inability of the group to meet such expenditure is therefore obvious. Moreover, payment of such arrears would automatically entail the closure of the factory**.**

C. The Committee's conclusions

476. *The Committee notes that this case concerns two distinct issues: (a) the annulment of a decision, made by the previous government on the eve of a general election, to pay an interim increase to public servants; and (b) the failure to apply an agreement, also concluded on the eve of a general election, on various conditions of work in a state-owned sugar milling enterprise.*

Receivability of the complaint

477. *As regards the first argument of irreceivability raised by the Government (i.e. the unspecific nature of the allegations) the Committee considers that the complainant did raise quite specific factual issues in relation to freedom of association principles: a pay raise for all civil servants, officially decided by a government and cancelled by its successor; and the non-respect of a pay raise embodied in an agreement signed at a state-owned enterprise. While opinions may differ on the ultimate consequences of both situations in the light of particular circumstances, that does not in itself make the complaint irreceivable. As to the second argument of irreceivability (absence of any proof to support the allegations) the Committee points out that it is within its mandate to examine whether, and to what extent, satisfactory evidence is being presented to support allegations; this appreciation goes to the merits of the case and cannot support a finding of irreceivability. The Committee also recalls that the purpose of its procedure is to promote respect for trade union rights in law and in fact [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 4]. This complaint is therefore receivable.*

Annulment of interim increase

478. *The Committee notes that there is no disagreement between the parties on the chronology of events as regards this issue. However, the complainant alleges that the decision of the newly elected Government to cancel the decision taken by the previous Government is totally arbitrary and unfair, and amounts to a breach of well-established labour and collective bargaining practices in the country. The Government replies that the decision to revoke the Rs.300 interim increment was taken in view of the difficult financial situation of the country, arising out of, inter alia, electoral measures announced on the eve of the general elections. The Government also states that it has agreed to implement the report of the "Heeralall" Committee in its totality; that the FCSU would be given an opportunity to present its views to the PRB during the next review of public service pay and grading structures; and that tripartite discussions on remunerations were supposed to be held in May 2001 within the National tripartite Commission.*

479. *As regards the country's financial situation, the Committee notes that the respective positions are both contradictory and unsupported by evidence. On the one hand, the Government merely states that the situation is difficult due, inter alia, to the electoral*

*measures announced on the eve of the general elections; on the other hand, the complainant states that economic indicators augur well. The Committee is not in a position to appreciate the reality of the situation, and recalls in any event that it is not mandated to decide on eventual acceptable amounts of financial restraints [see **Digest**, op. cit., para. 889].*

480. *As regards the substantive issue, the Committee considers as a matter of principle that stable and harmonious industrial relations imply a reasonable amount of legal certainty and continuity. If decisions made following a give-and-take process can be reneged upon, and if the social partners cannot trust that the word given, and **a fortiori** decisions officially made and signed, will be effectively implemented, that introduces on both sides a degree of uncertainty which is not conducive to a stable and predictable collective bargaining environment. Social partners should be able to rely on commitments made by a government in the context of social dialogue and that they will be respected and implemented: this is an essential prerequisite to developing and maintaining harmonious industrial relations.*

481. *The Committee wishes to recall here two principles relating to collective agreements and collective bargaining: agreements should be binding on the parties [see **Digest**, op. cit., para. 818] and the exercise of financial powers by the public authorities in a manner that prevents or limits compliance with collective agreements already entered into by public bodies is not consistent with the principle of free collective bargaining [see **Digest**, op. cit., para. 895].*

482. *The Committee further notes that the Pay Research Bureau (PRB) is going to review the pay and grading of public servants and that tripartite discussions on remuneration were supposed to be held in May 2001 within the National Tripartite Commission, where the MLC and the FCSU have been invited to participate. The Committee suggests that these are the forums where the parties could negotiate eventual adjustments, including by taking fully into account the Rs.300 interim increase, immediately or through progressive increments. The Committee emphasizes however that, in order to gain any credibility with workers and their representatives, this process must of necessity involve real and fully informed negotiations and that, notwithstanding any opinion submitted by the authorities responsible for assessing the financial consequences of draft collective agreements, the parties to collective bargaining should ultimately be able to conclude an agreement freely [see **Digest**, op. cit., para. 897]. The Committee requests the Government to keep it informed of the progress and results of these negotiations.*

483. *Lastly, the Committee notes that, according to the complainant, judicial proceedings have been launched in this regard, without however giving any detail, and that the Government did not reply on this aspect of the case. The Committee requests the complainant and the Government to provide information on these judicial proceedings and, as the case may be, to inform it of its outcome.*

Non-application of the agreement at Rose Belle Co.

484. *Concerning the second issue, the Committee notes that the Government's argument is twofold: (a) the irregularities allegedly contained in the agreement as regards the signing authority, its incomplete contents, and its non-binding effect; and, (b) the dire financial situation of the Rose Belle Company which would automatically entail the closure of the factory, if the expenditure resulting from the agreement were to be paid.*

485. *As regards the first argument, the Committee refers generally to the comments above on the necessary respect for agreements concluded. In addition, it recalls the importance it attaches to good faith negotiations for the maintenance of harmonious labour relations*

*[see **Digest**, op. cit., para. 814], and that genuine and constructive negotiations are a necessary component to establish and maintain a relation of confidence between the parties [see **Digest**, op. cit., para. 815].*

486. *As regards the second argument, the Committee points out that, for all practical purposes, the company here is a state enterprise. The Committee has had occasion in the past to state that collective bargaining in the public sector calls for verification of available resources in the various undertakings whose resources are dependent on state budgets, and that, as regards collective bargaining in such state-owned enterprises, provision should be made for a mechanism which ensures that both the trade union organization and the employer are adequately consulted and may express their point of view to the financial authority responsible for the wage policy of such enterprises [see **Digest**, op. cit., para. 898]. For this to take place however, it is essential that workers and their organizations be able to participate fully and meaningfully in designing an overall bargaining framework "which implies in particular that they must have access to all the financial, budgetary and other data enabling them to assess the situation on the basis of facts" [see **General Survey of the Committee of Experts**, ILC, 1994, para. 263]. On the basis of evidence available, the Committee is unable to determine whether such fully informed consultation took place in the circumstances, and whether this enterprise is empowered to negotiate and conclude collective agreements without the Government's approval.*

487. *The Committee therefore considers that it would be beneficial for all concerned that whatever agreement is ultimately concluded should rest on a sound basis, without any doubt as to its legal foundation and the conditions of its signing. The Committee considers it imperative that some balance be found here, so that the trade union may engage in meaningful and reliable collective bargaining about arrears, pay, working hours and other work conditions, with all the available relevant information, and therefore recommends that negotiations resume rapidly at the Rose Belle Sugar Estate, taking into account the above considerations. The Committee requests the Government to keep it informed of developments in this respect.*

The Committee's recommendations

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

(a) As regards the pay increase for public servants

(i) noting that discussions currently take place within tripartite national bodies on this issue, the Committee trusts that constructive negotiations, for which the bargaining agent should have full access to information, will be held, taking fully into account the increase decided by the previous Government, and requests the Government to keep it informed of the outcome of these discussions;

(ii) the Committee requests the complainant and the Government to provide information on the processing and outcome of the judicial proceedings filed concerning the cancellation of the pay increase.

(b) As regards the situation at the Rose Belle Sugar Estate, the Committee recommends that good faith bargaining resume on pending issues, with the bargaining agent being given full information on financial and other data

enabling them to assess the situation in full knowledge of the facts, and requests the Government to keep it informed of developments in this respect.

CASE NO. 2112

INTERIM REPORT

Complaint against the Government of Nicaragua presented by the Health Workers' Federation (FETSALUD)

Allegations: Anti-union dismissals and transfers; withdrawal of the check-off facility

489. The complaint is contained in two communications dated 16 January and 6 March 2001 from the Health Workers' Federation (FETSALUD). The Government replied in communications dated 8 March and 16 April 2001.

490. Nicaragua has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Workers' Representatives Convention, 1971 (No. 135).

A. The complainant's allegations

491. In its communication dated 16 January 2001, the Health Workers' Federation (FETSALUD) claims that the Government is conducting a campaign of repression and discrimination against the country's trade union movement, and against the leadership of FETSALUD in particular.

492. The Federation alleges that, on the spurious ground that they had refused to be transferred to the emergency zones established in the aftermath of Hurricane Mitch, a number of trade union officers (Oscar Léon Godoy, Elio Artola Navarrete, Roberto López Vargas, Harry Torrez Solís, José Dionisio Morales Castillo, Carlos Torrez Lacourt and Guillermo Porras Cortez), were deprived of their trade union immunity and dismissed (with Ministry of Labour approval) pursuant to two decisions, respectively dated 15 and 23 December 1998, by the Departmental Labour Inspectorate and the General Labour Inspectorate.

493. The officers in question having instituted *amparo* proceedings against both decisions on grounds of violation of trade union rights, on 18 September 2000 the Supreme Court of Justice handed down a final ruling (No. 164) that the Government, via the Labour and Health Ministries, had committed serious violations of freedom of association and trade union rights. The Court consequently ordered that the complainants be reinstated under the same conditions of employment and with the same responsibilities as those held at the time of their dismissal, and that they be paid their wages in arrears and the corresponding benefits. It also underscored that there were to be no retaliatory measures.

494. The Government rejected the above ruling on various grounds, all of which were declared inadmissible by the Supreme Court. In a decision dated 7 December 2000, the Office of the Procurator-General for Human Rights stated that the Minister of Health had infringed the officers' human rights in systematically refusing to comply with the ruling. In view of the foregoing, on 22 December the Health Minister officially announced the Ministry's recognition of the court order of reinstatement.

495. Four days later, however, the Health Ministry's Director of Human Resources informed the officers that they had been appointed to run hospitals in remote parts of the country, such as Karawala, Wiwilli, Nueva Guinea, Waslala and Siuna. The complainants regarded this as a measure of internal exile and geographical confinement of trade union officers, taken in retaliation for the judicial proceedings they had brought before the country's highest judicial body.

496. In a communication dated 6 March 2001, the complainant organization reports that on 28 February 2001 President Arnaldo Alemán issued an order via the written press withdrawing payroll check-off for public sector employees, thereby affecting deductions in favour of the unions, in violation of article 224 of the Labour Code.

B. The Government's reply

497. In a communication dated 8 March 2001, the Government declares that the Managua branch of the Departmental Labour Inspectorate approved the requests submitted by the directors of certain hospitals to terminate the contracts of employment of Dr. Gustavo Porras Cortez and other physicians. The Government adds that the individuals concerned appealed against the Inspectorate's decision within the prescribed deadlines and in compliance with the mandatory procedures.

498. Having specified that administrative action under the Labour Code is not subject to the strict provisions of ordinary law, the Government explains that the physicians in question were dismissed for refusing to comply with an order of transfer to areas devastated by Hurricane Mitch – on which ground the Labour Inspectorate challenged the appeal brought by the dismissed physicians, pursuant to articles 48(d) (reasons for termination of the employment relationship) and 231 (relative to trade union immunity, which stipulates that workers enjoying such immunity may not be dismissed without the Labour Ministry's prior authorization, based on a legitimate reason provided for in law and duly substantiated) of the Labour Code, among other legal sources.

