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SIXTH ITEM ON THE AGENDA

326th Report of the Committee on Freedom of Association

Contents

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 1, 2 and 9 November 2001, under the chairmanship of Professor Max Rood.

2. The members of Chilean, Japanese, Mexican, Pakistan and Venezuelan nationality were not present during the examination of the cases relating to Chile (Case No. 2135), Japan (Case No. 2114), Mexico (Case No. 2013), Pakistan (Case No. 2096) and Venezuela (Case No. 2067), respectively.

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3. Currently, there are 76 cases before the Committee, in which complaints have been submitted to the governments concerned for observations. At its present meeting, the Committee examined 16 cases on the merits, reaching definitive conclusions in seven cases and interim conclusions in nine 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. 2128 (Gabon), 2129 (Chad), 2130 (Argentina), 2131 (Argentina), 2133 (The former Yugoslav Republic of Macedonia), 2136 (Mexico), 2137 (Uruguay), 2139 (Japan), 2140 (Bosnia and Herzegovina), 2142 (Colombia), 2143 (Swaziland), 2144 (Georgia), 2147 (Turkey), 2148 (Togo), 2150 (Chile), 2151 (Colombia), 2152 (Mexico), 2154 (Venezuela), 2155 (Mexico), 2156 (Brazil), 2157 (Argentina) and 2158 (India), because it is awaiting information and observations from the governments concerned. All these cases relate to complaints 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. 1787 (Colombia), 1865 (Republic of Korea), 2036 (Paraguay), 2120 (Nepal) and 2124 (Lebanon).

Partial information received from governments

6. In Cases Nos. 1962 (Colombia), 1986 (Venezuela), 2046 (Colombia), 2068 (Colombia), 2082 (Morocco), 2086 (Paraguay), 2087 (Uruguay), 2088 (Venezuela), 2097 (Colombia), 2098 (Peru) and 2149 (Romania), the Government has sent partial information on the allegations made. The Committee requests all of these governments to send the remaining information without delay so that it can examine these cases in full knowledge of the facts. The Committee has also decided to adjourn Case No. 2114 (Japan) for which the Government already furnished a reply. In view of the fact that the Government has indicated that a reform of the public service personnel system is under consideration, the Committee will examine this case at its next meeting in the light of any further information that the Government may provide on developments in this regard.

Observations received from governments

7. As regards Cases Nos. 1888 (Ethiopia), 1948 (Colombia), 1955 (Colombia), 2079 (Ukraine), 2104 (Costa Rica), 2115 (Mexico), 2119 (Canada/Ontario), 2121 (Spain), 2123 (Spain), 2125 (Thailand), 2126 (Turkey), 2127 (Bahamas), 2132 (Madagascar), 2134 (Panama), 2138 (Ecuador), 2141 (Chile), 2145 (Canada/Ontario), 2146 (Yugoslavia) and 2153 (Algeria), the Committee has received the governments' observations and intends to examine the substance of these cases at its next meeting.

Urgent appeal

8. As regards Cases Nos. 1995 (Cameroon) and 2118 (Hungary), the Committee observes that, despite the time which has elapsed since the submission of the complaints, it has not received the observations of the governments. 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 these cases if their observations or information have not been received in due time. The Committee accordingly requests these governments to transmit or complete their 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: Belarus (Case No. 2090) and Venezuela (Case No. 2067).

Transmission of cases to the Committee of Experts

10. 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: Pakistan (Case No. 2096), Slovakia (Case No. 2094), Venezuela (Case No. 2067) and Zimbabwe (Case No. 1937).

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

Case No. 1963 (Australia)

11. The Committee last examined this case, which concerns violations of freedom of association arising out of actions related to the 1998 waterfront dispute and affecting workers in stevedoring operations at various Australian ports, at its June 2001 meeting. The Committee requested the Government to continue providing information on outstanding court proceedings and to forward the decisions once they have been issued [see 325th Report, paras. 12-14]. In a communication of 18 September 2001, the Government announces that Patrick Stevedores and the Maritime Union of Australia have negotiated a new enterprise bargaining agreement, with effect on 17 September. The Government indicates that, in two related proceedings brought against the Government and one of the companies involved (Container Terminal Management Services Ltd.) in the

federal courts of Brisbane and Melbourne, the proceedings have been dismissed against the Government but are continuing against other respondents.

12. *The Committee notes this information. It requests the Government to continue to provide information on relevant court proceedings and to forward decisions once they have been issued.*

Case No. 2102 (Bahamas)

13. The Committee examined this case at its June 2001 meeting [see 325th Report, paras. 97-110] where it made 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.

14. In a communication dated 17 August 2001, the Government indicates that, contrary to the allegations of the workers' organizations, tripartite consultations have taken place continuously since October 1996. After tabling the Bills in May 2000, which drew complaints from unions, bipartite dialogue and consultation were again initiated in October 2000; an average of three meetings were held monthly through April 2001. Extensive reviews were concluded on the Trade Union and Industrial Relations Bill (which the unions found the most objectionable) and the Employment Bill; most of the recommendations emanating from these consultative meetings have now been incorporated in amended drafts. The Government proposes to proceed with three of the five Bills initially tabled, i.e. the Employment Bill, the Occupational Health and Safety at Work Bill, and the Minimum Wage Bill. The Government also rejects the worker's earlier assertion that their rights are in limbo due to constitutional uncertainties surrounding the Industrial Tribunal; in fact, the Industrial Tribunal continues to sit, hear and decide cases before it. The Government states that copies of the Acts will be submitted to the ILO after passage through legislature.

15. *The Committee takes note of this information and, in particular that extensive consultations have taken place as regards some of these Bills. The Committee however notes with concern that the Government intends to communicate these pieces of legislation* ***after*** *their adoption, and* ***not prior to*** *it, as the Committee had initially recommended, so that it could examine their conformity with freedom of association principles. In these circumstances, the Committee is bound to reiterate its previous recommendation that full consultation take place with the social partners on all these issues, that the further amended Bills comply with freedom of association principles and that these be forwarded to the Committee before their adoption. The Committee once again draws the Government's attention to the availability of ILO technical assistance on all these issues, and requests the Government to keep it informed of developments in this matter.*

Case No. 2007 (Bolivia)

16. The Committee last considered this case at its meeting of March 2000, where its requested the Government to initiate mediation efforts with a view to helping the parties to reach a global solution (reinstatement or, if this is not possible on account of the time that has elapsed, financial compensation if not yet received) for the alleged acts of anti-trade union discrimination, in particular, bearing in mind that months after the collective agreement on the dispute, signed 5 May 1997, the employment contracts of many strikers have not been renewed. Mediation should further endeavour to find a solution to the criminal and civil suits that have been brought by both parties in connection with the strike, dating back to April 1997. The Committee also asked to be kept informed of developments and of judicial decisions [see 320th Report, para. 285].

17. In its communication of 19 July 2001, the Government states that, through mediation, the parties involved in this case reached a global solution, as recommended by the Committee, as regards both financial compensation and court cases. This final solution was achieved through consultation and conclusion of two transactional agreements. The first of these agreements was signed on 17 February 2000 between the company and leaders of the Federation of Factory Workers. The agreement was ratified and complemented by a second transactional agreement of 2 October 2000 between the company and the workers directly involved. These documents essentially provide for the following agreements whereby the dispute is terminated: (1) the employer undertakes to withdraw unconditionally the suits brought against former employees and renounces any compensation for damages caused during and as a result of the strikes; (2) the workers involved likewise withdraw their suits against the company; (3) both parties agree to recognize that social benefits were paid and collected in timely fashion, but decide to carry out a tripartite review of the corresponding payments in one month's time.

18. *The Committee takes note of this information with satisfaction.*

Case No. 2099 (Brazil)

19. The Committee last examined this case concerning allegations of the 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 at its June 2001 meeting [see 325th Report, paras. 182-196]. On that occasion the Committee made the following recommendations:

(a) The Committee requested 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 recalled 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 was essentially a matter to be left to the discretion of the parties. The Committee also emphasized that the imposition by law of a trade union monopoly was not compatible with the principles of freedom of association, and therefore urged the Government to ensure that national law was brought into conformity with those principles.

(c) Although the Committee did 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 was the result of collective bargaining, it requested the Government to prevent any discrimination between trade unions in that context.

20. In a communication dated 16 August 2001, the Government informs the Committee that in the past two months Banco do Brasil has held various meetings with its employees on their sharing in the profits and results of the enterprise. It states that it will continue to endeavour to reach an agreement with legally authorized trade unions.

21. With regard to the trade union monopoly, the Government reiterates that it does not discriminate between trade unions by negotiating exclusively with CONTEC, according to which CTNIF is neither legal nor constitutionally competent to represent employees at the negotiations. The Government also states that as the Constitution prohibits the establishment of more than one trade union organization at any level representing a professional or economic category in the same territorial division, CONTEC requested in law that the registration of CTNIF as a trade union be cancelled, and this took place on 18 December 2000.

22. Finally the Government states that, according to national legislation, trade union leaders at the Banco do Brasil have paid time off to carry out their trade union duties, entirely at the cost of the enterprise according to the collective agreements that the enterprise holds with its trade union bodies. The Government adds that of the 92 trade union leaders with paid time off to carry out their trade union duties at the cost of the enterprise, 30 are members of CONTEC and 62 are members of trade unions that are not affiliated to the latter.

23. *The Committee takes due note of this information. It notes that 62 of the 92 trade union leaders at the Banco do Brasil belong to trade unions that are not affiliated with CONTEC. However, it deplores that the CTNIF was struck from the trade union registry and invites the Government to take the necessary measures to repeal the provisions setting forth a trade union monopoly.*

Case No. 1989 (Bulgaria)

24. The Committee last examined this case at its meeting in June 2001 when it requested the Government to keep it informed of the outcome of the court cases which were pending concerning the workers dismissed from the Bulgarian State Railways (BSR), as well as the number of workers actually reinstated. The Government was also requested to keep the Committee informed of the findings of the independent commission set up to investigate the allegations of harassment of members of the Trade Union of the Engine Personnel of Bulgaria (TUEPB) by the BSR [see 325th Report, paras. 18-20].

25. In a communication dated 28 August 2001, the Government indicates that, under the court orders in force, the fired engine drivers are reinstated in their previously held positions and that further information will be transmitted concerning the outcome of the investigations into the complaints of alleged harassment of members of the TUEPB.

26. *The Committee takes due note of this information. It once again requests the Government to keep it informed of the outcome of the independent commission established to examine the allegations of harassment and anti-union discrimination against the members of the TUEPB.*

Case No. 2047 (Bulgaria)

27. The Committee last examined this case at its meeting in November 2000 when it requested the Government to keep it informed of the outcome of the counting of the membership of PROMYANA and ADS (the Association of Democratic Syndicates). The Committee also requested the Government to indicate whether the proposed amendment to the Labour

Code concerning the maximum duration of a collective agreement reflected tripartite agreement [see 323rd Report, paras. 42-44].

28. In a communication dated 15 January 2001, ADS indicated that amendments have been adopted to the Labour Code (annexed to their communication) which it considers further supports the monopoly and discrimination exercised by the Confederation of Independent Trade Unions of Bulgaria (CITUB) and CL "Podkrepa" at the national level, to the exclusion of ADS from the social dialogue and collective agreements. While having no problem with the article of the Labour Code which sets forth that only representative trade unions can participate in the National Tripartite Council (NTC), ADS considers that using the same representativeness criteria for participation on branch, field and municipality tripartite councils is discriminatory. Thus, only representative organizations can take part in collective bargaining at the branch or field level and, as such agreements can be extended to all enterprises in the given branch or field by the Minister of Labour, it effectively restricts the rights of other organizations to negotiate collective agreements at the enterprise level. The complainant also states that its exclusion from the NTC was unlawful and contrary to the Supreme Administrative Court judgements that had determined that the previous criteria for representativeness were unconstitutional. Finally, the complainant adds that a poll of trade union membership has never been conducted in Bulgaria, nor is there any law to provide for trade union elections for representativeness.

29. In a communication dated 28 August 2001, the Government states that the complainant's allegations are groundless and founded on misleading interpretations of the recent amendments to the Labour Code which came into force on 31 March 2001. The Government recalls that the objective and pre-established criteria set forth in the Labour Code are aimed at recognizing the representativeness of each workers' organization and reiterates its readiness to conduct a poll to determine whether PROMYANA and ADS meet the necessary requirements for participation in the NTC. The Government adds that the mechanism for conducting a union poll fully meets the requirements of European standards and states that an order is being elaborated under section 36 of the Labour Code concerning the availability of criteria for representation. The Government states that ADS participated in the discussions of the proposed amendments and adds that all trade unions have full and unlimited rights to participate in negotiations at enterprise level. As for the possibility of extending collective agreements to all enterprises in a given branch, the Government clarifies that an extension can only be considered when it has been generally requested by the representative workers' and employers' organizations. Finally, the Government challenges the criticism that the amendments endorse discrimination and a monopolistic structure, since the Labour Code provides for verification of the representative status every three years.

30. *The Committee takes due note of the information provided by the complainant and by the Government. The Committee considers that the amendments to the Labour Code, which provide that only representative organizations may participate in tripartite councils at national, branch, field or municipal level, are not contrary to the principles of freedom of association, given that the criteria for establishing representative status under section 3(3) of the Labour Code has already been considered by the Committee to be in conformity with these principles. The Committee also considers that the extension of branch or field-level collective agreements upon the joint request of the parties involved is consistent with freedom of association principles. The Committee urges the Government, however, to take the necessary measures rapidly in order to conduct a poll to determine whether PROMYANA and ADS meet the necessary requirements to establish representativeness for participation in the NTC and to keep it informed of the progress made in this respect.*

Case No. 1951 (Canada/Ontario)

31. The Committee has examined this case on several occasions, and for the last time at its June 2001 session [see 325th Report, paras. 197-215] when it formulated 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.

32. In its communication of 13 September 2001, the Government explains that the Ontario Government had previously indicated that the Ontario Court of Appeal dismissed the complaint brought by the Ontario Secondary School Teachers' Federation (OSSTF). The OSSTF filed a leave to appeal application which the Supreme Court of Canada dismissed in March 2001. The Government of Ontario maintains its position that Bill No. 160 necessarily removes 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. As Ontario's position has been supported by the Canadian courts, it has no plans to amend Bill No. 160.

33. *The Committee notes that the Government reiterates the arguments it had put forward in the past. The Committee recalls that the complaint in this case was filed more than three years ago and therefore regrets that the position of the Government of Ontario has not evolved since. While taking due note of the various courts' rulings, the Committee considers that the Government of Ontario should be reminded that the Canadian Government has freely ratified Convention No. 87 and, therefore, the provisions of this Convention should be fully respected in law and in practice in all Canadian provinces. While noting that the Ontario Government has no intention of amending Bill No. 160, the Committee regrets that the said Government has not provided any follow-up information concerning its other recommendations, in particular with regard to ensuring that 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 once again asks the Government to reconsider its position in this case, including the amendment of Bill No. 160, in order to fully respect the principles of freedom of association and asks it to keep it informed in this regard.*

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

34. The Committee examined this case at its November 1998, November 1999, March 2000 and March 2001 meetings [see respectively: 311th Report, paras. 235-271; 318th Report,

paras. 26-34; 320th Report, paras. 44-53; and 324th Report, paras. 30-42] and, on that last occasion, made the following recommendations:

– in respect of conditions of eligibility to union office, the Committee once again requested the Government to repeal section 5 of the Employment and Labour Relations (Miscellaneous Amendments) Ordinance, 1997 (ELRO), which restricts union office to persons actually or previously employed in the trade, industry or occupation of the trade union concerned (paragraph 40);

– regarding restrictions on financial contributions to trade unions and on the use of union funds, the Committee once again requested the Government to repeal sections 8 and 9 of the ELRO (paragraph 41);

– as regards the scope of protection against acts of anti-union discrimination, the Committee noted that legislative amendments empowering the Labour Tribunal to order reinstatements without the employer's consent would be presented to the competent councils of the HKSAR (Hong Kong Special Administrative Region) Government and trusted that these amendments would be adopted in the near future (paragraph 38);

– concerning the right to bargain freely with employers, the Committee once again requested the Government to give serious consideration to adopting provisions laying down objective criteria and procedures for determining the representative status of trade unions for collective bargaining purposes (paragraph 39).

35. In its communication of 10 September 2001, the Government states as regards the conditions of eligibility to trade union office that, under section 17(2) of the Trade Union Ordinance (TUO), a person who has some experience in a trade, industry or occupation with which a trade union is directly involved could become an officer of the union. The Government reiterates that flexibility is built into this section for persons from other trades to become union officers with the consent of the Registrar of Trade Unions. The Government underlines that the Registrar has approved all applications from trade unions asking for his consent under section 17(2). Therefore, the existing provision has not in practice restricted the freedom of unions to elect officers of their choice.

36. In addition, the Government has reviewed the occupational requirement for trade union officers stipulated in section 17(2) of the TUO and consulted the Labour Advisory Board (LAB) on the outcome of its review (the LAB, comprising an equal number of employer and employee members, is the most respected and representative tripartite consultative forum on labour matters in the HKSAR). The LAB considered the results of a survey conducted by employee members of the board and arrived at a consensus view that the current occupational requirement for union officers should not be relaxed. The Government will take the views of the LAB into full consideration in deciding on the way forward.

37. As regards the use of trade union funds, the Government has completed a review of the provisions relating to the use of trade union funds under the TUO and consulted the LAB, which considered it undesirable to relax the use of union funds for political activities other than for local elections. On the other hand, members supported the proposal to allow trade unions to make charitable donations to lawful organizations outside Hong Kong in accordance with their registered rules.

38. Concerning the scope of protection against anti-union discrimination, the LAB agreed that the reinstatement provisions under the Employment Ordinance should be amended so that the Labour Tribunal may make an order of reinstatement/re-engagement without the need

to secure the consent of the employer if the Tribunal considers it appropriate and reasonably practicable. Drafting of the relevant legislative amendments is under way.

39. As regards collective bargaining, it has been the policy of the HKSAR Government to take measures appropriate to local conditions to encourage and promote collective bargaining on a voluntary basis. At the enterprise level, the authorities actively encourage employers to engage in effective communication with their employers' and workers' unions and to consult them on employment matters. During the months of June and July 2001, the authorities launched a large-scale promotional activity entitled "Workplace Cooperation 2001" to promote the importance and benefits of workplace cooperation. The event featured a wide range of activities, including seminars, workshops, training courses, quiz competitions, visits and experience-sharing sessions.

40. At the industry level, in August 2001 the Government set up another tripartite committee for the retail industry. To date, nine such committees have been set up for the construction, catering, property management, hotel and tourism, printing, theatre, warehouse and cargo transport, cement and concrete as well as the retail industries. These committees have been holding regular meetings to discuss and agree on industry-specific issues of mutual concern. Through close collaboration with the tripartite committees, the Government has produced a code of practice for the catering trade, a practical guide on distinguishing employer-employee relationships from contractor-subcontractor relationships for the warehouse and cargo transport industry, as well as a guidebook on training opportunities for skills upgrading in the printing industry. A new booklet on the rights and obligations for practitioners of the tourism industry under major labour legislation is being prepared.

41. The Government concludes that its policy is to make progressive improvements to employees' rights and benefits in the territory, taking into full account the current social and economic circumstances and also the views of the LAB. It also seeks to maintain a reasonable balance between the interests of employees and employers.

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

43. *As regards the use of union funds, while noting that a debate took place in the LAB on this issue, which considered it undesirable to relax the use of union funds for political activities other than for local elections and that LAB members supported the proposal to allow trade unions to make charitable donations to lawful organizations outside Hong Kong, the Committee must recall that provisions which restrict the freedom of trade unions to administer and utilize their funds as they wish for normal and lawful trade union purposes are incompatible with principles of freedom of association. The Committee once again requests the Government to repeal sections 8 and 9 of the ELRO.*

44. *The Committee notes with interest that the LAB agreed that the reinstatement provisions under the Employment Ordinance should be amended so that the Labour Tribunal may make an order of reinstatement/re-engagement without the need to secure the employer's consent if the Tribunal considers it appropriate. The Committee trusts that these amendments will be adopted in the near future.*

45. *As regards the issue of promoting collective bargaining, while noting the explanations given by the Government concerning the efforts made at the enterprise and industry levels with a view to fostering an environment conducive to collective bargaining, the Committee must recall once again that the right to bargain freely conditions of work with employers is an essential element of freedom of association and trade unions should have the right, through collective bargaining or other lawful means, to seek to improve the living and working conditions of those whom the trade unions represent. Since the Committee had previously considered that the case at hand furnished a clear illustration of the appropriateness of adopting provisions laying down objective procedures for determining the representative status of trade unions for collective bargaining purposes, the Committee once again requests the Government to give serious consideration to the adoption of appropriate provisions which respect freedom of association principles.*

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

Case No. 1925 (Colombia)

47. The Committee last examined this case at its June 2000 meeting [see 322nd Report, para. 4]. On that occasion, the Committee noted the Government's communication indicating that a tripartite negotiating committee would be set up together with the AVIANCA company and the trade union. The Committee requested the Government to keep it informed in this regard. In a communication dated 5 April 2001, the Government states that a negotiation meeting was held between AVIANCA and SINTRAVIA on 13 February 2001 under the auspices of the Ministry of Labour and that, as a result, the President of the complainant organization stated that it would submit a proposed agreement to AVIANCA.

48. *The Committee takes note of this information and requests the Government to continue to keep it informed of progress achieved in the negotiations.*

Case No. 1973 (Colombia)

49. The Committee last examined this case at its March 2001 meeting [see 324th Report, paras. 317-325]. On that occasion, the Committee requested the Government, as regards the application of an agreement – that contains conditions of employment and remuneration higher than those agreed to through collective agreement – to managerial or technical staff and to staff employed in positions of trust on condition that they do not join or that they leave either of the two first-level trade union organizations present in the enterprise ECOPETROL, to take measures to ensure that the inquiry proposed be begun immediately and to keep it informed of the outcome. In a communication dated 5 April 2001, the Government indicates that on 12 March 2001 a negotiation meeting was held between representatives of ADECO and ECOPETROL, at which the former confirmed the complaints that gave rise to this case, while the ECOPETROL representative stated that more time was needed before a decision could be reached.

50. *The Committee takes note of this information and once again urges the Government to take the necessary measures to ensure that the inquiry requested is carried out without delay and to keep it informed in this regard.*

Case No. 2015 (Colombia)

51. The Committee last examined this case at its March 2001 meeting [see 324th Report, paras. 326-339]. On that occasion, the Committee requested the Government to take steps to ensure the prompt conclusion of the current or planned investigations concerning: (a) the military takeover of workplaces in the Naval Hospital of Cartagena and the Central Military Hospital of Bogotá during the national protest action of 20 and 21 May 1998; (b) the destruction of posters alluding to the protest movement in the Central Military Hospital of Bogotá and the assaults on trade unionists during the national protest action of 20 and 21 May, leaving 42 of them wounded; and (c) the refusal to grant time off for trade union activities, anti-union harassment, an increase in the working day in violation of an agreement, and the assignment of civilian employees to armed conflict zones. The Committee also requested it to keep it informed of the outcome of these investigations.

52. In a communication dated 5 April 2001, the Government states that negotiation meetings were held on 21 February and 2 March 2001 between the ASEMIL trade union and the Director-General of the Central Military Hospital and the head of the legal office of the Ministry of Defence, under the auspices of the Ministry of Labour and Social Security in the context of Case No. 2015.

53. *The Committee notes that the minutes of the negotiation meeting reflect that the following issues were covered: the granting of trade union leave, payment of wages due as ordered by the Constitutional Court, and the assignment of civilian workers to armed conflict zones. The Committee regrets that the Government has not stated whether the investigations that have been initiated were completed and requests it to inform it without delay of their outcome.*

Cases Nos. 1966 and 2030 (Costa Rica)

54. Concerning Case No. 1966, at its March 2001 meeting the Committee requested the Government to provide it with the text of the amended Code as soon as it is adopted [see 324th Report, para. 52]. The Government states in its communication of 25 May and 24 August 2001 that it will send the text of the law as soon as it is adopted.

55. As regards Case No. 2030, at its March 2001 meeting, the Committee requested the Government to send the decision of the Administrative High Court concerning decision 18-97 of 17 April 1997 taken by the Administrative Board of the National Registry as soon as it is handed down [see 324th Report, para. 55]. In a long communication of 12 February 2001, the Rerum Novarum Confederation of Workers replies to the arguments put forward by the Government in its last communication to the Committee and mentions the negative impact of the decision of the Constitutional Chamber regarding collective bargaining in the public sector and insists that the previous agreement on collective bargaining in the public sector was extremely restrictive and had been criticized by the Committee. In its communications of 25 May and 24 August 2001 the Government states that the judicial authority has rejected the complaint lodged by the Trade Union of Workers and Retirees of the National Registry and that no appeal has been lodged against that ruling (which has been transmitted).

56. *The Committee takes note of this information. It draws the attention of the complainant organization to the fact that the issue of the right to bargain collectively in the public sector will be dealt with in the context of Case No. 2104.*

Case No. 1984 (Costa Rica)

57. At its March 2001 meeting, the Committee made the following recommendations on pending issues [see 324th Report, para. 458]:

– with regard to the allegations concerning the enterprise Oropel (anti-union reprimands addressed to the trade union official Mr. Roberto Durán in the context of trade union persecution) and to the enterprise Roble (harassment of the trade unionist Mr. Luis Pérez Jarquín, blaming him alone for a poor harvest), the Committee notes that during the conciliation proceedings the trade union representative asked that these matters be transferred to the General Labour Inspectorate. The Committee asks the Government to keep it informed of the results of the investigation conducted into this matter;

– as regards the allegations concerning the banana enterprise Ceibo (persecution of SITRAP members), the Committee urges the Government to ensure that this matter is promptly investigated.

58. With its communications of 25 May and 24 August 2001, the Government forwarded the text of the administrative decisions that concluded the case of Mr. Roberto Durán (as unfair labour practices were not found to exist), dismissed the complaint relating to the alleged harassment of Mr. Luis Pérez Jarquín (considering that the facts denounced did not correspond to acts of anti-union persecution but to job-related activities involving the internal administration of the enterprise) and dismissed the complaint relating to the persecution of SITRAP members and the administrative appeal proceedings.

59. *The Committee notes this information.*

Case No. 2024 (Costa Rica)

60. Regarding Case No. 2024, at its March 2001 meeting the Committee noted the Government's statement that the judicial proceedings against the enterprise COBASUR (dismissal of the trade union official Mr. Adrián Herrera Arias, alleged aggression inflicted on this trade union leader) are paralysed because it has not been possible to notify the company that documents have been drawn up to correct the process and make it more flexible. The Committee noted this situation with concern, in particular the inability to notify the company, expressed the hope that the proceedings would be concluded as soon as possible and requested the Government to keep it informed of the outcome [see 324th Report, para 54]. In its communications of 25 May and 15 September 2001, the Government states that, concerning the alleged assaults against the trade union leader Mr. Adrián Herrera Arias, the case was closed since the deadline to initiate criminal proceedings had expired. Concerning the dismissal of that leader, the Government indicates that Mr. Herrera Arias received his severance benefits since he needed money and that he had not lodged another complaint since then. The Government adds that, according to Mr. Herrera Arias, the enterprise was now closed following bankruptcy.

61. *The Committee notes this information with regret. It insists on the fact that cases of anti-union discrimination should be examined in the framework of a prompt procedure.*

Case No. 2069 (Costa Rica)

62. At its March 2001 meeting, the Committee requested the Government to keep it informed of the process and outcome of the negotiations provided for in the agreement of 22 June 1999 reached between the Ministry of Public Education and the trade unions, whereby as from the 2000 school year the Ministry will negotiate the school calendar with the trade union organizations, incorporating trade union activities and granting the necessary leave to attend national assemblies and sessions of executive committees [see 324th Report, paras. 464 and 466].