499. The physicians concerned nevertheless initiated *amparo* proceedings before the Supreme Court of Justice, whose Constitutional Chamber declared their appeal receivable. The High Directorate of the Ministry of Justice thus invalidated the administrative decisions of the Managua branch of the Departmental Labour Inspectorate and the General Labour Inspectorate, which subsequently ordered that the physicians be reinstated in their posts under identical conditions of employment and that they be paid their wages in arrears along with the benefits to which they were entitled, in accordance with the ruling handed down by the Constitutional Chamber of the Supreme Court.

500. The Ministry of Health for its part raised the question of a conflict of jurisdiction, claiming that competence to hear such cases lay with the labour courts. The Labour Court of Second Instance requested the General Labour Inspectorate to refrain from further action and decided to refer the matter to the Supreme Court for decision on which of the two bodies had jurisdiction – the General Labour Inspectorate or the Labour Court of Second Instance.

501. The Government adds that Dr. Gustavo Porras Cortez is not exercising his duties as Secretary-General of FETSALUD, because the Federation ceased to operate after 13 November 2000 for failing to comply with the requirement to renew its executive committee within the time frame prescribed by the Regulations of Trade Union Associations.

502. In a communication of 16 April 2001, the Government indicates that the legislation provides for payroll check-off only if the union's member gives his or her express authorization to it.

C. The Committee's conclusions

503. *The Committee notes that the allegations in this case concern anti-union dismissals and transfers, and denial of payroll check-off. As regards the first allegation, it takes note that a number of trade union officers (Oscar Léon Godoy, Elio Artola Navarrete, Roberto López Vargas, Harry Torrez Solís, José Dionisio Morales Castillo, Carlos Torrez Lacourt and Guillermo Porras Cortez) were deprived of their trade union immunity and dismissed in December 1998, pursuant to decisions by the Departmental Labour Inspectorate and the General Labour Inspectorate, for failing to comply with the order of transfer to areas devastated by Hurricane Mitch.*

504. *The Committee further notes that the Supreme Court of Justice, after hearing the appeal lodged by the officers against the aforementioned decisions, handed down a final ruling (No. 164) on 18 September 2000, ordering that the complainants be reinstated without retaliation of any kind, under identical conditions of employment and with the same responsibilities as those held at the time of their dismissal, and that they be paid their wages in arrears and the corresponding benefits.*

505. *The Committee nevertheless observes that, according to the complainant organization, on 22 December 2000 – i.e. after the Ministry of Health had officially announced the dismissed physicians' reinstatement by court order – the Health Ministry's Director of Human Resources ordered the transfer of the officers to remote regions of the country. Consequently, the Committee recalls that one of the fundamental principles of freedom of association is that union officials should enjoy adequate protection against acts of discrimination in respect of their employment, such as dismissal, […] transfer or other prejudicial measures, 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 of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 724].*

506. *The Committee considers that the transferred trade union officers should be able to continue performing their duties as before, as long as those who elected them mandate them to do so. The Committee accordingly requests the Government to ensure that the transferred officers are not impeded in the exercise of their trade union activities, and to keep it informed in this regard.*

507. *The Committee further notes that the officers were deprived of their trade union immunity in December 1998 already and that, according to the Government, Dr. Gustavo Porras Cortez is not exercising his duties as Secretary-General of FETSALUD because the latter ceased operating after 13 November 2000 for failing to comply with the requirement to renew its executive committee within the time frame prescribed by the Regulations of Trade Union Associations. The Committee takes due note of the Government's statement but considers that such suspension of operation might simply be a logical consequence of the officers' dismissal.*

508. *The Committee finally takes note of the allegation that in February 2001 the Government ordered the suspension of payroll check-off for employees, in violation of article 224 of the Labour Code. In this connection, the Committee emphasizes that it is necessary to avoid withdrawal of the check-off facility, as this might lead to financial difficulties for trade union organizations and is not conducive to the development of harmonious industrial*

*relations [see **Digest**, op. cit., para. 435]. The Committee accordingly requests the Government to re-establish the check-off facility and to keep it informed in this respect.*

The Committee's recommendations

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

(a) Considering that the transferred trade union officers should be able to continue performing their duties as before, as long as those who elected them mandate them to do so, the Committee requests the Government to ensure that the transferred officers are not impeded in the exercise of their trade union activities, and to keep it informed in this regard.

(b) The Committee recalls that it is necessary to avoid withdrawal of the check-off facility, as this might lead to financial difficulties for trade union organizations and is not conducive to the development of harmonious industrial relations. Consequently, the Committee requests the Government to re-establish the payroll check-off facility and to keep it informed in this respect.

CASE NO. 2049

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

Complaints against the Government of Peru presented by
— the General Confederation of Workers of Peru (CGTP)
— the Unified Trade Union of Petroleum, Energy, Oil and Refinery Workers of the Grau Region (SUTPEDARG) and
— the Federation of Petroleum Workers of Peru (FETRAPEP)

Allegations: Refusal by the authorities to engage in collective bargaining in the public sector; decrees restricting the right to collective bargaining; detentions and bodily harm in the course of a strike

510. The Committee last examined this case at its November 2000 meeting and presented an interim report [see 323rd Report, paras. 431-456, approved by the Governing Body at its 279th Session (November 2000)]. The Government sent its observations in a communication dated 18 January 2001.

511. 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

512. During the previous examination of the case in November 2000 [see 323rd Report, paras. 431-456], the following allegations remained pending:

The members of the National Unified Federation of Health Workers (FENUTSSA) received a clear refusal from the Ministry of Health to negotiate upon the list of claims they presented this year, with the argument that, this year, the education sector required extra finances for the purpose of increasing the pay of administrative staff in various regions of the country. Similarly, the list of claims presented to the Ministry of Education by the United Education Trade Union of Peru (SUTEP), the Unified Trade Union of Education Centre Workers (SUTACE) and the National Federation of Education Administrative Workers (FENTASE) was disregarded upon grounds similar to those invoked in the health sector. All of this occurred despite the fact that salaries of public servants in health and education have been frozen for several years.

In its communication dated 31 August 1999, the CGTP alleges that on 19 July 1999 the Government handed over the railways of the state enterprise ENAFER S.A. to a consortium of private companies with domestic and foreign capital. This meant the dismissal of all workers already having undergone three staff rationalization operations involving more than 4,000 lay-offs since 1991. The dismissals constitute a case of abuse by the Government, given that a technical study by the World Bank indicates that the staff necessary for the enterprise to function is 1,859 workers. The new operator is only required to recruit former ENAFER S.A. workers to meet its own needs; the recruitment is for one year and may be carried out directly or through third parties. In this way, the majority of the 1,772 workers will lose their jobs when they are above 40 years of age and, also, the majority of those that manage to be recruited will be so by third parties. The CGTP points out that the offers made to the trade unions by ENAFER S.A. to bring about their acceptance of the terminations was to pay compensation to the tune of 186 nuevo sols (less than US$60) in respect of each year of service – which is equivalent to the present basic wage of an ENAFER S.A. worker with 25 to 30 years of service. This remuneration is lower than the minimum remuneration for the purpose of calculating compensation, which is currently set at 370 nuevo sols per year of service and an indemnity of $1,000. The enterprise's proposals were turned down.

The railway union representatives made a counter-proposal: recruitment guarantees for a minimum of five years; an increase in basic remuneration comprising 186 nuevo sols of basic wage, an "economic package" of 500 nuevo sols per month that had already been paid; a compensatory bonus of $5,000, etc. This counter-proposal was rejected and ENAFER S.A. sent out notarial letters to each of the 1,772 workers. These letters invited them to accept its proposal, setting a deadline of 19 August 1999 for the return of the signed letters, failing which they were threatened with termination as part of a collective dismissal already accepted by the Ministry of Labour, with the loss of the $1,000 indemnity and with not being included in the list of workers to be supplied to the new operator for recruitment purposes. The CGTP adds that, in these circumstances, it was agreed to call a strike on 20 August 1999. On 25 August, the Government initiated indiscriminate, unjustified and brutal repression of railway workers, their spouses and children camping out around the railway stations of Chosica (Lima), Cuzco and Arequipa. This violent repression left many people injured with contusions and instances of asphyxia, above all amongst the children and women on account of the large quantity of tear gas used by the police. In Cuzco, 75 workers were detained. On 26 August, there was industrial action in Lima, organized jointly by the telephone- and dockworkers' unions, as well as in Arequipa and Chosica to protest at the police repression. Meetings were held with the chairpersons of the National Congress Labour and Transport Committees as well as with the Deputy Minister of Transport although, to date, the Government's position has remained unchanged and it has declared the strike illegal.

In this respect, the Committee had urged the Government to send, without delay, its observations regarding (i) the refusal by the authorities to negotiate with the public sector

trade unions FENUTSSA, SUTEP, SUTACE and FENTASE, whose workers' wages had been frozen for several years; and (iii) the declaration that a strike in ENAFER S.A. was unlawful; and physical attacks upon and detention of strikers.

513. In addition, the Committee recalls that the complainants had criticized Emergency Decree No. 011-99, Ministerial Resolution No. 075-99-EF/15 and Emergency Decree No. 004-2000 (for making pay increases in the framework of collective bargaining subject to each worker's productivity), and that in this respect the Committee had requested the Government to indicate whether those affiliates covered by the collective agreement and who had received a negative evaluation were entitled to the special bonus negotiated by the parties.

B. The Government's reply

514. In its communication dated 18 January 2001, as regards the alleged refusal by the competent authorities to negotiate with the public sector trade unions FENUTSSA, SUTEP, SUTACE and FENTASE – the former being a health sector union and the rest being unions in the education sector – the Government states that: (1) in compliance with the Committee's recommendations, in the case of the National Unified Federation of Health Workers (FENUTSSA), the Ministry of Health has been asked to state why it has not negotiated with this trade union, in order to be able to provide more complete information; and (2) likewise, in the cases of the SUTEP, SUTACE and FENTASE trade unions, the Ministry of Education has been requested for information concerning the refusal to negotiate with these trade unions.

515. The Government adds that the collective rights of public servants are protected by the Constitution, as stated in article 42 of the Political Constitution of Peru, and that the right of public sector employees to collective bargaining is protected by sections 24 and 25 of Presidential Decree No. 03-82 PCM. The Government states further that any person who considers that the abovementioned provisions have not been complied with may assert his or her rights through the various mechanisms provided for by the legal system. The Government denies that the pay of public administration employees has been frozen, since some increases have been granted through provisions enacted by the Government itself and, moreover, it should be borne in mind that unilateral increases in these workers' wages depends on the necessary budgetary resources being available.