63. In its communication dated 24 August 2001, the Government sends an agreement of May-June 2001 signed by the Minister of Public Education and the teachers' organizations whereby the issues that remained pending are settled satisfactorily.

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

Case No. 2084 (Costa Rica)

65. At its March 2001 meeting, the Committee requested the Government to keep it informed of the final administrative decisions and judicial verdicts handed down in relation to the case of trade union leader Mr. Mario Alberto Zamora Cruz to enable it to reach a decision in this case [see 324th Report, para. 484].

66. In its communications of 25 May and 24 August 2001, the Government states that the Attorney-General has not yet handed down a decision concerning the defamatory and libellous complaint filed by Mr. Zamora against the Minister of Justice. Furthermore, Mr. Zamora has lodged a succession of appeals against the members of the Civil Service Tribunal for absolutely unfounded irregularities and incidents relating to the disciplinary proceedings being taken against him, thus employing delaying tactics in order to invoke the prescription.

67. *The Committee notes this information and reiterates its earlier requests for information concerning the final administrative decisions and verdicts relating to this case.*

Case No. 1954 (Côte d'Ivoire)

68. In the previous examination of this case during its November 1999 session [see 318th Report, paras. 48-50], the Committee had stressed the importance of a spirit of dialogue and cooperation which should prevail in the resolution of industrial disputes, and had requested the Government to keep it informed of the follow-up to the recommendations concerning the reinstatement of workers and trade union delegates who had been dismissed by the CARENA enterprise following a peaceful strike.

69. In a communication dated 19 June 2001, the complainant, the Confederation of Free Trade Unions of Côte d'Ivoire "Dignité", states that an agreement was concluded on 1 June 2001, through the mediation of the Government. Under the terms of the agreement, a copy of which was attached, the dispute is definitively ended and the parties renounce all legal action relating to it, including any demands for damages. *The Committee notes this information with satisfaction.*

Case No. 1938 (Croatia)

70. The Committee examined this case, which concerns, inter alia, the division of trade unions assets and property, on three occasions [see 309th Report, paras. 161-185; 310th Report, paras. 15-17; 321st Report, paras. 25-27]. At its May-June 2001 meeting, the Committee requested the Government to keep it informed of developments concerning this case [325th Report, para. 96].

71. In letters dated 11 July and 13 December 2000, and 30 July 2001, the Government limited itself to indicating that it did not have new information on the case.

72. *The Committee notes that this case concerns property owned by trade unions before the Second World War, that negotiations have taken place since 1993 between various confederations, without success however, and that this complaint was filed more than four years ago without significant progress being made to date. Stressing that the issue of transmission of trade union assets is an extremely serious one for the viability and free functioning of trade unions and that prolonged uncertainty in this respect is not conducive to sound labour relations, the Committee requests the Government, once again, rapidly to take the initiative in determining the criteria for the division of assets and property, in consultation with the workers' organizations concerned should they be unable to reach agreement among themselves, and to fix a clear and reasonable time frame for completing the division of property. The Committee, once again, requests the Government to provide it with substantive information on developments in this respect.*

Case No. 1961 (Cuba)

73. As part of the follow-up to the recommendations in this case, which was presented by the World Confederation of Labour (WCL), in a communication dated 8 December 2000 the WCL presented new specific allegations concerning detentions of journalists and members of the Single Council of Cuban Workers, obstruction of the functioning and activities of the latter organization (holding of a congress), attacks on freedom of expression, intimidation and threats. The Government replied in general terms to these allegations in a communication dated 16 September 2001.

74. *The Committee requests the Government to reply specifically to each of the allegations presented by the WCL.*

Case No. 1987 (El Salvador)

75. The Committee last examined this case at its June 2001 meeting [see 325th Report, paras. 22-25] and requested the Government once again to keep it informed with regard to the reform of the Labour Code in the light of the recommendations it had made in previous examinations of the case.

76. The Committee then recalled that, at its March 1999 meeting [see 313th Report, para. 117], it had observed that the legislation imposed a series of excessive formalities for the recognition of a trade union and the acquisition of legal personality that were contrary to the principle of the free establishment of trade union organizations (the requirement that the trade unions of independent institutions should be works unions), that made it difficult to set up a trade union (minimum number of 35 workers to establish a works union) or that in any case made it temporarily impossible to establish a trade union (the requirement for six months to have passed before applying to establish another trade union even if the previous one did not obtain legal personality).

77. In its communication of 5 September 2001, the Government refers to issues already dealt with in this case that are no longer in question and have been resolved, but it does not reply specifically to the issue of legislation.

78. *The Committee notes the communication and once again requests the Government to keep it informed with regard to the reform of the Labour Code (requested by the Committee in its 313th Report) in the light of the recommendations it has made in previous examinations of the case.*

Case No. 2085 (El Salvador)

79. The Committee examined this case at its November 2000 meeting [see 323rd Report, paras. 162-175]. On that occasion the Committee requested the Government to keep it informed of any follow-up to the renewed application by FESTSA to obtain legal personality (as the request contained procedural errors). The Committee also urged the Government, as a matter of urgency, to ensure that national legislation was amended so that it recognized the right of association of workers employed in the service of the State, with the sole possible exception of the armed forces and the police [see 323rd Report, para. 175].

80. In a communication dated 5 September 2001, the Government explains in detail and reiterates its statements that FESTSA did not comply with the legal requirements to obtain legal personality. The Government's observations imply that FESTSA has not made further attempts to obtain legal personality.

81. *The Committee takes note of this information. The Committee requests the Government to keep it informed of any initiative by FESTSA to obtain legal personality. It also, once again, requests the Government to ensure that national legislation is amended so that it recognizes the right of association of workers employed in the service of the State, with the sole possible exception of the armed forces and the police.*

Case No. 1970 (Guatemala)

82. When the Committee examined this case at its November 2000 meeting, it requested the Government to keep it informed with regard to a series of issues relating to violence against trade union members, anti-union dismissals, the overlong duration of legal proceedings on cases of anti-union discrimination, non-compliance with legal decisions with regard to the reinstatement of trade union members who had been dismissed and the refusal to enter into collective bargaining at certain enterprises.

83. The Committee also invited the Government to accept a direct contacts mission within the framework of the follow-up to the recommendations in this case [see 323rd Report, para. 284]. The Government accepted the mission in its communication of 20 February 2001 and stated that it hoped that the direct contacts mission would also investigate the questions raised by the Committee of Experts relating to the application of Conventions Nos. 87 and 98.

84. *The Committee notes the submission of the report on the direct contacts mission submitted by Professor Adrián Goldin, representative of the Director-General, which discusses the previous recommendations of the Committee on this case (November 2000) and the further observations of the Government (see Part IV of the direct contacts mission report).*

Report on the direct contacts mission to Guatemala (23-27 April 2001)

I. Introduction

At its meeting in November 2000, the Committee on Freedom of Association proposed to the Government of Guatemala that it accept a direct contacts mission as part of the follow-up to its recommendations in Case. No. 1970 [see the Committee's 323rd Report, para. 284].

In a communication dated 20 February 2001, the Government of Guatemala accepted the Committee's proposal for a direct contacts mission. The Minister of Labour requested that the mission also address the questions raised by the Committee of Experts on the Application of Conventions and Recommendations with regard to 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), bearing in mind also the fact that these questions had been discussed several times by the Conference Committee on the Application of Standards, most recently in 1999 and 2000.

The direct contacts mission took place in Guatemala City from 23 to 27 April 2001 and was led by Professor Adrián O. Goldin, Professor of Labour Law at the San Andrés University and the University of Buenos Aires. He was accompanied by Mr. Alberto Odero, Coordinator of the Freedom of Association Branch of the ILO's International Labour Standards Department, and Mr. Christian Ramos Veloz, a standards specialist from the San José (Costa Rica) Multidisciplinary Advisory Team.

Taking into consideration the questions addressed in Case No. 1970 and the reports of the Committee of Experts and of the Conference Committee on the Application of Standards, the mission decided to focus its activities on the following areas: (1) reminding the authorities and private individuals interviewed of the grave concerns expressed by the supervisory bodies at the acts of violence (murders, assaults and death threats) experienced by a number of trade union officials and members, and identifying the measures adopted or envisaged by the authorities with a view to rectifying that situation, including measures intended to protect trade unionists who have been threatened; (2) obtaining as much information as possible on the questions raised by the Committee on Freedom of Association with regard to Case No. 1970 and the measures taken to give effect to its recommendations; these questions refer in essence to acts of violence against trade unionists, anti-union dismissals, excessive delays in judicial proceedings in connection with cases of antiunion discrimination, failure to comply with court orders to reinstate dismissed trade unionists, and the refusal by certain enterprises to bargain collectively; (3) examining possible solutions to these problems with the authorities and the social partners, with a view to facilitating agreements in this area; and (4) emphasizing the importance of bringing legislation fully into conformity with Conventions Nos. 87 and 98.

The mission held interviews with the Vice-President of the Republic, the Minister of Labour and Social Security, and representatives of Congress, the Supreme Court and organizations of employers and workers (see the list of persons interviewed reproduced in the annex).

The mission wishes to emphasize that it received every assistance from the Government. It enjoyed the full cooperation of the Government and authorities, the central and primary trade union organizations and employers' associations. For this it wishes to express its profound gratitude.

II. Questions raised by the Committee on Freedom of Association as part of the follow-up to its recommendations in Case No. 1970

At its meeting in November 2000, the Committee made the following recommendations [see the Committee's 323rd Report, para. 284]:

(a) Deploring the extreme gravity of the allegations in this case and noting with deep concern the large number of acts of violence against trade union officials and members that have been alleged, and the fact that, since its last examination of the case, two trade union officials have been murdered – including one against whom a death threat had already been alleged in the context of this case – and another two have received death threats, the Committee wishes to draw the Government's attention to the fact that freedom of association can only be exercised

in conditions in which fundamental human rights, and particularly those relating to human life and personal safety, are fully respected and guaranteed, and that 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 repetition of such acts, and requests the Government to ensure that these principles are fully respected.

Allegations concerning acts of violence

Murders

(b) The Committee: (i) requests the Government to communicate without delay the outcome of the investigation conducted by the Commission for Historical Clarification into the murder of the trade unionist Mr. Luis A. Bravo; and (ii) hopes that the judicial proceedings relating to the murder of the trade unionist Mr. Pablo A. Guerra, which began in 1995, will be completed soon, and requests the Government to communicate the final outcome of those proceedings.

(c) The Committee profoundly regrets the murder of the General Secretary of the Trade Union of Pilots in Fuel and Air Transport, Mr. Oswaldo Monzón Lima, and urges the Government to take immediate measures to initiate a judicial inquiry with a view to clarifying the facts, determining responsibility, and punishing those responsible. The Committee requests the Government to keep it informed in this regard.

(d) The Committee: (1) requests the Government to keep it informed of the outcome of the judicial proceedings currently under way in relation to the murder of Mr. Robinson Manolo Morales Canales; (2) hopes that the judicial authorities will take steps to expedite the judicial proceedings in connection with the murder of Mr. Hugo Rolando Duarte Cordón, and requests the Government to keep it informed in this regard; and (3) requests the Government to initiate an immediate judicial inquiry into the murder of Mr. José Alfredo Chaón Ramirez and keep it informed in this regard.

(e) The Committee requests the Government to keep it informed of the outcome of the investigation into the murder on 22 June 1999 of Mr. Baldomero de Jesús Ramírez, General Secretary of the Trade Union of Workers of the Municipality of Santa Lucía, Cotzumalguapa, Department of Escuintla.

(f) With regard to the alleged murder of the trade unionists Cesario Chanchavac, Carlos Lijuc, José Vivas, Carlos Solórzano and Ismael Mérida, the Committee requests the Government to ensure that investigations begin soon and to keep it informed in this regard.

Death threats

(g) The Committee urges the Government to keep it informed of the outcome of the judicial investigation into alleged death threats against the official of the Trade Union of Workers of Agropecuaria Atitlán S.A. and Panamá Farm, Mr. Juan Guitérrez Garcia, and against other members of the trade union in question, for demanding payment of wages, and to provide protection to the trade union officials and members who have been threatened.

(h) With regard to the alleged death threats against the following trade union officials and members: (1) Rolando Quinteros and Mario Garza, of the United Trade Union of Taxi Drivers and Allied Workers of La Aurora International Airport; (2) José Angel Urzúa, Elmer Salguero García, Herminio Franco Hernández, Everildo Revolio Torres, Feliciano Izep Zuruy and José Domingo Guzmán; (3) the trade union officials of the Trade Union of the Santa Fe and La Palmera Farms; and (4) José Pinzón, General Secretary of the CGTG, and Rigoberto Dueñas, Deputy General Secretary of the CGTG, the Committee requests the Government to take steps to begin immediate judicial investigations and to provide protection to all the individuals who have been threatened. The Committee requests the Government to keep it informed of the final outcome of these investigations.

Raids on homes and attempted abductions

(i) The Committee requests the Government to take steps to begin an immediate investigation into the allegation concerning the raid on the home of the trade union official Mr. Francisco Ajtzoc Ajcac by the employer (El Arco Farm), and, if it is found to be true, to take steps to punish those responsible and prevent any recurrence in future. The Committee requests the Government to keep it informed in this regard.

Physical assaults

(j) The Committee requests the Government to take steps to begin an immediate investigation into the allegation concerning harassment by the Hotel Camino Real enterprise against trade union officials and the physical assault (stabbing) of the trade union's General Secretary and, if the allegations are to be found true, to take steps to punish those responsible and prevent any recurrence in the future. The Committee requests the Government to keep it informed in this regard.