516. As regards the alleged declaration that the strike held in ENAFER S.A. beginning on 20 August 1999 was unlawful, the Government states that the ENAFER S.A. enterprise had informed the Inspections Subdirectorate of the Ministry of Labour and Social Welfare on 20 August 1999 that it had read in a leaflet of the National Federation of Railway Workers of Peru that an open-ended general strike beginning on 20 August 1999 had been declared. According to the Government, the alleged reason for the strike was a mass lay-off allegedly under the pretext of handing over ENAFER S.A. to Ferrocarriles del Perú, adding that the industrial action would affect the Callao, Lima, Chosica, La Oroya, Huancayo and Cerro de Pasco sections. The Government states further that faced with this, the enterprise requested that this industrial action be declared illegal for not meeting the requirements laid down in Legislative Decree No. 25593, the Collective Labour Relations Act, and the regulations made under it, Presidential Decree No. 011-92-TR, requesting that an on-site inspection be carried out at the Desamparados station, located at No. 201, Ancash Street, Lima, and at the Chosica station.

517. The Government states that when the labour administration authority carried out the inspections at the Desamparados and Chosica stations, it noted that there was a stoppage of work in both places, and therefore the open-ended general strike begun on 20 August 1999 by the 306 employees at the Lima station and 101 unionized employees at the Chosica

station, belonging to the ENAFER enterprise was declared illegal by Subdirectorate Order No. 302,744-99-DRTSPL-DPC-SDIHSO-T2, issued in accordance with section 81 of Legislative Degree No. 25593, on the grounds that the requirement laid down in clause (c) of section 73 of the Collective Labour Relations Act and clause (a) of section 65 of the regulations made under it had not been met. According to the Government, it is clear from the above that this strike was declared illegal in accordance with the law, owing to failure to meet the requirements for carrying it out, such as notification of the employer and the labour administrative authority. As regards the alleged physical attacks on and detention of strikers, the Government points out that it is unable to comment on this, since the alleged victims have not been identified, neither have the acts been proven; the Government states that in any case, if these acts did occur, the victims have the right to institute legal proceedings with the judiciary.

518. As regards the question whether the workers covered by the collective agreement who have received a negative evaluation are entitled to the special bonus negotiated by the parties, the Government states that the award of the single productivity bonus requires, under other conditions, that the amount be set in accordance with the worker's level of responsibility, contribution and commitment, as reflected in an evaluation process. The evaluation criteria must be determined by the owner, directorate, or board of directors of the responsible enterprise. Given that this is a productivity bonus, it is important to evaluate the worker's output in order for it to be awarded, as it is based precisely on the worker's output and production.

C. The Committee's conclusions

519. *As regards the alleged refusal of the authorities to negotiate with the following public sector trade unions: the National Unified Federation of Health Workers (FENUTSSA), the United Education Trade Union of Peru (SUTEP), the Unified Trade Union of Education Centre Workers (SUTACE) and the National Federation of Education Administrative Workers (FENTASE), whose salaries, according to the complainants, have been frozen for several years, the Committee notes that, according to the Government: (1) the Ministry of Health (in the case of FENUTSSA) and the Ministry of Education (in the case of SUTEP, SUTACE and FENTASE) have been requested to state why they did not negotiate with the abovementioned trade unions; (2) the public sector workers' right to collective bargaining is protected by Presidential Decree No. 03-82-PCM and any person who considers that its provisions have not been complied with may assert his or her rights through the machinery provided for by the legal system; and (3) the salaries of public administration workers have not been frozen; some increases have been granted. In this respect, the Committee recalls that Article 4 of Convention No. 98 provides that measures appropriate to national conditions shall be taken, where necessary, 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 regulation of terms and conditions of employment by means of collective agreements. In these circumstances, the Committee requests the Government to take the necessary measures to encourage and promote collective bargaining with the trade unions concerned, in particular regarding the matters within the competence of the Ministries of Health and Education.*

520. *As regards the alleged declaration by the administrative authorities that a strike held in August 1999 in the ENAFER S.A. enterprise (railways sector) was illegal, the Committee notes that, according to the Government, the strike was declared illegal because it did not meet the requirements laid down in section 73(c) of the Collective Labour Relations Act and in section 65(a) of the regulations made under it (notification of the strike to the employer and the administrative authorities). The Committee has in the past accepted that certain prerequisites can be required in order to render a strike lawful, provided they are reasonable, in particular the obligation to give prior notice [see* ***Digest of decisions and***

***principles of the Freedom of Association Committee**, 4th edition, 1996, paras. 498 and 502]. In this respect, the Committee recalls that transport in general, including railways, does not constitute essential services in the strict sense of the term (that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population), and therefore the workers in this sector should enjoy the right to strike, and emphasizes the importance which it attaches to the principle that "responsibility for declaring a strike illegal should not lie with the Government, but with an independent body which has the confidence of the parties involved" [see **Digest**, op. cit., 4th edition, 1996, para. 522] and requests the Government to take measures so that in future the determination of the legality of strikes be carried out by an independent body which has the confidence of the parties involved and not by the administrative authority.*

521. *As regards the alleged physical attacks upon and detention of strikers during the strike carried out by the ENAFER S.A. workers, mentioned in the previous paragraph, the Committee notes that the Government states that it is unable to comment on these allegations, since the victims have not been identified and that in any case, if these acts did occur, the victims have the right to institute legal proceedings. In this respect, observing that the complainants alleged that violent police repression had been carried out around the Chosica, Cuzco and Arequipa railway stations against the workers and their families and that other trade unions had protested against these acts, the Committee deplores the fact that the Government has not instituted an inquiry concerning these allegations. In these circumstances, the Committee urges the Government to take steps to ensure that an independent inquiry be instituted into the alleged acts of violence, with a view to clarifying the facts, determining responsibility and punishing those responsible. The Committee requests the Government to keep it informed in this respect.*

522. *As regards Emergency Decree No. 011-99, Ministerial Resolution No. 075-99-EF/15 and Emergency Decree No. 004-2000 criticized by the complainants (for making pay increases in the framework of collective bargaining subject to each worker's productivity) and the Committee's request to indicate whether those workers covered by the collective agreement and who have received a negative evaluation are entitled to the special bonus negotiated by the parties, i.e. whether they would be able to receive pay increases, the Committee notes that, according to the Government, given this is a productivity bonus (pay increase), it is important to evaluate the worker's output in order for it to be awarded, since it is based precisely on the worker's output and production. In this respect, the Committee emphasizes that provisions which, through a decree by the executive branch or through legislation, impose productivity criteria on the parties to bargaining for the award of pay increases to the workers and exclude general pay increases limit the principle of free and voluntary collective bargaining enshrined in Convention No. 98. In these circumstances, the Committee requests the Government to repeal the decrees and resolution criticized by the complainants, so as to guarantee that the parties themselves decide whether they wish to include productivity criteria in determining wages in collective bargaining.*

The Committee's recommendations

523. ***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 encourage and promote collective bargaining with the trade unions concerned in particular regarding the matters within the competence of the Ministries of Health and Education.

(b) The Committee requests the Government to take measures so that in future the determination of the legality of strikes is carried out by an independent body which has the confidence of the parties concerned and not by the administrative authority.

(c) The Committee urges the Government to take steps to ensure that an independent inquiry is instituted into the alleged acts of violence committed during the strike held in August 1999 against the workers of ENAFER S.A. (violent police repression around the Chosica, Cuzco and Arequipa stations against workers and their families) with a view to clarifying the facts, determining responsibility and punishing those responsible. The Committee requests the Government to keep it informed in this respect.

(d) The Committee requests the Government to repeal Emergency Decree No. 011-99, Ministerial Resolution No. 075-99-EF/15 and Emergency Decree No. 004-2000 so as to guarantee that the parties themselves decide whether they wish to include productivity criteria in determining wages in collective bargaining.

CASE NO. 2098

INTERIM REPORT

Complaint against the Government of Peru presented by the General Confederation of Workers of Peru (CGTP)

Allegations: Dismissal of a trade union official, request for the cancellation of the registration of a trade union and refusal to bargain collectively

524. The complaint is set out in a communication from the General Confederation of Workers of Peru dated 14 August 2000. The organization sent supplementary information in a communication dated 4 October 2000 and new allegations in communications dated 23 and 27 April 2001. The Government sent its observations in communications dated 12 September 2000 and 23 January 2001.

525. 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

526. In its communications dated 14 August and 4 October 2000, the General Confederation of Workers of Peru (CGTP) alleges that on 12 May 1999 the Continental Cinematographic Enterprise arbitrarily dismissed Mr. Amílcar Zelada, General-Secretary of the Trade Union of Ticket Sellers and Ushers in Cinematographic Enterprises, by forcing him to take unpaid leave although he had already been on holiday. The complainant states that this dismissal disregards the trade union protection stipulated in Industrial Relations Act No. 25593 and its Regulations and Presidential Decree D11-92-TR which recognizes immunity against the dismissal of trade union officials. According to the complainant this dismissal is an open and obvious reprisal for Mr. Amílcar Zelada's trade union activities as

the enterprise had initiated proceedings for the cancellation of trade union registration before the Ministry of Labour in order to avoid the responsibility of collective bargaining. The CGTP also attaches a copy of a request for the cancellation of the trade union's registration in 1996 submitted by the enterprise on the grounds that the union did not have the minimum number of members required by law (100) to establish a trade union that encompasses workers from a number of enterprises. For this reason, in 1996 the enterprise filed its opposition before the Ministry of Labour to the initiation of the direct exchange stage and to bargaining collectively with the trade union and returned its statement of claims. On 12 September 2000 the enterprise did not attend the conciliation hearing.

527. With regard to the dismissal of the trade union official Mr. Amílcar Zelada, according to the information provided by the complainant, the judicial authorities of first and second instance rejected the claims for the reinstatement of the official (the case is presently before the Supreme Court) and, with regard to the allegations of disregard of trade union immunity, the judicial authorities state that "the complainant worker did not comply with the repeated orders given by the employer to take physical rest in the form of a holiday". The documentation from the enterprise, as provided by the complainant, also contains the following statement:

> What the complainant sought to achieve with his apparent defiance was to set me up with his refusal to effectively use the rest period in order later to allege that he was made to work against his will or without wanting to and to demand that I pay him triple holiday compensation which is the penalty provided by law when a worker is not granted paid leave in the year following his entitlement to the right … As can be seen from the facts described, the serious offence he committed has nothing to do with his status of trade union representative but specifically with an incident of misconduct at work.

528. In its communications of 23 and 27 April 2001, the CGTP states that three companies have requested that the unions' registrations be cancelled, and that violations of collective bargaining are occurring in another enterprise.

B. The Government's reply

529. In its communications of 12 September 2000 and 23 January 2001, the Government states that the Peruvian legal system protects trade union rights and establishes mechanisms to safeguard them and ensure they are observed. Article 28(1) of the Constitution establishes that the State recognizes and guarantees freedom of association, encourages collective bargaining and promotes peaceful methods of settling labour disputes. Furthermore, sections 2, 3 and 4 of Legislative Decree No. 25593, the Industrial Relations Act, which contains special provisions relating to freedom of association, stipulate as follows:

> Article 2. The State recognizes the right of workers to unionization, without prior authorization, for the study, development, protection and defence of their rights and interests and for the social, economic and moral advancement of their members.
>
> Article 3. Membership is free and voluntary. The employment of a worker cannot be made conditional on membership or non-membership; an employee cannot be obliged to join a union nor can he be prevented from doing so.
>
> Article 4. The State, employers and the representatives of both shall abstain from all acts likely to constrain, restrain or diminish, in any way, the right of unionization of workers and to intervene in any way in the establishment, administration or support of the trade union organizations that they constitute.

530. More specifically, and in accordance with the principles of the ILO in respect of freedom of association, section 30 of Legislative Decree No. 25593 establishes the following for the case of trade union officials:

> Article 30. Trade union immunity guarantees to certain workers that they will not be dismissed or transferred to other establishments belonging to the same enterprise without duly proven just cause or without their acceptance.
>
> The requirement of the worker's acceptance is not required when his transfer will not prevent him from performing his duties as trade union official.

531. Nevertheless, the Government recalls that the ILO has specified that "the principle that a worker or trade union official should not suffer prejudice by reason of his or her trade union activities does not necessarily imply that the fact that a person holds a trade union office confers immunity against dismissal irrespective of the circumstances".

532. Section 29 of the consolidated text established by Legislative Decree No. 738, the Act governing productivity and labour competitiveness, approved by Presidential Decree No. 003-97-TR, provides as follows:

> Section 29. A dismissal on the following grounds is void:
>
> (a) affiliation to a trade union or participation in trade union activities;
>
> (b) being a candidate to become a workers' representative or acting or having acted in this capacity;
>
> […]

In accordance with the quoted provision, section 34 of the Act establishes that in cases of invalid dismissal, if the worker's claim is declared founded, he or she will be reinstated in the job unless the worker opts for the compensation established in section 38 of the Act. This compensation is equivalent to one and a half ordinary monthly wages for each full year of service up to a maximum of 12 years.

533. Referring more specifically to the complaint, the Government indicates that the trade union official lodged an application for annulment of dismissal before the judiciary, with the case currently pending before the division of social and constitutional legislation of the Supreme Court of Justice of the Republic where an application for judicial review has been lodged. The Government indicates that the complainant states in its complaint that "the expressly arbitrary decision of the enterprise contravenes a number of provisions of national legislation which in fact protect workers against any act of anti-union discrimination rendering the dismissal void and its purpose without any legal effect, these provisions having been clearly cited by the worker in his judicial application to annul the dismissal".

534. Without attempting to evaluate the alleged arbitrariness of the dismissal – as this matter comes under legal jurisdiction – the Government emphasizes that the claimant bases himself on the assumption that internal legislation, in other words the legal framework in force in respect of freedom of association in Peru, protects the worker, in particular from acts of anti-union discrimination.

535. In this specific case, the trade union official affected had access to and made use of mechanisms to ensure respect for his trade union rights, and consequently a procedure to annul the dismissal is currently under way and is pending review before the division of constitutional and social legislation of the Supreme Court of Justice.

536. It must be remembered in this case that, when a worker makes an application to the judiciary, a limit is set for the jurisdiction of the public administration and the Government which cannot interfere in matters submitted to the courts, in accordance with the principle of the separation of powers. This principle is laid down in the Constitution. It means in effect that the judiciary is autonomous and enjoys total independence in issuing its decisions.

537. As regards the alleged attempt to avoid responsibility for collective bargaining by the enterprise Continental Cinematography SRL, the Ministry of Labour and Social Welfare has conducted the corresponding investigations. Once they were concluded, it was found that the case relating to the cancellation of trade union registration was initiated in conjunction with the application made to the enterprise by the Trade Union of Ticket Sellers, Ticket Collectors and Ushers of Cinemas for the approval of their statement of claims for 1995-96, with the indication that the trade union had a total of 57 members. As it is an occupational trade union, made up of workers from different enterprises who perform the same job, occupation or speciality, in accordance with section 5(c) of Legislative Decree No. 25593, the Industrial Relations Act, it must have a minimum of 100 members. In effect, section 14 of the Act provides as follows:

> Section 14. To be established and remain operational, enterprise trade unions must have at least 20 members while trade unions of other types must have at least 100 members.

538. The action filed with the general registration and proficiency department is currently being dealt with and the cancellation of the registration by the labour authority is subject to whether or not the trade union in question has the minimum number of members required under the prevailing regulations. The labour inspection unit is undertaking an inquiry in order to determine the number of members of the union in question. Consequently, until a decision has been made concerning the cancellation of the trade union registration, the Government considers that it is not possible to evaluate the matter of the enterprise's alleged avoidance of the responsibility to bargain collectively.

C. The Committee's conclusions

539. *The Committee observes that in this case the complainant has alleged the arbitrary, illegal and anti-union dismissal of the trade union official Mr. Amílcar Zelada, for having refused to take unpaid leave as ordered by the enterprise when he had already taken leave. According to the complainant, this dismissal occurred in the context of the enterprise requesting the cancellation of the registration of the trade union since 1996 and refusing to bargain with it, maintaining that it does not have the legal minimum number of 100 members.*

540. *With regard to the dismissal of the trade union official Mr. Amílcar Zelada, the Committee notes that, according to the information provided by the complainant, the judicial authorities of first and second instance rejected the claims for the reinstatement of the official and observes that, with regard to the allegations of disregard of trade union immunity, the judicial authorities state that "the complainant worker did not comply with the repeated orders given by the employer to take physical rest in the form of a holiday". A document from the enterprise, as provided by the complainant, states that the complainant worker sought through his apparent defiance effectively to use the rest period in order later to allege that he was made to work against his will or without wanting to and to demand that he be paid triple holiday compensation which is the penalty provided by law. Moreover, according to the document, the facts described illustrate that the serious offence he committed had nothing to do with his status of trade union representative but specifically with an incident of misconduct at work.*

541. *In these circumstances, in order to reach a decision in full knowledge of the facts, the Committee asks the Government to keep it informed of the ruling handed down by the Supreme Court concerning the dismissal of the trade union official Mr. Amílcar Zelada.*

542. *With respect to the proceedings initiated by the enterprise before the Ministry of Labour to cancel the registration of the trade union on the grounds that it does not have the minimum legal number of 100 worker members established for non-enterprise trade unions (but only 57) and with regard to the enterprise's refusal to bargain, the Committee notes the Government's statement that the cancellation proceedings are pending and will depend on the trade union proving it has the appropriate number of members, determined by the labour inspection; it is only on the basis of the decision adopted in this respect that it will be possible to evaluate the enterprise's alleged avoidance of responsibility to bargain.*

543. *In this connection, the Committee wishes to bring to the Government's attention that the Committee of Experts on the Application of Conventions and Recommendations has for a number of years been criticizing "the requirement of a high number of workers (100) to form trade unions by branch of activity, occupation and for various occupations (section 14 [of the Industrial Relations Act])" (see Report III, Part 1A, ILC, 1999, page 270). The Committee has itself stated that "a minimum requirement of 100 workers to establish unions by branch of activity, occupation or for various occupations must be reduced in consultation with the workers' and employers' organizations"* ***[Digest of decisions and principles of the Freedom of Association Committee,*** 1996, para. 254]. *In these circumstances, the Committee requests the Government to take steps to amend the legislation with a view to reducing the minimum number of workers established by law to constitute non-enterprise trade unions, and urges the Government not to cancel the registration of the Trade Union of Ticket Sellers and Ushers in Cinematographic Enterprises and clearly to recognize the right to collective bargaining of this trade union with cinematographic enterprises, at least on behalf of its members. The Committee requests the Government to keep it informed in this regard.*

544. *The Committee requests the Government to provide its observations concerning the recent communications of the CGTP, dated 23 and 27 April 2001.*

545. *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

546. ***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 the ruling handed down by the Supreme Court concerning the dismissal of the trade union official, Mr. Amílcar Zelada.

(b) The Committee requests the Government to take measures to amend the legislation with a view to reducing the minimum number of workers established by law to constitute non-enterprise trade unions, and urges the Government not to cancel the registration of the Trade Union of Ticket Sellers and Ushers in Cinematographic Enterprises and clearly to recognize the right to collective bargaining of this trade union with cinematographic enterprises, at least on behalf of its members. The Committee requests the Government to keep it informed in this regard.

(c) The Committee requests the Government to provide its observations concerning the recent communications of the CGTP, dated 23 and 27 April 2001.

(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. 2079

INTERIM REPORT

Complaint against the Government of Ukraine presented by the Volyn Regional Trade Union Organization of the All-Ukraine Trade Union "Capital/Regions"

Allegations: Adoption of legislation contrary to freedom of association; denial of legal recognition to trade unions harassment and intimidation of trade union activists

547. The Committee has already examined the substance of this case at its November 2000 meeting when it submitted an interim report to the Governing Body [see 323rd Report, paras. 525-543].

548. The Government provided further information in communications dated 7 and 30 November, 14 December 2000 and 29 March 2001. The complainant forwarded additional information in a communication dated 1 May 2001.

549. Ukraine 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

550. At its meeting in November 2000, in the light of the Committee's interim conclusions, the Governing Body approved the following recommendations:

(a) Considering that sections 11 and 16 of the Act on "Trade Unions, their Rights and Safeguard of their Activities" are in violation of Convention No. 87 and taking note of the recent decision of the Ukrainian Constitutional Court on the unconstitutionality of certain provisions of the said Act, the Committee requests the Government to take all necessary measures to bring sections 11 and 16 of the said Act into full conformity with the provisions of that Convention and to keep it informed in this regard.

(b) The Committee requests the Government to take the necessary measures to ensure that, once the registration formalities have been observed, the trade unions at the Volynoblenergo and Lutsk Bearing Plant enterprises do acquire legal recognition and are able to exercise freely their activities.

(c) The Committee regrets that the Government has not provided any information on the allegations of harassment, intimidation and initiation of

legal proceedings against the leaders of the unions at the Volynoblenergo and Lutsk Bearing Plant enterprises and requests it to transmit its observations on this aspect of the case without delay. It also requests the Government to transmit its observations on all the new allegations submitted by the complainant in its most recent communication.

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

B. New reply from the Government

551. In its communication of 7 November 2000, the Government indicates that the ruling of the Constitutional Court of Ukraine which declared unconstitutional certain provisions of sections 11 and 16 of the Act on "Trade Unions, their Rights and Safeguard of their Activities" will make it possible to eliminate the provisions which were in contradiction with the provisions of Convention No. 87. In this regard, the Ministry of Labour and Social Policy has requested technical and advisory assistance from the ILO in order to put the provisions of the said Act into full conformity with Convention No. 87. Following this request, an ILO technical advisory mission will visit the country sometime this spring.