Allegations concerning acts of anti-union discrimination upon which the judicial authority has not yet rendered final judgements

(k) As concerns the questions relating to the dismissal of three trade union officials on 7 August 1994 at the El Arco Farm; the dismissals on 22 May 1995 and in October 1996 of the seven founding members of the Trade Organization of the Santa Lucía La Mayor Farm; the dismissal on 28 November 1996 of 25 members of the Trade Union of the La Argentina Farm; the dismissal on 2 April 1997 of ten workers at the El Tesoro Farm for presenting a list of demands; and the dismissal on 28 October 1993 of 40 unionized workers, including all the members of the Executive Committee of the Trade Union of Santa Anita Farm, the Committee, deeply concerned at the excessive duration of the proceedings, which constitutes a denial of justice, requests the Government to ensure that the competent judicial authorities take a rapid decision to permit the safeguard of the interests of the workers concerned, if necessary by their provisional reinstatement in their posts until the courts have rendered a final decision. The Committee requests the Government to keep it informed in this respect.

Other questions

(l) With regard to the alleged impossibility of negotiating a collective agreement at the San Carlos Miramar Farm, the Committee, emphasizing that it is within its competence to determine whether the legislation and its application are in conformity with the principles of freedom of association, requests the Government to keep it informed of any decision taken by the judicial authorities with regard to this allegation.

(m) With regard to the dismissal of 15 workers at the San Rafael Panam and Ofelia Farms for presenting a list of demands and the failure to comply with the reinstatement order, the Committee requests the Government to endeavour to give effect to the judicial order to reinstate the workers dismissed five years ago, and to keep it informed in this regard.

(n) With regard to the dismissals on 23 August 1995 and 14 March 1996 of two trade unionists at the La Patria y Anexo Farm, the Committee deeply deplores the failure to comply with the judicial reinstatement order, and urges the Government to endeavour to enforce the order in question. The Committee requests the Government to keep it informed in this regard.

(o) With regard to the dismissal of trade union officials and workers at the Santa Fe and La Palmera Farms for forming a trade union and presenting a list of demands to the judicial authorities, the Committee hopes that the proceedings now under way will be concluded in the near future, and requests the Government to keep it informed of the outcome of those proceedings.

(p) The Committee invites the Government to accept a direct contacts mission within the framework of the follow-up to the recommendations in this case.

III. Legal questions raised by the Committee of Experts and by the Conference Committee on the Application of Standards

At its two most recent meetings in 1999 and 2000, the Committee of Experts made certain recommendations concerning the application by Guatemala of Conventions Nos. 87 and 98, as follows:

[Convention No. 87]

[In the first place], the Committee notes with concern the conclusions of the Committee on Freedom of Association in Case No. 1970 in which it noted with deep concern the large number of acts of violence against trade union officials and members which have been alleged, including numerous murders and death threats (see the 323rd Report of the Committee on Freedom of Association, paragraph 284(a)). In this respect, the Committee shares the opinion expressed by the Committee on Freedom of Association that freedom of association can only be exercised in

conditions in which fundamental human rights, and particularly those relating to human life and personal safety are fully respected and guaranteed [see op. cit.].

The Committee recalls that for many years it has been criticizing the following provisions of the legislation:

- the strict supervision of trade union activities by the Government (section 211(a) and (b) of the Labour Code);
- the requirement of being Guatemalan to establish a provisional trade union executive committee or to be elected as a trade union officer; to be an active worker at the time of election; and that at least three members of the executive committee are able to read and write (sections 220(d) and 223(b));
- the requirement for the members of the provisional trade union executive committee to make a sworn statement that they have no criminal record and that they are active workers in the enterprise (section 220(d));
- the obligation to obtain a two-thirds majority of the workers of the enterprise or workplace (section 241(c)) and of the members of a trade union (section 222(f) and (m)) to be able to call a strike;
- the prohibition of a strike or suspension of work by agricultural workers during harvests, with a few exceptions (sections 243(a) and 249), and by workers of enterprises or services whose interruption would, in the opinion of the Government, seriously affect the national economy (sections 243(d) and 249);
- the possibility of calling on the national police to ensure continuity of work in the event of an unlawful strike (section 255) and the detention and trial of persons who try to publicly call an illegal strike or suspension of work (section 257);
- the imposition of a prison sentence ranging from one to five years for persons who carry out acts intended to paralyse or disrupt the functioning of enterprises which contribute to the economic development of the country with a view to jeopardizing national production (section 390(2) of the Penal Code);
- the imposition of compulsory arbitration without the possibility of having recourse to strike action in public services which are not essential in the strict sense of the term, in particular public transport and services related to the supply of fuel, and the prohibition of inter-union sympathy strikes (section 4(d), (e) and (g) of Decree No. 71-86, amended by Legislative Decree No. 35-96 of 27 May 1996).

The Committee notes with interest that the President of the Republic has transmitted for adoption to Congress a Bill to amend or repeal some of the above provisions […]

The Committee expresses once again the firm hope that in the very near future legislation will be adopted which has been the subject of tripartite consultations and which includes amendments to all the provisions criticized. The Committee requests the Government to provide information in its next report on any developments in this respect. The Committee reminds the Government that the Office's technical assistance is at its disposal.

[Convention No. 98]

The Committee [also] notes the information of the Government to the effect that in the framework of technical cooperation the Office has provided it with a draft to address the comments of the Committee, and the tripartite commission concerning international labour issues is working on preparing draft reforms by consensus to put before the Congress of the Republic.

The Committee had asked the Government to amend section 2(d) of the Regulation for the procedures of negotiation, official approval and rejection of collective agreements, dated 19 May 1994, which requires a draft collective agreement to be submitted to the General Labour Inspectorate together with the certification of the fact that the General Assembly of the trade union in question voted, by a majority of two-thirds of its total membership, to authorize those serving on its executive committee to conclude, approve and endorse, subject to a referendum or definitively, the draft agreement, since it considered that the required percentage was too high and that it could well obstruct the conclusion of collective agreements. The Committee notes that the Government reports the existence of a tripartite commission to draft reforms in this regard, and asks the Government to take the measures necessary to ensure that the point in question comes before the Committee, and to keep it informed in this connection.

Equally, regarding Legislative Decree No. 35-96, which under its section 2(a) provides that bargaining in respect of collective agreements or conventions in the public sector shall take into account the legal possibilities of the general state income and expenditure budget, the Committee requested the Government to establish a mechanism whereby trade union organizations and employers are adequately consulted so as to be able to express their points of view to the financial authorities sufficiently in advance, so that these authorities may take due account of them when formulating the budget. The Committee notes that the Government indicates in its report that section 53(b) of the Labour Code provides that workers may denounce a collective agreement in force at least one month before its expiry date. This means that the denunciation and subsequent consultations, where the workers may express their point of view before the financial authorities, may take place sufficiently in advance prior to the elaboration and approval of the State Budget. The Committee notes that while the period allowed for consultation is adequate, no legislation has been introduced to ensure the consultation process. Consequently, the Committee again requests the Government to take the measures necessary to amend the legislation as indicated and inform it in its next report in this connection.

In June 2000, the Conference Committee on the Application of Standards adopted the following conclusions regarding the application by Guatemala of Convention No. 87:

The Committee took note of the written and oral information supplied by the Minister of Labour and of the discussion that took place in the Committee. The Committee recalled that the problem of non-compliance of national legislation and practice with the provisions of the Convention had been examined by the Committee of Experts and discussed in this Committee over many years, including the previous year. The Committee took note of the development announced by the Government representative, which had just occurred, that draft legislation to amend the Labour Code, the trade union legislation, the regulation on the right to strike and the Penal Code, in order to bring them into conformity with the requirements of the Convention, had been sent by the President of the Republic to Congress for adoption on 17 May 2000. The Committee indicated that it would be for the Committee of Experts to examine the compatibility of these amendments with the provisions of the Convention and trusted that these amendments would finally allow the full application of this fundamental Convention, ratified in 1952. The Committee was still concerned by the lack of concrete progress in practice. The Committee expressed its firm hope that the Government would send a detailed report to the Committee of Experts and a copy of the amendments adopted so as to allow it to make an assessment of real progress in law as well as in practice by the following year. It recalled the importance it attached to tripartite consultations with regard to the application of the principles of freedom of association.

IV. Written information submitted by the Government and other authorities in Case No. 1970

In a lengthy communication dated 26 January 2001, the Government states that implementation of the recommendations of the Committee on Freedom of Association is a priority. The Government indicates that it has communicated with the courts, the Office of the Attorney-General and the Presidential Human Rights Commission (COPREDEH) in connection with these recommendations, and explains that as a result of the 34 years of armed conflict within the country, which ended only recently, the state authorities have suffered a degree of disorganization and the necessary measures are still not being taken. One task since peace was achieved in 1996 has been to improve the legal and regulatory framework and to regenerate the justice system. This is not an excuse but rather an explanation for the institutional deficiencies that still exist, despite the fact that all the organizations are working towards the goals that have been defined and progress is being achieved in a process which should be viewed from the long-term perspective. As regards the constitutional principle of separation of powers, the Government has sought to ensure rapid processing of labour and criminal cases brought before the Committee with a view to resolving them swiftly (the Government supplies copies of the relevant communications).

Official visits have been made at the highest level with a view to speeding up efforts to deal with labour disputes and ensuring that criminal cases are investigated in accordance with the law. Ministry of Labour representatives have visited district-level public prosecution offices and courts in Zacapa, Escuintla, Santa Lucía , Cotzumalguapa and Guatemala City, in order to carry out on-site inspections, and fruitful discussions with judges and other officials dealing with cases have led to undertakings to introduce greater speed and flexibility. In that respect, the Ministry is fully aware of

the efforts that are required to protect trade union organizations and workers, in accordance with the Political Constitution and the Labour Code and within the framework of law.

The Ministry of Labour has on many occasions asked the Office of the Attorney-General, through its highest authority the Prosecutor-General and Head of the Office, to collaborate as closely as possible in resolving criminal matters, which have had an impact on the world of work throughout the country. Officials of the Attorney-General's Office have responded to these requests, although not always as quickly and diligently as might have been wished. For these reasons, there are still some cases where there is insufficient information, which it is hoped will be obtained in due course. Guatemala reiterates its firm commitment to establishing the truth.

As regards the allegations regarding violence or threats against trade unionists, the Government states that complains have not been made in all cases, and attempts have therefore been made to find the trade unionists concerned or their organizations with a view to ascertaining whether or not the individuals in question are still at risk of their lives, but no replies have been received. The Government invites the ILO to solicit information on this matter from the complainants.

Subsequently, the report sets out the considerable amount of information provided by the Government on specific questions raised by the Committee, as well as information given to the mission by the Supreme Court of Justice, the Office of the Prosecutor-General and the Human Rights Procurator.

Recommendation (b) of the Committee

With regard to the death of Pablo Antonio Guerra Pérez in 1995, the judicial authorities acquitted the defendant who had been charged with culpable homicide (the defence counsel maintained that the death had been an accident). An appeal could have been lodged within ten days of the ruling but this was not done; the ruling is therefore final and the case is considered closed.

As regards the killing of Luis Armando Bravo Pérez in October 1996, death was due to wounding with a firearm. The case was classed "unsolved" because the person responsible for the crime could not be found (Mr. Bravo's companions at the time of the incident were unable to identify the culprits because it occurred at night and visibility was poor). The investigation remains open.

Recommendation (c) of the Committee

Oswaldo Monzón Lima was found dead on 22 June 2000. The case is being investigated by the Office of the Attorney-General. The Prosecutor-General has been asked to appoint a special investigator. There are three principal suspects in the case.

Recommendation (d) of the Committee

As regards the murder of Robinson Manolo Morales Canales (12 January 1999), the two culprits were sentenced by the courts to 20 and 25 years' imprisonment respectively. The sentence is final.

With regard to the killing of Hugo Rolando Duarte Cordón, two persons have been charged following investigations by the Office of the Attorney-General.

As regards the death of José Alfredo Chacón Ramirez (in January 1999), information is being gathered in connection with a complaint.

Recommendation (e) of the Committee

With regard to the death of Baldomero de Jesús Ramírez in 2000, the Office of the Attorney-General does not have sufficient evidence to establish the responsibility of any individual. The daughter of Mr. Ramírez has rejected the notion that the local mayor is the culprit. The investigation remains open and is focusing on two possibilities: that the mayor was responsible, or that the deceased was killed by his wife.

Recommendation (f) of the Committee

As regards the reported death of Cesáreo Chanchavac on 30 October 1992, there has been no investigation report by the National Police.

Homicide proceedings are under way in connection with the death of Carlos Lij Cuc (in July 1994) as a result of stabbing. Two persons have been arrested and charged in connection with the killing.

As regards the killing of José Feliciano Vivas in January 1996, the duty judge initiated the appropriate procedures on the following day.

With regard to the reported killing of Solórzano Guardado (May 1996), the justice of the peace issued a certificate of suspicious death.

As regards the killing of Ismael Mérida (July 1996), the National Police has given information regarding the personal examination carried out by the justice of the peace, without any positive results.

Recommendation (g) of the Committee

As regards the death threats made against Juan Gutiérraz García, the Minister of Labour lodged a petition against the Atitán S.A. farming enterprise, and a complaint was filed on 7 August 1998. The Human Rights Procurator has been asked to ensure that this worker is given protection, the threats cease and those responsible are punished.

Recommendation (h) of the Committee

The death threats against Rolando Quinteros and Pablo Garza are being investigated by the Office of the Attorney-General. The Human Rights Procurator has been asked to provide them with protection.

As regards the death threats against José Angel Arzúa, no complaint has been made. According to his trade union, he has retired and no longer receives death threats. The mayor responsible for anti-union acts and acts of violence was removed from office.

With regard to the death threats against Elmer Salguero García, the trade union concerned states that no complaint has been made and that he no longer receives such threats. He is now a trader and no longer works in the municipality of Zacapa. The mayor responsible for violent and anti-union actions was removed from office.

As regards the death threats against Feliciano Izep Zuruy, there has been no complaint. However, there was a commercial dispute between individuals in connection with work spaces. This was also the case with José Domingo Guzmán.

As regards the death threats against Everildo Revolario Torres, Hermicio Franco Hernández, José Pinzón and Rigoberto Dueñas, the Government has asked the Human Rights Procurator to provide them with protection.

Recommendation (i) of the Committee

As regards the raid on the home of the trade unionist Francisco Ajtzoc Ajcac, the case is before the Second Labour and Family Court of Retalhuleu Department.