552. As regards the registration of the Volyn Regional Trade Union Organization of the All-Ukraine Trade Union "Capital/Regions" and its affiliates at the Volynoblenergo and Lutsk Bearing Plant enterprises, the Government explains that trade union affiliates obtain legal personality on the basis of the by-laws of a registered All-Ukraine Trade Union. In this regard, the Government indicates that the All-Ukraine Trade Union "Capital/Regions" was registered by the Ministry of Justice on 6 October 2000. However, in its most recent communication of 29 March 2001 the Government indicates that the Volynskaya Province division of the All-Ukraine Trade Union "Capital/Regions" has not yet been registered with the local authorities, since the required documents have not been submitted.

553. As regards the remaining allegations of harassment, intimidation and initiation of legal proceedings against trade union leaders, the Government provides the following information. Concerning the case of Mr. Vdovichenko of the Independent Trade Union at the Lutsk Bearing Plant enterprise, the Government explains that following a complaint brought by the Board of Directors of the said plant, the district court of Volynskaya Province ruled that in April 2000 Mr. Vdovichenko was liable for causing moral harm. Furthermore, the Government indicates that following a meeting of the union members at the plant in December 2000, the decision was taken to suspend Mr. Vdovichenko from his post as union president and to forbid him to speak on the union's behalf. It was also decided during that meeting to form a new trade union, draw up by-laws and prepare for a constituent assembly. On 17 January 2001, the constituent assembly of members of the Free Trade Union took place and it was decided that another free trade union "Metallist" should be established to represent the workers at the Lutsk Bearing Plant. Union by-laws were adopted, a president and officers were elected, and representatives were appointed to sit on the committee responsible for negotiating a collective agreement for 2001. Concerning the dismissal of Mr. Shavernev, trade union activist at the Lutsk Bearing Plant enterprise, the Government explains that he was dismissed for absenteeism on 14 June 2000 in accordance with section 40(4) of the Ukraine Labour Code. Mr. Shavernev initiated legal proceedings to challenge the decision of the enterprise but in September 2000, the Kivertsovskij district court in Volynskaya region dismissed his case. As regards the attack on Mr. Chupikov, leader of the Free Trade Union, at the Voltex enterprise, the Government indicates that according to the Ministry of the Interior, Mr. Chupikov and his wife were assaulted and robbed at around midnight on 20 October 1999 in the city of Lutsk. The local authorities have initiated criminal investigations on 31 December 1999

and 27 August 2000 in accordance with section 141(2) of the Penal Code. These investigations, which are trying to identify and punish the offenders, are being supervised by the Ministry of the Interior. The Government indicates that it will keep the Committee informed of any developments concerning this incident.

554. Finally, as concerns the alleged unfair dismissal of 1,150 workers in 1999, the Government explains that in accordance with instruction No. 04-471-98 issued on 1 March 2000, the matter was examined by the public prosecutor of the city of Lutsk, who concluded that the dismissals in question had not contravened the law.

C. The Committee's conclusions

555. *The Committee recalls that this case related to two sets of allegations, namely allegations of a legislative nature related to certain provisions of the Act on "Trade Unions, their Rights and Safeguard of their Activities", and allegations of a factual nature related to the denial of legal recognition of trade unions, harassment and intimidation of trade union activists as well as unlawful dismissals.*

556. *With regard to the allegations of a legislative nature, the Committee takes note with interest of the ruling of the Constitutional Court of Ukraine which declared unconstitutional certain provisions of sections 11 and 16 of the Act on "Trade Unions, their Rights and Safeguard of their Activities", as well as the Government's willingness to put these provisions into full conformity with Conventions Nos. 87 and 98. The Committee also takes due note of the Government's request for technical assistance on this issue following the Committee's offer and understands that the Office has undertaken the necessary arrangements. The Committee asks the Government to keep it informed of the measures effectively taken to bring the abovementioned Act into full conformity with Conventions Nos. 87 and 98.*

557. *As regards the registration of the Volyn Regional Trade Union Organization of the All-Ukraine Trade Union "Capital/Regions" and its affiliates at the Volynoblenergo and Lutsk Bearing Plant enterprises, the Committee notes the registration, on 6 October 2000, of the All-Ukraine Trade Union "Capital/Regions", which also entails that its affiliates have obtained legal personality. However, the Committee notes that according to the Government's most recent communication, the Volynskaya Province division of the All-Ukraine Trade Union "Capital/Regions" has not yet been registered with the local authorities, since the required documents have not been submitted. The Committee trusts that the said union will be registered without delay as soon as it has complied with the required formalities and asks the Government to keep it informed in this regard.*

558. *As regards the remaining allegations of harassment, intimidation and initiation of legal proceedings against trade union leaders, the Committee notes firstly that concerning the case of Mr. Vdovichenko at the Lutsk Bearing Plant enterprise, the District Court of Volynskaya Province division ruled in April 2000 that Mr. Vdovichenko was liable for causing moral harm at the Lutsk Bearing Plant. Furthermore, the Committee notes that following a meeting of the union members of the plant, Mr. Vdovichenko was suspended as president of the union and that at a later constituent assembly a new union was formed and new officials were elected. In this regard, the Committee requests the complainant to provide more information on the current trade union situation at the Lutsk Bearing Plant. Concerning the case of Mr. Shavernev, the Committee takes note of the fact that while he challenged his dismissal, the district court dismissed his case in September 2000. With regard to the case of Mr. Chupikov, the Committee notes that the assault he and his wife were victims of is under investigation. The Committee asks the Government to keep it informed of the outcome of the investigation and hopes that the perpetrators will be punished. The Committee regrets that the Government has not provided any information*

on the trade union leader at the Volynoblenergo enterprise, Mr. Jura, and requests it to keep it informed on this aspect of the case. Finally, the Committee asks the Government to put an end to all acts of harassment and intimidation of trade unionists. It asks the Government to keep it informed in this regard.

559. *With regard to the dismissal of a high number of workers in 1999 at the Lutsk Bearing Plant enterprise, the Committee notes that the complainant had mentioned the case of 223 workers who were laid off at the end of 1999 without the union being informed of it, while the Government refers to 1,150 dismissed workers whose case was examined by the public prosecutor of the city of Lutsk, who later concluded that the said dismissals had not contravened the law. In these conditions, the Committee considers that it does not have enough elements from the complainant to conclude that the dismissals implied a violation of trade union rights and therefore requests it to provide further information on this aspect of the case. Finally, the Committee asks the Government to send its observations concerning the allegations contained in the complainant's most recent communication.*

The Committee's recommendations

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

(a) Noting with interest the ruling of the Constitutional Court of Ukraine and the Government's intention to comply with that ruling as well as its request for ILO technical assistance on this issue, the Committee asks the Government to keep it informed of the measures effectively taken to bring the Act on "Trade Unions, their Rights and Safeguard of their Activities" into full conformity with the provisions of Conventions Nos. 87 and 98.

(b) Concerning the case of Mr. Vdovichenko, the Committee requests the complainant to provide more information on the current trade union situation at the Lutsk Bearing Plant. With regard to the case of Mr. Chupikov, victim of an assault which is under investigation, the Committee requests the Government to keep it informed of the outcome of this case as soon as the decision is handed down. The Committee also asks the Government to keep it informed on the situation of Mr. Jura, trade union leader at the Volynoblenergo enterprise.

(c) The Committee notes the recent registration of the All-Ukraine Trade Union "Capital/Regions" and the acquisition of legal personality of its affiliates. However, noting that the Volynskaya Province of the All-Ukraine Trade Union "Capital/Regions" has not yet been registered with the local authorities since the required documents have not been submitted, the Committee trusts that the said union will be registered without delay, as soon as it has complied with the required formalities and asks the Government to keep it informed in this regard. In addition, the Committee requests the Government to put an end to all acts of harassment and intimidation of trade unionists. It asks the Government to keep it informed in this regard.

(d) With regard to the dismissal of a high number of workers in 1999 at the Lutsk Bearing Plant, the Committee requests the complainant to provide further information on this aspect of the case.

(e) The Committee asks the Government to send its observations concerning the allegations contained in the complainant's most recent communication.

CASE NO. 2087

INTERIM REPORT

Complaint against the Government of Uruguay presented by the Association of Bank Employees of Uruguay (AEBU)

Allegations: Anti-union dismissals; irregular denouncement of a collective agreement; threats of dismissal

561. The complaint in this case is contained in the communication from the Association of Bank Employees of Uruguay (AEBU) of June 2000. The Government sent its observations in a communication dated 28 September 2000.

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

A. The complainant's allegations

563. In its communication of June 2000, the Association of Bank Employees of Uruguay (AEBU) alleges that members of the provisional trade union committee of workers of the Savings and Loans Cooperative of Officials of the Armed Forces (CAOFA) were dismissed for having attempted to form an enterprise union, affiliated to the AEBU. The AEBU states that an enterprise union previously existed called the Association of CAOFA Officials (AFUCA), which had signed a collective labour agreement with the enterprise that is still in force, which the enterprise maintains that it has denounced. According to the complainant, in January 1999, the leaders of AFUCA, Nelson Corbo and Eduardo Cevallos, along with other workers, proposed that this trade union become a member of the AEBU. When the enterprise became aware of the intentions of its unionized workers, it refused to recognize the enterprise union and the collective labour agreement in force. Furthermore, in a memo issued to staff dated 21 December 1999, the enterprise denounced the agreement and took over the payment of contributions being deducted from various workers to pay off loans made against salaries granted by the Banking Retirement and Pension Fund.

564. The complainant states that for the above reasons, and since CAOFA workers were already affiliated to the AEBU, it requested a meeting with the management of the enterprise, but the latter did not permit its workers to attend, claiming that it did not recognize their membership of the banking union. Faced with this situation, the AEBU appealed to the National Directorate of Labour (DINATRA) to summon the enterprise in order to deal with issues that could not be discussed owing to its refusal to recognize that its workers were members of the AEBU delegation, and to address this latter issue, which undoubtedly entailed acts of anti-union discrimination.

565. The AEBU alleges that on 20 January 2000, only two days before the meeting with the AEBU delegation, Mr. Nelson Corbo, head of the AEBU provisional committee at CAOFA, was dismissed in another obvious act of anti-union discrimination. On 24 January 2000, a hearing was held at the National Directorate of Labour; however the

enterprise did not attend. On 26 January 2000, a new hearing was held at DINATRA and was attended by the enterprise, which denied that Mr. Nelson Corbo had been dismissed on trade union grounds, alleging that the AEBU had at no time communicated a list of CAOFA workers affiliated to the banking union. This hearing was attended by the AEBU delegation, CAOFA workers affiliated to the AEBU, namely Nelson Corbo (dismissed days earlier), Eduardo Cevallos, Gonzalo Ribas, Andrea Oyharbide, Gerardo Olivieri and Marcelo Almada. This hearing took place at around midday and later that afternoon all members of the AEBU delegation employed at CAOFA were dismissed.