Recommendation (j) of the Committee

As regards the harassment and assault against (unnamed) officials of the trade union of workers of the Camino Real Hotel, the union ceased to be operative after its officers resigned, and another trade union now exists in its place.

Recommendations (k) to (o) of the Committee

With regard to the cases concerning allegations of anti-union discrimination, the Ministry of Labour and Social Security summarizes the administrative and judicial proceedings as follows.

As regards the administrative aspects of the proceedings, the Ministry is speeding up the cases which are being brought individually or collectively by the workers, in the sense that once a complaint has been made, a summons is issued immediately so that the party against whom the complaint is made appears before the General Labour Inspectorate within three days. Previously, if the party failed to appear at that hearing, up to two further summonses would be issued. With the change in Government, the current Ministry has ruled that, when the employer is summonsed, the summons must indicate the reason for the summons, and the address must be carefully checked to ensure that there can be no excuse for failure to appear. If the employer fails to appear, punitive proceedings begin automatically in the labour courts; these involve an application by the Labour Inspectorate stating the particular violation of labour law by the employer. This is a fairly long procedure, leading ultimately to a conviction which entails a small economic penalty against the employer and thus has no real effect.

If on the other hand the party against which the complaint has been made appears before the Labour Inspectorate and the dispute is resolved, the case is closed. If the dispute is not resolved, the worker must lodge a judicial application and for that purpose the Ministry has created the Office of the Procurator for the Defence of the Worker, which makes the necessary representations free of charge in connection with the claim. The Office was set up with the aim of assisting the many workers without the means to pay a lawyer in their attempts to enforce their labour rights before the courts.

A lower court ruling will be favourable or unfavourable to one of the parties. Any party dissatisfied with a ruling may appeal to ensure that its case is examined by a higher (appeals) court. This is a procedure by which one or both parties request the higher court to review a lower court ruling unfavourable to it, and asks the higher court to set aside or modify the original ruling.

The higher court can be subject to an application for protection *("amparo")* which is enshrined in article 265 of the country's Political Constitution. According to this provision, *amparo* proceedings can be instituted with a view to protecting persons against a threatened violation of their rights, or in order to restore rights that have already been violated. No sphere is exempt from *amparo* proceedings, which are applicable whenever any acts, decisions, provisions or laws imply a threat to, or a restriction or violation of, constitutional and legal rights.

Such applications are heard by a special *amparo* tribunal within the Supreme Court of Justice. In practice, the legal requirement, that a violation of rights be noted before any ordinary procedures or remedies (judicial or administrative) be applied, has virtually never been observed. Indeed, *amparo* applications have been incorrectly lodged before the Constitutional Court, which is the court of appeal for all *amparo* cases and is competent to examine direct *amparo* applications against the Supreme Court, most of which seek a "review" of decisions handed down by the ordinary courts.

There are thus four levels of judicial authority, which means that the procedure for dealing with labour disputes is slow and workers often abandon their claims in despair, frequently preferring to renounce the compensation to which they are entitled or to accept far less than they could legally claim. This situation is illustrated by the cases of anti-union discrimination referred to by the Committee.

Dismissals at the El Arco Farm. The authorities have supplied information on a collective dispute in 1997, although the complaint concerns the dismissal of three trade union leaders in August 1994. It would be helpful if the Government would send new information.

Dismissals at Santa Lucía la Mayor Farm. The judicial authorities ordered the reinstatement of the workers and the order has been put into effect.

Dismissals at La Argentina Farm. The first court order for reinstatement was overruled. The judicial authority ordered that financial compensation be paid to the workers in question.

Dismissals at El Tesoro Farm. The Constitutional Court upheld the previous rulings ordering reinstatement, thereby closing the case.

Dismissals at Santa Anita Farm. On 1 February 2000, the dismissed workers accepted an out-of-court financial settlement with the Farm and abandoned their claim.

Impossibility of negotiating a collective agreement at the San Carlos Miramar Farm. The Government has not provided new information on any court rulings in this matter.

Dismissals at San Rafael Panam Farm. The court lifted the injunctions and provisional remedies (that is, the protection given to the trade unionists) and that decision was upheld on appeal. The proceedings have ended.

Dismissals at Ofelia Farm. The parties did not appear before the court after the plaintiff requested that the direct remedies for dealing with the reinstatement applications be exhausted. The case is still pending.

Dismissals at La Patria Farm in August 1995 and March 1996. Two separate cases are pending. In the first (No. 102-97), a conciliation tribunal was convened but only the workers appeared. They can request a new hearing for both parties but have not done so. In the second case (No. 108-97), the judicial authority has lifted the injunctions and provisional remedies (thus terminating the trade union protection); this was upheld on appeal on 9 November 1996, and the case was filed.

Dismissals at Santa Fe and La Palmera Farms. This case has already been considered by an appeal court and the company lodged a request for protection *(amparo)* before the Constitutional Court, which has yet to give a ruling.

The Human Rights Procurator has noted violations of labour law and freedom of association at some of these farms (El Tesoro, Ofelia, La Patria, El Arco, San Rafael Panam and La Argentina).

V. Interviews conducted by the mission

Before entering into the substance of this section, it should be noted that, during the mission, the Congress of the Republic adopted a reform of the Labour Code (Legislative Decree No. 13-2001), which gives effect to some, although not all, of the recommendations of the Committee of Experts with regard to the application of Convention No. 87. Seventeen days after the mission's departure, Congress adopted another partial reform in Legislative Decree No. 18-2001. These reforms are considered below.

Interview with the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF)

The employers' representatives told the mission that they deplored all forms of violence, and that the situation in that respect had improved enormously since the signing of the peace agreements in 1996. As regards the other questions raised in Case No. 1970 before the Freedom of Association Committee (which refer to incidents that have taken place over a number of years), they stated that reinforcing and improving the efficiency of the justice system and reforming the procedural rules were envisaged in the peace agreements. It was a matter of priority for the employers that justice should be administered through procedures that dealt with labour issues and other areas of law in a way that was appropriate, effective, swift and up to date. In that regard, the CACIF had undertaken a number of different initiatives to improve the situation. It had attempted to promote alternative systems for resolving disputes (agreements between the parties themselves) in which the parties could freely participate if they so wished. It had requested that new tribunals be established and greater resources be allocated to the justice system. In 1997, it had worked with the trade unions on a draft labour procedural code that was almost complete. In the recent agreement with the trade unions concerning reforms to the Labour Code, it had proposed a more effective system of dealing with infractions of the Code (involving the justices of the peace) and increased fines. With regard to the latter, although the employers and the trade unions had reached an agreement on the text of an agreement, the trade unions had not wished to include this in the reform package. It was therefore unfair for some unions to criticize the employers for exploiting a situation of impunity, since the employers were more concerned than anyone else to establish a sound system for the administration of justice.

The draft labour procedural code negotiated between employers and the unions in 1997 had failed because the current Minister of Labour, a former trade union official, had a very individual view of tripartism: he had unilaterally presented the social partners with a new draft labour procedural code, while the CACIF and the trade unions had more or less agreed on their own in 1997.

In the employers' view, this attitude on the part of the Minister was also reflected in the successive partial reforms of the Labour Code undertaken with a view to bringing its provisions into line with Conventions Nos. 87 and 98. For example, he did not consult the CACIF or send it a copy of the draft reforms presented to Congress and to the International Labour Conference in 2000, in order to circumvent the need to achieve consensus. According to records of the tripartite commission, the trade unions "would not endorse an initiative [the preliminary draft] that had not been agreed by the commission". Many of the provisions proposed by the Minister were also, in the employers' view, unconstitutional.

At the same time, instead of encouraging conciliation in disputes, the Minister of Labour encouraged the use of the courts (thus prolonging the disputes), adopted biased positions in favour of the trade unions, and unjustly and incorrectly accused the CACIF of organizing demonstrations.

As regards social dialogue, the employers have emphasized the contribution of the 1995 direct contacts mission headed by Professor Enrique Marín, and the subsequent creation of the tripartite commission. Since then, progress had been made in social dialogue and in gradually overcoming the mistrust which had resulted from the armed conflict and political "labelling". In that regard, the employers drew attention to the 1998 agreement, which had been implemented through various legal reforms, and the Legislative Decree of 25 April 2001, which drew together a number of far-reaching historic agreements between the central trade union organizations and the CACIF and addressed many of the problems highlighted by the Committee of Experts. They emphasized how regrettable it was that the Government had wanted, without the approval of Congress, to extend other reforms on which there was no agreement. These included the reform concerning strikes by agricultural workers during harvests, which were potentially very damaging to agricultural enterprises, or the unconstitutional role which it sought to give to the Labour Inspectorate in imposing fines. According to some press releases that appeared after the mission's visit, the CACIF protested vigorously at the unilateral reforms imposed under the second Labour Code reform of 14 May 2001.

The employers' commitment to tripartism and social dialogue had been made abundantly clear during the past seven or eight years, and the employers were prepared to go on addressing difficult topics. It was important to establish terms of reference and to ensure that future reforms of the Labour Code and procedural rules would be implemented with competitiveness and job creation in mind. Other issues had also been raised in bipartite talks on the recent reform, and progress was possible.

The CACIF stated that it was prepared to reach agreements within the framework of the tripartite commission on a number of questions raised by the mission (details are given below). Lastly, it appreciated the ILO's role in the process of social dialogue and emphasized the importance of its continuing role in that process.

Interviews with the trade unions

In the view of the trade union organizations, the armed conflict had left a heavy legacy of mistrust between the social partners. Although this was now being gradually overcome, there were still employers for whom trade unions were synonymous with "guerrillas" and "communists". The number of killings and other acts of violence against trade unionists had fallen (one trade unionist suggested that there had been 12 killings since 1992), but death threats were still very frequent and the Office of the Attorney-General did not pay enough attention to such acts of violence. There were currently cases of attempted lynching of trade unionists (the mission learned directly of one such attempt and intervened with the authorities to prevent it), and intimidation also occurred in other forms. All the central trade union organizations agreed that, although legislation provided protection against acts of anti-union discrimination, in practice that protection was ineffective because of deficiencies in the justice system and the consistently anti-union stance of the employers, who stepped in immediately to crush any attempt to form trade unions or promote collective agreements. As a result of this, the central trade union organizations thought twice before promoting a union for fear of reprisals which had potentially serious consequences for workers at a time of high unemployment. Anti-union discrimination took different forms: dismissals of workers attempting to set up unions, bargain collectively or carry out trade union actions; circulation of blacklists of union leaders and members among companies; practices aimed at making workers leave their unions; attempted lynching of workers whose reinstatement had been ordered by a court; temporary plant closures or changes of name for anti-union ends; and the use by companies of contractors employing no more than 15 workers in order to prevent the formation of trade unions (the minimum

number of workers required to form a trade union is 20). At the same time, employer-dominated parallel trade unions were being created, and non-confrontational *"solidarismo"* was being used against traditional trade unionism. The problems were most acute in the assembly plants and in the rural sector. According to one central trade union organization, in the coffee sector, which employed 57,000 workers, there were only eight unions. As regards the right to strike, the law made the exercise of that right too difficult and in recent years there had been no cases of a strike being declared legal. In the municipalities there were also dismissals of trade unionists who lodged complaints (the mission heard direct testimony of one trade union delegation). In addition, the Labour Code did not provide for the establishment of industry trade unions.

As regards the deficiencies in the justice system, the Labour Inspectorate (at the time of the interviews) had no authority to apply sanctions, the sanctions that did exist for contraventions of the Labour Code were outdated and ridiculous (maximum fines of 5,000 quetzales) and even then were not applied by the courts. Orders to reinstate workers were not implemented and fines for non-compliance were laughable (between 250 and 5,000 quetzales). Proceedings were inordinately long and might have to pass through four judicial levels of review. Many judges were close to those with economic power and some were corrupt. Complaints against the courts brought before the supervisory authority led nowhere. In the view of the central union organizations, there was no political will to end the situation of impunity and reform the justice system, and successive governments had deferred to the interests of political and economic minorities. A number of central trade union organizations have stated that the current Minister of Labour had made efforts at reform but they had failed because they were mired in the existing structures and in the system of economic minorities. One trade union organization sharply criticized the Minister of Labour and accused him of anti-union discrimination. Successive governments and the authorities in general had, in the view of the trade union organizations, lacked the political will to solve the problems.

The central trade union organizations regard the new dialogue with the employers as an encouraging sign and are eager to achieve progress and conclude agreements. They felt disappointed and let down by the fact that, in the first reform of the Labour Code, which was adopted during the mission, Congress had legislated only on questions on which agreement had been reached with the CACIF, but not on others which had been agreed with the Minister of Labour. According to the press, they also complained of the very limited scope of the second partial reform of the Labour Code which was adopted after the mission left

The trade union organizations stated their readiness to reach agreements within the framework of the tripartite commission on questions raised by the mission, of which further detail is given in the rest of this report.

Interview with Congressional representatives

The mission had a working breakfast with Congressional representatives from two different parties, just hours before the adoption of the first partial reform of the Labour Code (25 April 2001).

During the meeting, which took place in the Congress building, the mission explained the purpose of its visit and emphasized the importance of fulfilling all the requirements set out by the Committee of Experts with regard to freedom of association. The mission also answered various questions of a technical nature on points raised by the Committee of Experts and emphasized the need to strengthen social dialogue.

Interview with the Vice-President of the Republic

The Vice-President of the Republic, who was standing in for the President during the mission's visit, indicated that by comparison with the country's past, the period of violence between trade unions and employers was now over and that there had been a considerable reduction in the incidence of threats. As regards the reform of the Labour Code which had just been adopted by Congress (the first reform of 25 April 2001), the President and senior members of the Government had wanted more substantial changes, but unfortunately Congress would not go beyond matters on which agreement had been reached by the central trade union organizations and the CACIF. Clearly, the conditions needed to reform certain provisions regarding the right to strike were not in place but could be reviewed. The Government wanted greater change and wished to equalize the respective power of the employers and workers and avoid favouring one side or the other. To do so, it was important to avoid the "tripartidism" which, in his view, was maintained by the employers only as

long as was absolutely necessary to achieve consensus on a desired labour reform. The Executive branch had a duty to guarantee justice and social coexistence and, if the social partners were unable to reach conclusions or take decisions, the State had a duty to act. The trade unions for their part did not always support the Government's initiatives aimed at helping the workers and promoting freedom of association, and they needed, with the ILO's help, to acquire greater clarity in their ideas, as well as greater strength and structure.