566. The complainant adds that the enterprise subsequently threatened all workers that anyone who confirmed in writing their intention to remain affiliated to the AEBU, in order to have union contributions deducted from their salaries, would be dismissed just like the other workers who had been members of the provisional committee. According to the AEBU, this pressure was successful, given that only three workers confirmed their affiliation to the AEBU: Sandra Suarez, Carina Sanzone and Virginia Orrego. With regard to Ms. Virginia Orrego, it should be noted that on 21 February 2000 she was transferred from the board secretariat to a position involving serving the public, and was forced to take her regulatory annual leave, which she is currently doing.

567. Finally, the complainant states that the enterprise cannot claim that the dismissals were due to redundancies or service requirements, given that the dismissed workers were subsequently replaced with newly employed staff.

B. The Government's reply

568. In its communication of 28 September 2000, the Government states that upon the request of AEBU members, the Collective Bargaining Department of the National Directorate of Labour summoned CAOFA to a hearing on 24 January 2000 to resolve three difficult situations, which are clearly described in the official record produced by the abovementioned department. By virtue of the content of this official record, the aim of the meeting was to bring the parties together to resolve the following issues: (a) the irregular deductions from the salaries of officials, to make loan payments into the Bank Fund, which were not paid by the enterprise, thus leaving employees behind with their payments; (b) the irregular denouncement of the collective agreement; and (c) the non-payment of the extra bonus established in this agreement. The Government states that it was also informed by the trade union delegation that Mr. Nelson Corbo, who had participated in the trade union negotiations, was dismissed by the enterprise on 20 January 2000, and it was assumed that the same measure would be adopted for Mr. Eduardo Cevallos. The enterprise did not appear at this hearing and a new hearing was called for 26 January 2000.

569. On 26 January 2000, both parties attended and each of the issues which had led to the conflict was assessed. The enterprise acknowledged that it owed the abovementioned items and committed itself to paying them as soon as possible. Similarly, the enterprise maintained that the amounts that had been deducted and not paid into the Bank Fund would be included in a payment agreement to be signed immediately. With respect to Mr. Nelson Corbo, the enterprise alleged that he was dismissed based on his performance (not being efficient in his job) and not on trade union grounds, and refused to recognize that its staff were members of the AEBU. The position adopted by each sector is recorded in the minutes, and the Department of Collective Bargaining of the National Directorate of Labour has not been involved in the conflict since, as its intervention has not been requested.

570. The Government adds that on 10 March 2000, it lodged a complaint against CAOFA before the General Inspectorate of Labour and Social Security on behalf of the AEBU and the provisional trade union committee of CAOFA, for alleged acts of anti-union

discrimination, which initiated the administrative proceedings aimed at determining whether or not the conduct of the enterprise constituted a violation. To date, a final resolution has not been adopted on the denounced acts and evidence is still being processed. According to the Government, the abovementioned administrative proceedings have followed the due procedure, in that, notwithstanding the evidence officially gathered through procedural investigations, the parties involved have also had the possibility of submitting evidence and sustaining their case. Finally, the Government indicates that once proceedings are finalized, it will communicate the results and the adopted measures to the Committee.

C. The Committee's conclusions

571. *The Committee observes that in this case the complainant alleges that once the Savings and Loans Cooperative for Officials of the Armed Forces (CAOFA) became aware of the intentions of union leaders of the cooperative to become affiliated to the Association of Bank Employees of Uruguay (AEBU), CAOFA refused to recognize the enterprise union, denounced the collective agreement that was in force, dismissed six workers affiliated to the AEBU (Nelson Corbo, on 20 January 2000, and Eduardo Cevallos, Gonzalo Ribas, Andrea Oyharbide, Gerardo Olivieri and Marcelo Almada on 26 January 2000), transferred another worker (Virginia Orrego), and, finally, threatened workers that anyone who confirmed in writing their intention to remain affiliated to the AEBU would be dismissed just like the other workers who had been members of the AEBU provisional committee.*

572. *With regard to these allegations, the Committee takes note that the Government states that: (i) the National Directorate of Labour summoned the parties to a hearing on 24 January 2000 to bring the parties together and resolve issues relating to irregular deductions from the salaries of officials to make loan payments into the Bank Fund, the irregular denouncement of the collective agreement, the non-payment of the extra bonus established in this agreement, and the dismissal of Mr. Nelson Corbo, who had participated in trade union negotiations; (ii) since the enterprise did not appear at the hearing on 24 January 2000, another hearing was called for 26 January 2000 during which the enterprise acknowledged that it owed the abovementioned items and committed itself to paying them as soon as possible, and stated that Mr. Nelson Corbo had been dismissed for not being efficient in his job and not on trade union grounds; (iii) the Department of Collective Bargaining of the National Directorate of Labour has not been involved in the conflict since, as its intervention has not been requested; and (iv) on 10 March 2000, the AEBU lodged a complaint against CAOFA before the General Inspectorate of Labour and Social Security for alleged acts of anti-union discrimination, which initiated an administrative investigation which is at the stage of processing evidence.*

573. *In this respect, the Committee regrets that the Government has not communicated its observations on the dismissal of several workers affiliated to the AEBU and the transfer of another worker, as well as on the threats of dismissal made to any workers who affiliated themselves with the AEBU. The Committee notes with concern that according to the complainant, Eduardo Cevallos, Gonzalo Ribas, Andrea Oyharbide, Gerardo Olivieri and Marcelo Almada were dismissed on the same day (26 January 2000) they attended the hearing representing the AEBU trade union organization alongside the enterprise in order to discuss various difficult issues, and that Ms. Virginia Orrego was transferred after having informed the enterprise that she wanted trade union contributions to be deducted from her salary and paid to the AEBU. The Committee recalls that "No person shall be prejudiced in his employment by reason of his trade union membership or legitimate trade union activities, whether past or present" and that "Protection against acts of anti-union discrimination should cover not only hiring and dismissal, but also any discriminatory*

measures during employment, in particular transfers, downgrading and other acts that are prejudicial to the worker" [see ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, paras. 690 and 695].*

574. *In these circumstances, noting that the Government states that an administrative investigation is under way initiated following a complaint lodged by the AEBU against CAOFA for anti-union acts, the Committee requests the Government to: (1) take measures so that this investigation, started more than one year ago, is quickly concluded; (2) ensure that the investigation covers all the allegations made by the complainant in this case; and (3) take measures, if during this investigation the allegations are found to be true, so that: (i) workers dismissed on trade union grounds or transferred are reinstated immediately in their jobs, with the payment of back wages; and (ii) in the future, the respect of established collective agreements is fully guaranteed at CAOFA as well as that of legal provisions against acts of anti-union discrimination. The Committee requests the Government to transmit information on the results of the investigation and any measures adopted.*

The Committee's recommendation

575. ***In the light of its foregoing interim conclusions, the Committee invites the Governing Body to adopt the following recommendation:***

Noting that the Government states that an administrative investigation is under way, initiated following a complaint lodged by the Association of Bank Employees of Uruguay (AEBU) against the Savings and Loans Cooperative of Officials of the Armed Forces (CAOFA) for anti-union acts, the Committee requests the Government to:

(a) take measures so that this investigation, started more than one year ago, is quickly concluded;

(b) ensure that the investigation covers all the allegations made by the complainant in this case;

(c) take measures, if during this investigation the allegations are found to be true, so that: (i) workers dismissed on trade union grounds or transferred are reinstated immediately in their jobs, with the payment of back wages; and (ii) in the future, the respect of established collective agreements is fully guaranteed at CAOFA as well as that of legal provisions against acts of anti-union discrimination; and

(d) transmit information on the results of the investigation and any measures adopted.

CASE NO. 2067

INTERIM REPORT

Complaint 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 Communication 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 on trade union issues, hostility on the part of the authorities towards a trade union confederation.

576. The Committee first examined this case at its March 2001 meeting when it presented an interim report to the Governing Body [see 324th Report, paras. 940-994, approved by the Governing Body at its 280th Session in March 2001].

577. The Government sent its observations in communications dated 25 March and April 2001. The Venezuelan Workers' Confederation (CTV) and the International Confederation of Free Trade Unions (ICFTU) sent new allegations in communications dated 4 and 25 April, and 22 May 2001, respectively.

578. 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

579. At its March 2001 meeting, the Committee made the following recommendations on the allegations that remained pending:

– 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 in violation of the collective agreement.

– 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.

– 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.

B. The Government's reply

580. In its communications dated 25 March and April 2001, as regards the Committee's recommendations, the Government states that the collective agreement for the oil sector was signed and ratified in October 2000 and that it contains major improvements (a copy is attached with its reply). The enterprise consulted only the workers and employees involved in the dispute (which is permitted under national legislation as a means of settling disputes directly between the parties), but it never sought to disregard the oil sector's trade unions and federations, nor did it attempt to delay conclusion of the collective agreement; it was in fact those very bodies that signed the agreement. Moreover, all the trade union federations, including the Venezuelan Workers' Confederation (CTV), reached unanimous agreement on 21 February and 9 March 2001, with technical assistance from the ILO Regional Office in Lima, to work towards the democratization of the trade union movement; this was followed by trade union elections. The agreement aims to respond to the need to overcome the serious shortcomings besetting the Venezuelan trade union movement and to enhance its strengths and capacities. The workers and their federations will be the decision-makers in a process based on dialogue. The Government emphasizes its neutral stance and maintains that it has never had any intention of replacing the trade union movement by an organization allied to the Government.

581. As regards the referendum on 3 December 2000, which was conducted in conformity with the Constitution, it was aimed at obtaining society's endorsement of the legitimization of trade unionism, which was seen as "a matter of national importance". As regards the

allegations concerning the transfer of officers of the Trade Union of National Assembly Legislative Workers (SINOLAN), the Government states that it was necessary as part of the process of restructuring of the former National Congress, to enable the current National Assembly to work in a more efficient and productive manner. The issue has already been resolved, and today there are no more complaints pending on the part of these workers.

582. The Government affirms its resolve to abide by the ILO Conventions on freedom of association, adding that as many as 3,063 trade union organizations had been registered as at 10 April 2001 and 40 collective agreements were signed over the past three months. It expresses its appreciation for the opportunities to exchange experience offered by the international trade union movements. The Government finally refers to the statement by the President of the CTV before the ILO Governing Body, which confirmed the existence of a forum for dialogue with all the trade union federations and emphasized that there had been a significant change in industrial relations during the term of office of the current Minister of Labour, whose move to promote dialogue was regarded as a positive sign.

C. The complainants' new allegations

583. In its extensive communications dated 4 and 25 April 2001, the Venezuelan Workers' Confederation (CTV) alleges that there are new provisions which imply state interference in trade union affairs and which affect the free election of trade union officers, such elections being subject to authorization and supervised by the National Electoral Council. In addition, trade union officers are required to declare their assets. The CTV refers to reiterated statements in the media by the President of the Republic expressing hostility towards the CTV and clearly displaying favouritism with regard to the Bolivarian Workers' Force, an organization allied to the Government, which continues to maintain its control over the CTV's affiliates. In its communication of 22 May 2001, the ICFTU alleges that the company SIDOR-Consorcio Amazonia refuses to bargain collectively and has committed acts contrary to the right to strike.