The Vice-President said that he supported the administration of the Minster of Labour and endorsed the mission's initiative to form a special unit within the Prosecutor-General's Office to investigate offences against trade unionists and employers. Referring to the peace agreements, he added that the delays in legal proceedings needed to be corrected.

As regards the criminal cases referred to by the Committee on Freedom of Association, he recalled that the burden of proof was on the prosecution (not the Government), and that there were cases of killings in which there was no material or eyewitness evidence, only suspicions as to the identity of the culprit (however important these might be). As regards the death threats, these were sometimes made by telephone and could be very difficult to trace.

The Executive was considering the complaints made to the ILO and had brought them to the attention of the courts and prosecution service. However, it could not interfere with the work of those authorities.

Interview with the Minister of Labour

The Minister of Labour emphasized the Government's willingness to honour the obligations arising from ratification of Conventions Nos. 87 and 98. He shared the view of the Vice-President regarding the "tripartidism" demanded by the employers, which amounted to a right of veto on all labour issues. Nevertheless, progress had been made in social dialogue, although more needed to be done. Finding solutions to the problems in the justice system (delays, non-implementation of rulings, obsolete levels of fines, etc.) that had been reported to the ILO was an integral part of the commitments under the peace agreements, and the authorities would have to undertake the necessary reforms. In particular, sanctions for failure to implement court rulings needed to be strengthened, and the Minister referred to the new draft labour procedural code which had been submitted to the social partners and aimed to bring about greater efficiency and speed in labour court procedures. He also supported the proposal to create a special unit within the prosecution service to investigate offences against trade unionists and employers, as well as efforts to strengthen social dialogue. He endorsed the mission's proposals regarding topics within its mandate for discussion by the tripartite commission (more details of these are given below).

Lastly, he emphasized that the reforms of the Labour Code which the Executive had proposed to Congress went beyond Legislative Decree No. 13-2001 (adopted on 25 April 2001) with regard to the implementation of the recommendations of the Committee of Experts concerning strikes. They also brought up to date the penalties applicable in cases of violation of labour laws and gave the Labour Inspectorate the power to impose penalties, in addition to other improvements (recognition of industry trade unions, etc.).

Interview at the Supreme Court of Justice

The Supreme Court judges provided information on the status and outcome of various criminal and labour court cases relating to Case No. 1970. They drew attention to the efforts that had been made recently through seminars and other activities aimed at formulating coherent criteria on the interpretation of laws, in the light of the complaints made by the trade unions through MINUGUA. A coordinating committee on labour jurisprudence had also been established. This body consisted of senior judges and its purpose was to establish guidelines which should ensure consistency in court rulings. Within one month, the Labour Courts' *Gazette* would also reappear and would gather together relevant court rulings and judgements on labour issues.

As regards the failure to implement reinstatement orders, this constituted the offence of "failure to carry out orders issued by a lawful authority" which, according to one judge, could give rise to sanctions under a new procedure allowing the adoption of coercive measures to force an employer to reinstate a worker. Nevertheless, it was obvious that the available fines were not severe. According to the same judge, a prison sentence could be substituted for the fine in the case of a repeat offence.

The execution of reinstatement orders was less effective than it should be, and the Office of the Attorney-General did not attach sufficient importance to the investigation of cases of failure to implement court orders. One judge emphasized that a sanction such as plant closure would undoubtedly be effective.

However, the judges indicated that cases of non-reinstatement following a judicial order to that effect were infrequent.

One judge pointed out that the allegations made in Case No. 1970 dated from before the present peace (1996), and that the situation, while far from perfect, had improved since then, in terms both of criminal activities and labour relations.

Labour court proceedings were subject to serious delays, in particular because of the abuse of applications for annulment or of objections that were lodged (often on unreasonable grounds). The Supreme Court could formulate draft legislation, and, probably in October 2001, once all the necessary consultations with the judicial community had taken place, a draft general procedural code would be put forward. This had been designed to ensure that judicial proceedings would be confined to no more than two instances; possible ways of delaying proceedings would be restricted and proceedings would be speeded up as far as possible, by making conciliation centres available to the parties to a dispute and making it a condition of any judicial examination that those centres be used. This procedure would apply to civil and criminal cases and to (individual) labour disputes.

Interview with representatives of the Office of the Prosecutor-General

The Prosecutor-General was abroad, and his representatives said that he had handed over to his private secretary the cases presented to the ILO to ensure that they received the maximum attention. The mission was then given written information on the cases before the Committee on Freedom of Association. The representatives said that the mission's proposal that a special unit be set up within the prosecution service to deal with offences against trade unionists and employers (killings, assaults, death threats, etc.) was a valuable one (other similar units existed), since it would enable a special prosecutor to coordinate and direct the activities of the district courts, consolidate information on all cases, and benefit from the advantages of specialization. It was for the Prosecutor-General to take the final decision, and the mission's proposal would be submitted to him. A protection programme already existed for witnesses and others involved in criminal trials.

The justice system suffered from a number of serious problems (a heavy workload, fear experienced by witnesses in a violent society, corruption, etc.).

As regards the offences of failure to implement judicial orders (section 414 of the Penal Code), the Office of the Prosecutor-General could not deal with such offences, since the sanction involved was a fine of between 250 and 5,000 quetzales and the procedure similar to the misdemeanours procedure. On the other hand, if the people responsible for disregarding judicial orders were public officials (including mayors), the Office could prosecute them before a lower criminal court, but such cases had first to go through a preliminary hearing (removal of immunity or *"desafuero"*) before the officials could be tried. Since failure to obtain removal of immunity resulted in what was to all intents and purposes a final ruling which precluded any further action, lack of evidence normally meant that proceedings were delayed until such time as more evidence could be gathered.

In cases of death threats, the Office of the Prosecutor-General took action but also involved the National Police. Problems of coordination with the National Police could arise when, as sometimes happened, the Police claimed the right to direct an investigation.

Proceedings were closed only when a ruling was handed down or a case dismissed; the fact that a given case was "filed" did not mean that it was closed.

* * *

In a communication of May 2001, the Office of the Procurator-General informed the mission that it had commissioned a study with a view to setting up a special unit (investigation unit) which would deal with offences against organizations and their members, and that it planned to get the unit operational as quickly as possible.

Interview with the Human Rights Procurator

The Human Rights Procurator said that violations of freedom of association were very commonplace, and there was a high level of impunity in many labour relations and criminal cases. This was a result of the lengthy proceedings, the failure to implement court reinstatement orders, corruption, and other such factors. Death threats were commonplace and affected all sections of society, including judges, witnesses, public officials and trade unionists. One of the main causes of the deficiencies in the justice system was the method of appointing divisional and court judges. The Labour Inspectorate did not function well in cases of anti-union discrimination. The Human Rights Procurator undertook mediation activities and investigations with a view to formulating a non-binding "conscience" settlement which was published and followed up. However, the Human Rights Procurator ceased to deal with a case once it came before the courts. The Procurator supplied some written information on questions raised in connection with Case No. 1970.

Interview with senior officials of the United Nations Verification Mission in Guatemala (MINUGUA)

The direct contacts mission wishes to emphasize that MINUGUA is fulfilling its commitments with due regard to the provisions of the ILO Conventions and the recommendations of the Committee of Experts and the Committee on Freedom of Association, which it cites frequently in its reports.

The mission owes MINUGUA a great deal of valuable information on compliance with those provisions of the peace agreements that relate to labour and trade union rights. One point worth mentioning, which rarely came up in other interviews, is the lack of collective agreements (only 161 between 1995 and 1999) and the limited scope of the agreements that do exist (negotiation is basically conducted on a company basis).

The documentation received shows that MINUGUA is concerned by many of the issues raised by the Committee of Experts and the Committee on Freedom of Association (slowness of legal proceedings, legal restrictions, etc.), and that it is fully committed to achieving progress in these areas.

The mission would like to draw attention to the very valuable help that it received from MINUGUA officials, especially Mr. Ricardo Changala and Ms. María Castells.

VI. The partial reform of the Labour Code adopted by the Congress of the Republic during the mission's visit and the subsequent partial reform

As indicated earlier, the first partial reform (Legislative Decree No. 13-2001) concerns trade union matters and was adopted on 25 April 2001, during the mission's visit. Congress had been asked to consider a draft text by the Executive, on the one hand, and an agreement between the central trade union organizations and the CACIF, on the other. The Congressional Decree set aside the Executive's draft text and adopted the provisions of the bipartite agreement, with the sole exception of one provision amending section 257 of the Labour Code (detention and trial of persons attempting to incite others to carry out illegal strikes or stoppages).

The mission had formulated observations on the Executive's draft text and on the agreement, recalling the observations and principles of the Committee of Experts. These observations were transmitted to the Minister of Labour who in turn brought them to the attention of Congress.

It should be noted that before the adoption of the first reform and after the first draft text submitted by the Executive (May 2000), there were successive drafts which either caused frustration among the trade unions or raised their hopes, while the CACIF maintained that it had not been consulted and the Minister of Labour claimed that the employers had abandoned the tripartite commission discussions on these issues. Whatever the case may have been, the trade unions were hoping that Congress would go beyond the issues on which agreement had been reached with the CACIF, the agreement in question having been reached when Congress suspended its discussions and submitted these legislative issues to the social partners for comment in April 2001. The

Congressional representatives expressed a willingness, where necessary, to widen the reforms along the lines suggested by the ILO.

Congressional Legislative Decree No. 13-2001, which introduces the first reform, is dated 25 April 2001. Legislative Decree No. 18-2001 introduced the second partial reform of the Labour Code and is dated 14 May 2001, i.e. 17 days after the mission departed. The legislative reform process was influenced by the demand of the United States that Guatemala comply with ILO standards as a condition for allowing the country to remain within the General System of Preferences. In a communication to the ILO dated 2 May 2001, before the second partial reform of the Labour Code, the Minister of Labour informed the ILO that the Executive intended to act on the ILO's request that it bring the Labour Code into line with Conventions Nos. 87 and 98 as far as the Constitution would allow and as far as it did not create conditions likely to impede the country's development in the social and economic conditions of today. The Minister requested as a matter of urgency that an answer be given as to whether Legislative Decree No. 13-2001 was consistent with the ILO's observations, and, if it were not, for an indication as to which provisions needed to be amended to produce wording that would be satisfactory for the ILO and for the country. The ILO replied on 7 May 2001.

Below are set out the points in which the reforms give effect to the recommendations of the Committee of Experts and those points in which they do not.

(a) Provisions which give effect or imply greater adherence to the recommendations of the Committee of Experts

- the strict supervision of trade unions by the Executive authorities is abolished (former section 211 of the Labour Code);
- the requirement that a prospective member of a trade union executive body have no criminal record and be able to read and write is abolished (former sections 220 and 223);
- the requirement to obtain a two-thirds majority of the union membership for a strike to be called (former section 222) within a union has been abolished; this has been replaced with a provision that for a strike to be approved, one-half of the quorum of the respective assembly plus one member must vote in favour;
- the requirement that at least two-thirds of workers at an enterprise must vote in favour for strike action to be legal is abolished (former section 241); instead, it is enough to obtain one-half of the votes of the workers at the enterprise plus one vote, not including workers in positions of management trust or those representing the employer [the new rule is certainly an improvement over the previous one, but the Committee of Experts will have to decide as to its compatibility with the principles of freedom of association];
- the prohibition of strikes or stoppages during harvests under former section 243(a) and strikes by workers in enterprises or services whose interruption would in the Government's view seriously affect the national economy (section 243) is repealed, so that suspension of a strike by the President is now possible only if it seriously affects public services that are essential to the country (new final paragraph of section 243). The Committee of Experts will have to rule on the compatibility of this provision with the principles of freedom of association;
- the provision allowing the arrest and trial of persons publicly inciting others to illegal strikes or stoppages is repealed (former section 257);
- in the case of illegal strikes or stoppages, there is no longer an obligation for courts to order the National Police to ensure the continuity of work (former section 255); in its place, there is now a provision according to which judges "may" order and implement precautionary measures to guarantee continuity of work and the right to work for persons wishing to continue working;
- also repealed (implicitly, by virtue of the new section 222 of the Labour Code) is the requirement for a two-thirds majority of a trade union's members for the signing of a draft collective agreement, which was part of section 2(d) of the Regulations of 19 May 1994 concerning collective agreements.

(b) Provisions to which the Committee of Experts objected and which are not covered, or not obviously covered, by the reforms

- the requirement to be of Guatemalan origin (this requirement is derived from the Constitution) and to be actively employed by a company in order to be elected to trade union office (sections 220 and 223 of the Code);
- the sanction of one to five years' imprisonment for persons carrying out acts aimed at paralysing or disrupting enterprises that contribute to the country's economic development with a view to harming national production (section 390(2) of the Labour Code). The Committee of Experts will have to determine whether, with the repeal of section 257 (regarding the arrest and prosecution of persons calling publicly for an illegal strike), section 390(2) still poses problems in terms of compatibility with the principles of freedom of association;
- the requirement for compulsory arbitration without the possibility of recourse to strike action in the public services which are not essential *stricto sensu*, such as the public transport services and services related to fuel, and the prohibition of trade union solidarity strikes (section 4, clauses (d), (e) and (g), of Decree No. 71-86, as amended by Legislative Decree No. 35-96 of 27 May 1996). The Committee of Experts will have to determine whether any of these restrictions continue to pose problems of compatibility with the principles of freedom of association, in view of the new wording of section 243, with its definition of essential services where a minimum service may be required; this is currently limited to situations of danger to life or to the safety of all or part of the population;
- the absence of a consultation procedure (within the framework of the collective bargaining procedure in the public sector, governed by Legislative Decree No. 35-96) to allow the trade unions to express their views to the financial authorities so that the latter could take account of those views when drawing up the budget.

On the other hand, Legislative Decree No. 18-2001 directly or indirectly answers some of the questions raised by the Committee on Freedom of Association (excessive delays in court proceedings in cases of anti-union discrimination, final judicial rulings for the reinstatement of dismissed workers and refusal to bargain collectively in some companies), in the sense that it considerably strengthens the obligation to reinstate workers dismissed for anti-union reasons, as well as the sanctions in cases of contraventions of the Labour Code (based on a variable multiple of the minimum wage). It also obliges the offender to remedy the irregularity, imposes further sanctions in cases of repeat offences, and enables the General Labour Inspectorate to dictate settlements and impose sanctions. The Decree also provides that the court must appoint one of the employees to act as executor and ensure that dismissed workers are actually reinstated in cases where a trade union is being established, or in cases of collective disputes in which legal immunity has not been respected.

The various drafts of a labour procedural code

In the section concerning the interviews conducted by the mission, there are references to three drafts or preliminary drafts of a labour procedural code which are intended to solve the problem of judicial delays. One was produced by the CACIF and the trade unions in 1997, and was on the point of being finalized; another more recent one was produced by the Ministry of Labour; and a third was being finalized by the Supreme Court and was due to be submitted in the near future as a bill which, if approved, would become a General Procedural Code applicable to civil, labour (individual disputes) and criminal cases.

The mission delivered a communication from the ILO's International Labour Standards Department with observations on the draft procedural code produced by the Ministry of Labour from the perspective of the application of Conventions Nos. 87 and 98.

As indicated earlier, the mission helped to guide discussions on the efficacy of the procedures. The public authorities and the social partners were fully aware of the deficiencies in the workings of the justice system, the undesirable consequences of lengthy proceedings, and the obsolete fines imposed under the Penal Code (section 414) for failure to comply with judicial orders. It is likely that the social partners and the public authorities will discuss the most appropriate procedural model.

VII. Conclusions and results

The mandate of the mission

As indicated previously, the mission's objective was:

(a) to follow up the recommendations of the Committee on Freedom of Association regarding matters relating to Case No. 1970 (killings of trade unionists, excessive delays in proceedings in connection with cases of anti-union discrimination, non-compliance with judicial orders arising from those cases, etc.); and

(b) to collaborate in efforts to bring Guatemalan legislation into line with Conventions Nos. 87 and 98 so as to meet the criticisms voiced by the Committee of Experts.

It should be noted, first, that the mission was able to carry out all its planned activities in an atmosphere of consideration and respect from the government authorities, legislature, judiciary and the Office of the Attorney-General, as well as from employers' and workers' organizations. It was important in that context to ensure that the questions raised by the Committee on Freedom of Association and the Committee of Experts were still relevant. The concern expressed by the various authorities to respond to the points raised by the ILO's supervisory bodies only confirms the importance of the latter in promoting the principles and values of freedom of association.

Regarding the questions raised in Case No. 1970

Brief résumé of the problems

In accordance with its mandate, the mission in all its interviews with government officials, the judiciary, legislative authorities and the Office of the Attorney-General, drew attention to the concerns of the Committee on Freedom of Association at the acts of violence and discrimination suffered by trade unions officials, as well as the situations of impunity, delays or ineffective procedures for dealing with anti-union behaviour. As illustrated in sections IV and V of this report, the Government representatives and the other authorities interviewed explained various aspects of the situation in Guatemala which have a bearing on these issues and reported on the efforts made to resolve the problems. They provided the mission with information on all the pending questions raised by the Committee on Freedom of Association in Case No. 1970.

Regarding the points raised by the Committee, many of our interlocutors referred to the after-effects of a history of violence, confrontation and mistrust. There is no doubt that the peace agreements marked a turning point and have set Guatemala on the path towards a gradual recovery of basic human rights, including the right to life and security of the person. This should not be underestimated. Nevertheless, the after-effects in question have not yet been overcome and are still evident in the form of threats and acts of anti-union discrimination (which in the opinion of the trade unionists are frequent), and in the nature of labour relations, especially in terms of mutual rejection and prejudices.

This "culture", which has grown out of the ashes of past violence, is also reflected in the institutional machinery of legal process and reparation: judges, witnesses, labour inspectors, and parties to disputes often find themselves faced with threats which create an insuperable obstacle to the administration of justice and the exercise of police authority.

There are also other factors which contribute to the institutional ineffectiveness, and these relate to the competent bodies, and to the procedures and methods of implementation. In investigations of offences, lack of resources, poor coordination with the civil police, duplication of authorities and disputes about official powers are among the problems faced. When it comes to violations of the principles of freedom of association and labour protection standards, exacerbating factors include the inadequacy of the courts, unsatisfactory methods of appointing and supervising judges, the tendency for existing procedures to be abused (which is one factor explaining the delays in proceedings), the absence of adequate sanctions in cases of failure to comply with court orders, the impotence of the penal system to deal with violations of labour laws (excessive length of procedures, etc.).

Initiatives and results

A new process of social dialogue

It is clear that in this situation of mistrust between the parties, a sustained exercise in social dialogue – quite apart from any possible specific goals of that process – becomes an end in itself. It serves to promote mutual knowledge and recognition, and contributes to the goal of conciliation and thereby to attaining the objectives of the peace agreements.

With this in mind, the mission proposed to the central employers' organization, the central trade union organizations and the Government, that a new process of dialogue be established with the assistance of the ILO, this time geared to identifying options for remedying the severe lack of institutional effectiveness evident from the questions raised before the Committee on Freedom of Association. Aspects of this include: reforming procedures for settling individual and collective labour disputes (following the proposal to speed up procedures and ensure compliance with existing laws and court rulings); development of alternative techniques and mechanisms for prevention and settlement by the parties themselves of disputes; and tripartite review of alleged acts of violence affecting trade unionists and employers with a view to collaborating in efforts to bring down the incidence of such acts, ensure they are properly investigated and protect the victims. The employers' associations and trade unions, as well as the Ministry of Labour, have expressed their readiness to participate in this process of social dialogue; the ILO, through the San José Multidisciplinary Advisory Team and its social dialogue programmes, should play its part in setting up the process, promoting its development and maintaining the commitment of the parties. The first meeting will probably take place in July with a view to setting up the necessary committees.

A sign of the high regard in which the ILO is held in Guatemala is the fact that, in including the question of reforming labour law procedures in the future social dialogue agenda, the parties agreed, at the mission's urging, to set aside certain a priori objections (particularly by the employers and the Ministry of Labour) to various reforms on which there had supposedly been no consultation. Also in preparation is a proposed procedural reform drafted by the Supreme Court with a view to consolidating civil, commercial and labour procedures. One of the first commitments at the dialogue table must be a commitment to building consensus on the procedural model considered to be most effective in dealing with labour conflicts.

Investigations of offences and other questions relating to the penal system

The mission, with the Vice-President, the Minister of Labour and officials of the Prosecutor-General's Office, considered the need for measures to improve the investigation of offences against trade unionists. These talks led to a certain degree of convergence in the sense that the creation of a special unit dedicated to this task within the Prosecutor-General's Office would allow officials to specialize and centralize information, and could lead to better results. The mission accordingly recommended that this option be considered. On 14 June 2001, the Government reported that the Special Investigation Unit *(Fiscalía Especial)* had begun work on 8 June. It goes without saying that, as indicated previously, its effectiveness will depend on the provision of adequate resources, proper subordination of the civil police and avoidance of any duplication of effort.

As regards the recurrent failure to implement court rulings, it seems obvious that structural factors of the kind referred to previously are still at work. We referred to these as "after-effects" of historical tendencies, not yet fully overcome, towards violent forms of behaviour and the consequent erosion of the rule of law. Other factors have also contributed to the problem. These include the method of appointing judges and the inadequate machinery for monitoring their activities. A number of those we spoke to drew attention to the virtual absence of any real penalties for non-compliance with judicial rulings, the only available penalty being outdated fines under section 414 of the Penal Code. The minor status of such offences under the Penal Code is shown by the fact that they are dealt with by justices of the peace, rather than by criminal court judges. [1] In the

[1] Unless the offence is committed by a public official, in which case the criminal courts are involved, and, in addition to a fine, the offender can be sent to prison for between one and three years.

light of the conclusions of the Committee on Freedom of Association, the mission suggested to the Vice-President that it would be appropriate to set about amending the relevant provisions determining the penalty and the competent authority, in such a way as to increase their deterrent effect and punish with sufficient vigour the failure to respect judicial rulings which so dangerously undermines the credibility of the justice system.

The mission found that everyone to whom it spoke was agreed on the need to strengthen the system of recording and punishing contraventions of labour legislation which is hampered by the excessive length of judicial proceedings and the inadequacy of existing penalties. There was, however, disagreement as to the right way of rectifying this deficiency. This question had already been dealt with in the bills under discussion during the mission's visit, and corresponding provisions were approved in the legal reforms adopted after the mission left (Legislative Decree No. 18-2001 of 14 May 2001). In that text, the power to impose sanctions – which had hitherto been the prerogative of the labour tribunals – has been given to the Labour Inspectorate (the employers regard this as unconstitutional), while penalties have been updated by increasing them and setting them in relation to the minimum wage.

Towards strengthening the labour relations system

In many of the interviews, it became obvious that there was a need to strengthen the labour relations system. To do this, the mission considers that it would be very helpful to carry out a diagnostic survey of its status, its overall context, the factors that are preventing it from working properly, and possible ways of overcoming them. The ILO could provide technical assistance for such a study, and the conclusions could be discussed as part of the process of social dialogue.

The reservations expressed by the Committee of Experts

As indicated in the opening lines of this report, the Ministry of Labour had requested that the mission, the original purpose of which was to follow up the recommendations of the Committee on Freedom of Association in Case No. 1970, also address the questions raised by the Committee of Experts. During its visit, the mission stressed the importance of bringing legislation fully into conformity with Conventions Nos. 87 and 98, and made observations on the bills and agreements under discussion at that time in the light of the reservations expressed by that supervisory body and of the principles embodied in Conventions Nos. 87 and 98. Those observations were passed on to the Minister of Labour who in turn brought them to the attention of Congress. The mission also had meetings with the Congressional authorities, and emphasized in those meetings the need to find solutions that would answer the reservations of the Committee of Experts.

The content and scope of the legislative reforms are described in section VI of this report. As indicated there, the Legislative Decree adopted during the mission's visit and the one adopted 17 days after its departure constitute a significant step forward in the application of Conventions Nos. 87 and 98, in that they repeal or amend many of the provisions criticized by the Committee of Experts (and have a more or less positive impact with regard to the questions raised by the Committee on Freedom of Association), although such legislative decrees have been severely criticized by both the employers' and workers' organizations, albeit for different reasons.

* * *

I would not wish to conclude this report without expressing my profound personal gratitude to my colleagues during the mission. After the daunting work of preparing for the mission, the experience and wise counsel of Mr. Alberto Odero de Dios were crucial to its success. Mr. Christian Ramos Veloz, based in San José, was jointly responsible for the preparatory work. His extensive knowledge, cooperative spirit and skilful participation were of great value to the team in its deliberations.

Buenos Aires, 9 June 2001. Adrián O. Goldin.

85. *The Committee thanks Professor Adrián Goldin for his comprehensive mission report. With regard to the alleged murders of trade union members, the Committee notes that, according to the Government, the two people responsible for the murder of the trade union member Robinson Manolo Morales Canales were sentenced by the courts to 20 and 25 years imprisonment respectively. The Committee notes that investigations have begun into the murders of Oswaldo Monzón Lima, Hugo Rolando Duarte Cordón and Carlos Lij Cuc, and suspects have been identified. The Committee deeply regrets that the judicial proceedings relating to the murders of Luis Bravo and Pablo Antonio Guerra Pérez have been closed without those responsible being identified.*

86. *The Committee also notes that investigations have begun into the murders of Baldomero de Jesús Ramírez, José Feliciano Vivas and Carlos Solórzano. The Committee requests the Government to keep it informed with regard to these matters and to provide new information on the murders of José Alfredo Chacón Ramírez and Ismael Mérida. The Committee also requests the complainant to provide further information on the murder of Cesáreo Chanchavac.*

87. *Although most of these murders are not recent, the Committee notes with grave concern that, according to the mission report, the Human Rights Procurator stated that violations of freedom of association were very commonplace and that there was a high level of impunity in many labour relations and criminal cases. The Committee reminds the Government that freedom of association can only be exercised in conditions in which fundamental human rights, and in particular those relating to human life and personal safety, are fully respected and guaranteed; it hopes that the investigations and proceedings currently under way will allow those responsible for the murders to be identified and punished.*

88. *With regard to the alleged death threats, the Committee notes with grave concern that according to the mission report, trade union members continue to receive death threats. It notes that the Government states that investigations or legal proceedings are currently under way in the cases of Juan Gutiérrez Garciá, Rolando Quinteros and Pablo Garza. The Committee notes that José Angel Arzúa, Elmer Salguero García, Feliciano Izep Zuruy and José Domingo Guzmán have not provided official complaints of death threats. In this respect, the Committee requests the Government that an independent inquiry be established as soon as the authorities are aware of death threats having been made, whether or not an official complaint has been made. With regard to the alleged death threats to Everildo Revolario Torres, Herminio Franco Hernández, José Pinzón and Rigoberto Dueñas, the Committee notes that the Government has requested the Human Rights Procurator to provide them with protection.*

89. *On a more general note the Committee notes with interest that at the request of the direct contacts mission a special unit within the Prosecutor-General's Office, which aims to improve the efficiency of investigations into offences against trade union members, began to function in June 2001. The Committee hopes that the new unit will help speed up the criminal investigations already under way and that it will have sufficient budgetary allowance, control over the police and will help avoid duplication of investigative proceedings. The Committee supports the proposal of social dialogue with the assistance of the ILO (accepted by the Government and the social partners) to review, on a tripartite basis, the alleged acts of violence affecting trade union members and employees with a view to collaborating in efforts to bring down the incidence of such acts, ensure they are properly investigated and protect the victims. The Committee hopes that this technical assistance programme will begin as soon as possible.*

90. *The Committee notes that judicial proceedings have begun with regard to the allegation concerning the raid on the home of trade union member Francisco Ajtzoc Ajcac. The*

Committee notes that the Government did not reply specifically to the allegation of the stabbing of the General Secretary of the trade union of the Hotel Camino Real and reiterates its request to the Government to indicate whether an investigation has begun into this allegation.