D. The Committee's conclusions

584. *The Committee notes the Government's reply, and in particular the agreements reached by the trade union confederations, including the Venezuelan Workers' Confederation (CTV), aimed at democratizing the trade union movement as part of a process which would open the way to trade union elections, in which the workers would take decisions and the Government, according to its statement, would remain neutral. The Committee nonetheless deplores the fact that according to the new allegations the sense of these agreements has been distorted, given the interference by the authorities in the process of trade union elections and the new restrictive provisions, as well as the hostile statements made by the President of the Republic with regard to the CTV and the favouritism shown to the Bolivarian Workers' Force, according to the CTV's latest allegations. The Committee urges the Government to cease its harassment of the CTV and to ensure that the authorities refrain from interference in the trade union electoral process, and that it abandon the idea of imposing trade union unity. The Committee requests the Government to send its observations on the CTV's allegations of 4 and 25 April 2001.*

585. *The Committee concludes that the Government has not changed its attitude with regard to trade union matters and that the situation prevailing at the time of the previous examination of the case in March 2001 is continuing to deteriorate; the Committee must also emphasize its previous recommendations on the need to repeal or substantially amend the standards and decrees referred to in its previous recommendations and the new provisions restricting trade unions' right to elect their representatives in full freedom. The Committee requests the Government to keep it informed in this regard. Moreover, although*

it notes the Government's statements to the effect that the consultative referendum of 3 December 2000 was conducted in accordance with the Constitution, the Committee requests the Government to refrain in future from holding referendums on matters directly affecting the trade union movement, disregarding the will of the trade unions and their confederations.

586. *The Committee observes that the allegations relating to collective bargaining in the oil sector and the transfer of SINOLAN officials have been resolved (a collective agreement has been concluded in the oil sector and no complaints by the SINOLAN trade union are pending).*

587. *The Committee requests the Government to provide its observations concerning the allegations submitted on 22 May 2001 by the ICFTU.*

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

The Committee's recommendations

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

(a) The Committee reiterates its previous recommendations and demands that the Government take measures to repeal or substantially amend the trade union standards and decrees that are in violation of Conventions Nos. 87 and 98, adopted since the arrival of the new Government. 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 to trade union rights that are incompatible with Conventions Nos. 87 and 98. The Committee requests the Government to keep it informed in this regard.

(b) The Committee urges the Government to cease its harassment of the Venezuelan Workers' Confederation (CTV), and to ensure that the authorities refrain from interference in the trade union electoral process and from displaying favouritism with regard to the Bolivarian Workers' Force, and to abandon the idea of imposing trade union unity.

(c) The Committee requests the Government to refrain in future from carrying out referendums on matters directly affecting the trade union movement, disregarding the will of the trade unions and their confederations.

(d) The Committee requests the Government to provide its observations concerning the new allegations submitted by the CTV (4 and 25 April 2001) and the ICFTU (22 May 2001).

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

CASE NO. 2088

INTERIM REPORT

Complaint against the Government of Venezuela presented by the National Organized Single Trade Union of Court and Council of the Judicature Workers (SUONTRAT)

Allegations: Suspension of collective bargaining – dismissal and suspension of trade union officers – suspension of trade union leave – limitations on the use of the trade union headquarters – detention and harassment of trade union officers

590. The complaint is contained in a communication from the National Organized Single Trade Union of Court and Council of the Judicature Workers (SUONTRAT) dated 1 May 2000. The Government sent its observations in the communications of 13 and 16 February 2001.

591. 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

592. In its communication of 1 May 2000, the National Organized Single Trade Union of Court and Council of the Judicature Workers (SUONTRAT) states that the Judicial Emergency Commission, established by Decree of 25 August 1999 by a mandate from the Constituent National Assembly, briefly existed as an institution until 15 December 1999. During this time it assumed the task and responsibility of reforming the Judiciary. The Commission on the Functioning and Restructuring of the Judicial System, through the decree which regulates the public power transition regime, replaced the former commission and continued its work, broadening its scope to cover the whole judicial system. Its institutional existence is to come to an end with the transfer of administration of the judicial system to the Executive Directorate of the Magistracy. Therefore, both commissions are state bodies, and as such were obliged to adhere to the rule of law and abstain from committing human rights violations. The complainant alleges that, nonetheless, both commissions violated the Conventions on freedom of association. In particular, the complainant invokes the following violations of trade union rights:

– the derogation of the collective agreement in force pursuant to resolution No. 124 of 8 March 2000 of the Commission on the Functioning and Restructuring of the Judicial System, as well as the suspension of lists of demands. The complainant adds that the Commission does not hold meetings, share information or negotiate with SUONTRAT, yet it does so with other trade unions in the judicial field which are controlled by the employer;

– the suspension of SUONTRAT trade union officers covered by trade union immunity, Ms. Elena Coromoto Marval Reyes and Mr. Derio José Martínez Moreno, through a resolution of the Judicial Emergency Commission dated 9 December 1999. The complainant alleges that the officers in question were suspended without any detailed information being given to date as to the reasons for this measure, and that the right of defence was violated since this sanction was not backed by any administrative

procedure. The complainant also invokes the suspension of Ms. Consuelo Ramírez, president of the Barinas branch of SUONTRAT, on 8 January 2000;

– the suspension of trade union leave for all SUONTRAT officials and the opening of disciplinary proceedings for the dismissal of Ms. María de la Esperanza Hermida Moreno, president of SUONTRAT, Mr. Luis Martín Gálviz, finance secretary and Rodolfo Rafael Ascanio Fierro, information and propaganda secretary, under the accusation of being absent from work on days corresponding to their trade union leave (the dismissal proceedings have been suspended but remain open). Furthermore, the complainant adds that Mr. Ascanio Fierro's salary has been suspended since February 2000;

– the dismissal of Mr. Isidro Ríos, organization secretary of the Zulia Maracaibo branch of SUONTRAT, on 22 September 1999 and Mr. Oscar Rafael Romero Machado, safety and health secretary of the national executive committee of SUONTRAT, on 10 January 2001;

– restrictions on the use of the national trade union headquarters of SUONTRAT, based on the argument that premises in the "José María Vargas" building cannot be accessed outside designated hours of work (the complainant states that on 28 January 2000 security staff ordered the president of SUONTRAT to leave the trade union premises);

– the harassment of SUONTRAT members: detention of Mr. Oscar Romero, a SUONTRAT officer, on 17 February 2000 by the National Guard under the accusation of disrespect of authority; summons of Mr. Argenis Acuña Padrón, disputes and complaints secretary of the SUONTRAT national executive committee, to appear before the Court of the Penal Circuit of the State of Carabobo issued by persons identifying themselves as officers of the Military Intelligence Directorate; surveillance of Mr. Ascanio Fierro, a SUONTRAT officer, by members of the National Guard on 28 February 2000, when he went to claim his salary for the second half of February 2000.

B. The Government's reply

593. In its communications of 14 and 16 February 2001, the Government states with regard to the allegations concerning administrative acts, deeds or omissions carried out by the Government which violate Convention No. 87 by constituting systematic anti-union practices and direct interference in the trade union, that on 9 March 2000, the president of the National Organized Single Trade Union of Court and Council of the Judicature Workers (SUONTRAT) lodged an appeal for the protection of constitutional rights *(amparo)* before the Constitutional Chamber of the Supreme Court of Justice against the Commission on the Functioning and Restructuring of the Judicial System for deeds, acts and omissions which in her opinion constituted anti-union practices. On 28 June 2000, the Constitutional Chamber declared the *amparo* proceedings filed by the plaintiff admissible since they are not covered by the grounds for inadmissibility contained in section 6 of the organic Act of *amparo* on constitutional rights and guarantees. Subsequently, by a decision of 10 August 2000, the same Constitutional Chamber rejected the *amparo* proceedings on the following grounds: one of the *amparo* petitions is the reinstatement of Elena Marval and Derio Martínez, who initiated *amparo* proceedings for the same reasons, which were declared admissible by decision No. 432 of 19 May 2000, thus rendering the present *amparo* proceedings relating to the aforementioned persons inadmissible; with regard to the right to freedom of association, there is no evidence of an infringement of the right to organize, nor does it appear that the trade union has been interfered in, suspended or dissolved by the alleged offender, nor is there proof that workers belonging to the trade

union have been discriminated against in the exercise of their right of association, therefore, these being the elements which would constitute a violation of the aforementioned right, the violation referred to in the complaint was not found to have taken place; with regard to the other alleged violations, there is no evidence that Isidro Ríos – whose dismissal while he was organization secretary of the Zulia trade union branch was denounced in the *amparo* proceedings – is a member of the trade union's national board, which would entitle him to security of tenure; and with regard to the complaints relating to trade union leave, the order to close disciplinary proceedings, the reinstatement of workers, the payment of salaries, the suspension of procedures and the conduct of relations with other trade unions, the court observes that if such violations were to exist they would, in any event, be offences under the ordinary law and not direct violations of the Constitution, which, combined with the fact that the plaintiff does not indicate the specific act which directly violates a constitutional guarantee, means that the plaintiff's complaints are inadmissible.

594. Concerning the allegations relating to administrative acts infringing the rights of defence and due process of trade union officers, in violation of Convention No. 87, the Government states that on 24 March 2000, Ms. Elena Coromoto Marval Reyes and Mr. Derio José Martínez Moreno brought *amparo* proceedings before the Constitutional Chamber of the Supreme Court of Justice against the alleged deeds, acts and omissions committed by the Commission on the Functioning and Restructuring of the Judicial System. On 19 May 2000, this court declared the *amparo* proceedings admissible, since the requirements contained in section 18 of the organic Act of *amparo* on constitutional rights and guarantees had been met, and since these proceedings did not come under any of the grounds for inadmissibility. Subsequently, by the decision of 11 October 2000, the same Constitutional Chamber upheld the *amparo* proceedings on the following grounds: from the assessment of the evidence and statements presented by the parties in the constitutional hearing (during which the defendant admitted the absence of any procedure), it is clear in the present case that, to date, no administrative procedures to sanction Ms. Elena Marval and Mr. Derio Martínez have been carried out and, therefore, according to the court, the measures taken against the plaintiffs, by the Commission on the Functioning and Restructuring of the Judicial System constitute a flagrant violation of article 49 of the Constitution (right to due process); and given that merely establishing that there has been an infringement of the right to due process suffices to obtain a favourable ruling in *amparo* proceedings, the court abstained from ruling on the other alleged violations of the Constitution.

595. As regards collective bargaining in the sector, from 27 September 1999 when SUONTRAT presented a list of demands within the framework of a dispute to the former Council of the Judiciary (now the Executive Directorate of the Magistracy), following the publication of resolution No. 124 of 3 August 2000, to 9 November 2000, the Government states that no progress was made between the parties which might indicate an end to the dispute proceedings. On 9 November 2000, the trade union presented a new list of demands within the framework of the dispute, adding new elements (non-compliance by the employer), as well as confirming those featured in the list of 27 September 1999. On 14 November 2000, after having notified the employer and the Attorney-General's Office of the presentation of a new list, a Conciliation Board was convened. Subsequently, on 17 November 2000 substantial agreement was reached between the parties on the fulfilment of obligations under the collective agreement which the employer had not been able to meet, inter alia: the payment of the merit-based bonus and the base of calculation for 1999; a technical commission was established comprising trade union and employers' representatives, with the aim of determining the base of calculation for the merit-based bonus for 2000; the payment of benefits under the Food Programme Act and the applicable base of calculation, with a ceiling for workers in grade 12 of the administrative staff wage scale (in addition, payment of this benefit for 1999); payment of a uniform allowance to administrative staff

entitled to this benefit; approval of the order recognizing overtime and the obligation to pay workers accordingly; with regard to trade union leave, establishment of the necessary mechanisms to reintroduce such leave, as well as to take the necessary corrective measures to guarantee the peace and stability of administrative staff of the judiciary; and regarding negotiation of the new collective agreement, agreement was reached to complete all the formalities still pending before the Ministry of Labour in order to begin discussions on this issue.

596. The Government adds that on 30 November 2000, it was requested that the deadline for negotiating the list be extended to 15 January 2001, and that before this date was reached another extension was requested as 15 January 2001 was not feasible. The parties met on 29 January 2001 at the Public Sector Directorate of the National Inspectorate of Labour and Collective Issues. On this date, it was again agreed to extend negotiations until 28 February 2001, when a new meeting could take place between the Judicial Commission of the Supreme Court of Justice, the Executive Directorate of the Magistracy, the Ministry of Labour and the National Organized Single Trade Union of Court and Council of the Judicature Workers (SUONTRAT) [now the National Organized United Trade Union of Workers in Judicial Administration (SUONTRAJ)]. Furthermore, the Government points out that the Executive Directorate of the Magistracy has been honouring its commitments according to an agreement concluded on 14 December 2000 with SUONTRAT, with the payment of the 1999 merit-based bonus in the first half of January 2001 and the incorporation of the 2000 bonus into salaries. The six-month (July-December) retroactive payment of the 2000 merit-based bonus is still pending, but it was negotiated for July 2001 and is to be included in additional funding.

C. The Committee's conclusions

597. *The Committee observes that in the present case the complainant alleges that the Judicial Emergency Commission and the Commission on the Functioning and Restructuring of the Judicial System, which replaced the former, committed acts which violated trade union rights to the detriment of the complainant and its officers. In particular, the complainant alleges: (1) the derogation of the collective agreement in force in the sector and the suspension of the presentation of lists of demands pursuant to a resolution, as well as the fact that the authorities negotiate with other organizations in the judicial field which are controlled by the employer; (2) the suspension and dismissal of trade union officers; (3) the suspension of trade union leave; and (4) the harassment of trade union officers who were detained or placed under surveillance by the security forces.*

598. *With regard to the allegations concerning the derogation of the collective agreement in force in the sector and the suspension of the presentation of lists of demands pursuant to a resolution, and the fact that the authorities negotiate with other organizations in the judicial field which are controlled by the employer, the Committee notes that the Government states that: (i) on 17 November 2000 an agreement was reached between the parties (SUONTRAT and the Executive Directorate of the Magistracy) on the fulfilment of obligations under the collective agreement; (ii) on 30 November 2000 it was agreed to request that the negotiation deadline be extended until 28 February 2001; and (iii) the Executive Directorate of the Magistracy has fulfilled agreements concluded with SUONTRAT in December 2000. In this respect, the Committee recalls that the suspension or derogation of collective agreements freely entered into by the parties violates the principle of free and voluntary collective bargaining established in Article 4 of Convention No. 98 and regrets that the collective agreement in force in the judicial sector was derogated unilaterally. However, the Committee notes that SUONTRAT and the relevant authorities have commenced negotiations for a new collective agreement and that, in the meantime, they have concluded agreements, which, according to the Government, have been observed. In these circumstances, the Committee urges the Government to endeavour*

to encourage and promote the full development and utilization of machinery for voluntary negotiation in this sector between SUONTRAT and the relevant authorities.

599. *With regard to the allegations concerning the suspension and dismissal of trade union officers, the Committee observes with concern that these measures could have affected a significant number of officers of the complainant organization. In this context, before examining the cases specifically referred to in the complaint, the Committee would recall 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, para. 724].*

600. *Concerning the alleged suspension of SUONTRAT trade union officers Ms. Elena Coromoto Marval and Mr. Derio José Martínez Moreno, without the reasons for this measure being given, and without an administrative procedure being carried out beforehand, the Committee notes that the Government states that the Supreme Court of Justice ruled that "the measures taken against the plaintiffs by the Commission on the Functioning and Restructuring of the Judicial System constitute a flagrant violation of article 49 of the Constitution (right to due process)". In this respect, the Committee requests the Government to take measures to immediately lift the suspension of the trade union officers in question and to keep it informed in this regard.*

601. *Regarding the alleged dismissal of trade union officer Mr. Isidro Ríos, the Committee notes that the Government states that within the framework of the* amparo *proceedings before the Supreme Court of Justice, it was found that "there is no evidence that Isidro Ríos – whose dismissal while he was organization secretary for the Zulia trade union branch was denounced in the* amparo *proceedings – is a member of the trade union's national board, which would entitle him to security of tenure". In this regard, the Committee requests the Government to take measures to carry out an inquiry into the dismissal of Mr. Ríos (a trade union officer, according to the complainant) and reinstate him if he is found to have been dismissed on anti-union grounds (for carrying out trade union activities, being a member of the trade union SUONTRAT, etc.). The Committee requests the Government to keep it informed in this respect.*

602. *With regard to allegations concerning (1) the suspension of Ms. Consuelo Ramírez, president of the Barinas branch of SUONTRAT, on 8 January 2000; (2) the opening of disciplinary proceedings for the dismissal of Ms. María de la Esperanza Hermida Moreno, president of SUONTRAT, Mr. Luis Martín Gálviz, finance secretary of SUONTRAT and Mr. Rodolfo Rafael Ascanio Fierro, information and propaganda secretary of SUONTRAT (with regard to the latter, the complainant also invokes the suspension of his salary since February 2000); and (3) the dismissal of Mr. Oscar Rafael Romero Machado, safety and health secretary of SUONTRAT, on 10 January 2000, the Committee regrets that the Government has not sent the necessary observations in this regard, and has only stated that in the context of the* amparo *proceedings instituted by SUONTRAT before the Supreme Court of Justice, the judicial authorities found that "with regard to the complaints relating to the reinstatement of workers, the payment of salaries, etc., the court observes that if such violations were to exist, they would, in any event, be offences under the ordinary law and not direct violations of the Constitution, which, combined with the fact that the*

plaintiff does not indicate the specific act which directly violates a constitutional guarantee, means that the plaintiff's complaints are inadmissible". In these circumstances, the Committee requests the Government to take measures to initiate detailed inquiries into these allegations and communicate its observations on this matter without delay.

603. *As for the alleged suspension of trade union leave for all SUONTRAT officers, the Committee notes that the Government states that on 17 November 2000 substantial agreements were reached between SUONTRAT and the Executive Directorate of the Magistracy on the fulfilment of obligations under the collective agreement and, inter alia, agreement was reached to establish the necessary mechanisms to reintroduce such leave. In this regard, the Committee requests the Government to ensure observance of the collective agreement clauses relating to the trade union leave of SUONTRAT officers.*

604. *Lastly, the Committee observes that the Government has not communicated its observations concerning the following allegations: (i) the restriction of the use of the national trade union headquarters of SUONTRAT, based on the argument that the building where the union premises are located cannot be accessed outside designated hours of work; (ii) detention by the National Guard of SUONTRAT trade union officer Mr. Oscar Romero on 17 February 2000; (iii) summons of Mr. Argenis Acuña Padrón, disputes and complaints secretary of SUONTRAT, to appear before the Court of the Penal Circuit of the State of Carabobo; and (iv) the surveillance of Mr. Ascanio Fierro, a SUONTRAT officer, by members of the National Guard when he went to claim his salary for February 2000. In this respect, the Committee requests the Government to send its observations concerning these allegations without delay.*

The Committee's recommendations

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

(a) The Committee urges the Government to endeavour to encourage and promote the full development and utilization of machinery for voluntary negotiation between SUONTRAT and the relevant authorities.

(b) The Committee requests the Government to take measures to immediately lift the suspension of trade union officers Ms. Elena Coromoto Marval and Mr. Derio José Martínez Moreno, and to keep it informed in this regard.

(c) The Committee requests the Government to take measures to carry out an inquiry into the dismissal of Mr. Isidro Ríos (a SUONTRAT officer, according to the complainant) and to reinstate him if he is found to have been dismissed on anti-union grounds (for carrying out trade union activities, being a member of the trade union SUONTRAT, etc.). The Committee requests the Government to keep it informed in this respect.

(d) With regard to the allegations concerning (1) the suspension of Ms. Consuelo Ramírez, president of the Barinas branch of SUONTRAT, on 8 January 2000; (2) the opening of disciplinary proceedings for the dismissal of Ms. María de la Esperanza Hermida Moreno, president of SUONTRAT, Mr. Luis Martín Gálviz, finance secretary of SUONTRAT and Mr. Rodolfo Rafael Ascanio Fierro, information and propaganda secretary of SUONTRAT (with regard to the latter, the complainant also invokes the suspension of his salary since February 2000); and (3) the dismissal of

Mr. Oscar Rafael Romero Machado, safety and health secretary of SUONTRAT, on 10 January 2000, the Committee requests the Government to take measures to initiate detailed inquiries into these allegations and to communicate its observations on this matter without delay.

(e) The Committee requests the Government to ensure observance of the collective agreement clauses relating to the trade union leave of SUONTRAT officers.

(f) The Committee requests the Government to send its observations concerning the following allegations without delay: (i) the restriction of the use of the national trade union headquarters of SUONTRAT, based on the argument that the building where the union premises are located cannot be accessed outside designated hours of work; (ii) the detention by the National Guard of SUONTRAT trade union officer Mr. Oscar Romero on 17 February 2000; (iii) the summons of Mr. Argenis Acuña Padrón, disputes and complaints secretary of SUONTRAT, to appear before the Court of the Penal Circuit of the State of Carabobo; and (iv) the surveillance of Mr. Ascanio Fierro, a SUONTRAT officer, by members of the National Guard when he went to claim his salary for February 2000.

Geneva, 14 June 2001.

Max Rood,
Chairperson.

Points for decision: Paragraph 110; Paragraph 181; Paragraph 196; Paragraph 215; Paragraph 237; Paragraph 268; Paragraph 337; Paragraph 353; Paragraph 367; Paragraph 401; Paragraph 488; Paragraph 509; Paragraph 523; Paragraph 546; Paragraph 560 Parargraph 575; Paragraph 589; Paragraph 605.