91. *With regard to the allegations of anti-union discrimination, the Committee notes that the direct contacts mission report indicates that exacerbating factors in violations of the principles of freedom of association and labour protection standards include the inadequacy of the courts, the unsatisfactory methods of appointing and supervising judges, the tendency for existing procedures to be abused (which is one factor explaining the delays in proceedings), the absence of adequate sanctions in cases of failure to comply with court orders, the impotence of the penal system to deal with violations of labour laws (excessive length of procedures, etc.). The Committee notes with interest that the Government and the social partners also accept that social dialogue established with the assistance of the ILO will identify "options for remedying the severe lack of institutional effectiveness evident from the questions raised before the Committee on Freedom of Association: aspects of this include reforming procedures for setting individual and collective labour disputes (following the proposal to speed up procedures and ensure compliance with existing laws and court rulings), the development of alternative techniques and mechanisms for prevention and settlement by the parties themselves of disputes".*

92. *The Committee hopes that ILO assistance will take place in the shortest possible time. The Committee also notes with satisfaction that two legislative decrees have been adopted, in particular Legislative Decree 18-2001 of 14 May 2001, adopted following the direct contacts mission, wherein, among other things, there are mentioned improvements relating to the issues presented in Case No. 1970. Specifically, the Committee notes that in the latter Decree, the power to impose sanctions – which had hitherto been the prerogative of the labour tribunals – has been given to the Labour Inspectorate, while penalties have been updated by increasing them and setting them in relation to the minimum wage, in order to ensure compliance.*

93. *The Committee insists on the need to punish more seriously the crime of non-compliance with judicial rulings (for example, those that call for the reinstatement of trade union members), as these are currently punished by a fine which is not enforced, and considers that the labour legislation should be revised so that cases of trade union discrimination are processed rapidly. The Committee requests the Government to take the necessary measures in consultation with the most representative employers' and workers' organizations.*

94. *With regard to the specific allegations of anti-union discrimination, the Committee notes that the judicial authority ordered the reinstatement of the trade union members dismissed from the Santa Lucía la Mayor farm and the El Tesoro farm, and the dismissed workers from Santa Anita farm accepted an out-of-court settlement with the farm. The Committee notes that the judicial authority declared the order of reinstatement of trade union members from La Argentina farm overruled but ordered that the workers be paid compensation. The Committee also notes that the judicial authority lifted protective measures for trade union members at the San Rafael Panam farm and for a number of trade union members at the La Patria farm (dismissed in March 1996).*

95. *The Committee notes, however, that the judicial proceedings relating to dismissals at the Ofelia and La Patria farms (dismissed in August 1995) and the Santa Fe and La Palmera farms are still pending. The Committee requests the Government to provide specific information in this respect, and also to provide information on the dismissals at the El Arco farm (1997) and the alleged impossibility of negotiating a collective agreement at the*

San Carlos Miramar farm. The Committee emphasizes the importance of revising judicial proceedings in order to avoid the possibility of four legal proceedings or at least so that the legislation ensures that the legal decisions on reinstatement in the first instance are provisionally carried out until confirmed during a later appeal. Finally, the Committee draws the Government's attention to the availability of ILO technical assistance to facilitate the implementation of the Committee's recommendations.

Case No. 1890 (India)

96. The Committee last examined this case concerning the dismissal of Mr. Laximan Malwankar, President of the Fort Aguada Beach Resort Employees' Union (FABREU), the suspension or transfer of 15 FABREU members following strike action, and refusal to recognize the most representative workers' organization for collective bargaining purposes [see 324th Report, paras. 56-58].

97. In communications dated 17 July and 21 August 2001, the Government repeats its previous information according to which two inquiries, in respect of Mr. Sitaram Rathod and Mr. Shyam Kerkar, are still in progress. With regard to the second group of seven workers suspended pending inquiry, the Government indicates that only two inquiries, in respect of Mr. Ambrose D'Souza and Mr. Mukund Parulekar, are still in progress. As regards the case of Mr. Malwankar, the Government states that adjudication proceedings are in progress. The next date for hearings is fixed for 9 October 2001. Further developments will be intimated by the Government in due course.

98. *The Committee takes note of the information provided by the Government. It recalls that this case related to various acts of harassment and anti-union discrimination carried out against the President of FABREU, Mr. Malwankar, from 1992 to 1994, which culminated in the dismissal of this trade union leader in January 1995 and the suspension or transfer of FABREU members in April 1995 following strike action in the hotel industry which was declared a public utility service and thus referred to the Industrial Tribunal, contrary to the principles of freedom of association since the hotel industry is not an essential service in which the strikes can be prohibited [see 307th Report, paras. 366-375]. The Committee must once again deeply deplore the fact that the events to which the various proceedings and inquiries are related occurred in 1995 and earlier on. With respect to Mr. Malwankar, the Committee once again expresses the firm hope that the court proceedings will be expedited and requests the Government to continue to keep it informed of the outcome thereof. Furthermore, the Committee once again requests the Government to continue to keep it informed of the outcome of the inquiries in respect of Messrs. Sitaram Rathod, Shyam Kerkar, Ambrose D'Souza and Mukund Parulekar.*

Case No. 2078 (Lithuania)

99. The Committee last examined this case at its meeting in June 2001 when it recalled 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 the minimum service to be provided and the need to revoke Decision No. 1443V which had set out the required minimum service for passenger transportation services in Vilnius. The Committee requested the Government to keep it informed of the progress made in this regard [see 325th Report, paras. 44-46].

100. In a communication dated 17 July 2001, the Government indicates that amendments of the Act on the Settlement of Collective Disputes ensuring participation of workers' and employers' organizations concerned in the determination of minimum services have been prepared and submitted to the social partners for their observations. Furthermore,

provisions of this Act have been included in the draft Labour Code which is being discussed with the social partners and is expected to be adopted this year. As concerns Decision No. 1443V, the Government indicates that the municipality of Vilnius has informed it that there is no need to revoke this decision as it was set out for that particular case only. If a new dispute were to arise, a new determination will need to be made about the minimum services, taking into account the concrete situation. Finally, the Government recalls that there is no dispute at present given that a collective agreement was signed at the Vilnius Bus Depot Ltd. in February of this year and that the negotiators of the agreement at the Vilnius Trolleybus Depot Ltd. now agree on all items and the agreement is to be signed on 26 July. In a communication dated 10 August 2001, the Government indicates that the collective agreement at the Vilnius Trolleybus Depot Ltd. was signed on 31 July.

101. *The Committee notes this information with interest, as well as the Government's indication that amendments have been prepared to the legislation so as to ensure the participation of the workers' and employers' organizations concerned in the determination of minimum services. The Committee hopes that these amendments will be adopted in the near future and requests the Government to keep it informed of the progress made in this regard.*

Case No. 1980 (Luxembourg)

102. When it last examined this case at its meeting of March 2001 [see 324th Report, paras. 623-675], the Committee requested the Government to take the necessary measures so that an organization whose representativeness in a given sector, in line with ILO principles, had been objectively demonstrated and whose independence was established, was able to sign, and where necessary to be the sole signatory to, collective agreements, in order to make Luxembourg practice fully compatible with freedom of association.

103. In a communication of 27 July 2001, the Government stated that it did not intend to oppose the Committee's recommendation. However, it wished to place certain observations relating to the case before the Committee. The Government explained that the Luxembourg system of social dialogue was based on institutionalized tripartism comprising strong organizations on the side of the social partners, which were present throughout the country and in most branches of economic activity. This presence accounted for their representativeness but also explained their responsibility for drawing up answers to questions of national interest. For example, when the national action plan for employment was drawn up, with a view to implementing the European employment strategy, the national Tripartite Coordination Committee, consisting of the major representative trade unions, adopted wage restraint as one of the points of the plan. In this regard, the Government was of the opinion that only trade unions that were able to go beyond the partisan interests of a group of employees, and able to act on behalf of what was ultimately the common interest of all salaried employees, would have the necessary responsibility and influence to contribute to the implementation of a national policy of this sort.

104. Moreover, the Government considers that the Committee's recommendation may carry the seeds of corporatism in it, by giving power – in some cases excessive – to trade unions which exclusively defend the interests of a fairly small specific group of salaried employees. In addition, even though the short-term interest of salaried employees represented by a purely sectoral trade union may appear relevant, such a selfish corporatist attitude could count against them in the long term. Hence, for the management of a crisis in one sector to form a relevant part of a policy of solidarity taking into account the interests of salaried employees directly concerned and of the national community, it would be necessary to have independent and powerful unions. In this regard, the Government fears that the Committee's recommendation may pave the way both for an unhealthy fragmentation of the union scene and for the risk of "house" trade unions developing

within enterprises. This would give such "single-enterprise" sectors an unexpected opportunity for signing collective agreements with a union whose development had been promoted by the employer and which would be easier to manipulate than powerful national unions.

105. Finally, the Government considers that a viable solution might be as follows: if a trade union has a strong presence in a sector, a collective agreement could not be signed without it, but the co-signature of a nationally representative union would be necessary. In this way, the principle defended by the ILO would be respected, without jeopardizing the Luxembourg social model. In addition, the Government said that it had initiated a reform of the legislation on collective agreements and that it wanted, among other things, to incorporate the ILO's position in its considerations. A preliminary draft law was due to be finalized shortly and the social partners would be consulted in connection with it.

106. *The Committee noted with interest the detailed information supplied by the Government. While taking account of the specific nature of the Luxembourg social model, the Committee reiterated its earlier conclusions, namely that imposing national and multi-sectoral representation in interpretation of the 1965 Act is contrary to the principles of freedom of association since it could prevent the most representative union in a given sector from being the sole signatory to collective agreements and thus from defending fully the interests of the workers whom it represents. However, the Committee stresses the fact that the representativeness of a trade union organization in a given sector must be objectively demonstrated in line with ILO principles. Moreover, as regards the independence of a trade union organization and the danger of the development of trade unions that are promoted and manipulated by the employer, the Committee again stresses the fact that it is only when their independence vis-à-vis the employer and the authorities is established that trade union organizations may have access to collective bargaining. The Committee again reiterates that the criteria of representativeness and independence attributed to trade union organizations must be determined by a body offering every guarantee of independence and objectivity. Finally, noting the legislative reform undertaken by the Government on this issue, the Committee reminds the latter that it can have recourse to technical assistance from the ILO with respect to the implementation of its recommendation.*

Case No. 2109 (Morocco)

107. The Committee examined this case relating to the dismissal of trade unionists following the establishment of a trade union committee and anti-union repression at its June 2001 meeting [see 325th Report, paras. 448-462]. On that occasion, the Committee requested the Government to take all necessary measures to ensure that the ruling handed down by the relevant court – if the ruling confirmed the labour inspectorate's conclusion that a violation of freedom of association had been committed in the Fruit of the Loom company – was fully and effectively applied and that the eight trade union officers were reinstated in their respective jobs without loss of pay and with full compensation. The Committee also requested the Government to keep it informed of developments in regard to the attitude of the Governor of the town of Salé who had made statements against trade unions and acted in an anti-union manner, in particular with regard to the trade union members of the Fruit of the Loom company in the town of Salé.

108. In its communication dated 21 September 2001, the Government states that, in accordance with the legislation in force, the two reports of the labour inspectorate of their meetings with the employer were transmitted to the relevant court and that the Committee will be informed of the ruling handed down by this court as soon as this takes place. Moreover, the Government states that the employees involved in this action have submitted a case to the courts for compensation for wrongful dismissal.

109. *The Committee takes note of this information. It once again requests the Government to inform it of the decision of the court on the two records submitted by the labour inspectorate, and of the ruling on the case brought before the court by the employees for compensation for wrongful dismissal. Finally, the Committee requests the Government to keep it informed of the measures taken or envisaged with regard to the allegations of anti-union behaviour on the part of the Governor of the town of Salé.*

Case No. 2034 (Nicaragua)

110. The Committee last examined this case, relating to unjustified dismissals of trade union officials, at its June 2001 meeting [see 325th Report, paras. 47-49]. On that occasion, the Committee requested 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. In a communication dated 7 August 2001 the Government reiterates that the persons concerned have not been reinstated as the procedures laid down in national legislation have not been exhausted.

111. *In this regard, the Committee regrets to note this information once again and urges the Government to take the necessary measures immediately to ensure that the abovementioned trade union officials are reinstated in their posts and any back wages paid.*

Case No. 2112 (Nicaragua)

112. The Committee last examined this case, relating to anti-union dismissals and transfers and withdrawal of the check-off facility in the health sector, at its June 2001 meeting [see 325th Report, paras. 489-509]. On that occasion, the Committee requested the Government to ensure that the transferred officers are not impeded in the exercise of their trade union activities, and to re-establish the payroll check-off facility.

113. In a communication dated 20 July 2001, the Government refers to the communication of the Ministry of Labour dated 16 April 2001, already examined by the Committee at its June 2001 meeting, in which it points out that the deduction of union dues is carried out once the express consent of each worker has been obtained and that a list of such deductions must be submitted to the employer; should the employer refuse to authorize them, the trade union has the right to ask the departmental offices of the Ministry of Labour to take the necessary measures to guarantee compliance with labour legislation.

114. *The Committee regrets that the Government has not provided any new information and urges the Government immediately to adopt appropriate measures to guarantee the exercise of trade union activities by the transferred officers and to proceed to re-establish the payroll check-off facility.*

Case No. 1996 (Uganda)

115. During its previous examination of this case in June 1999 [see 316th Report, paras. 642-669], the Committee had requested the Government to take the necessary measures to ensure that certain provisions of the Trade Unions Decree of 1976 were amended in line with freedom of association principles. Noting the Government's indication that steps were already being taken to address this problem within the framework of the ongoing labour law reform process in the country, the Committee had requested the Government to keep it informed of any developments in this regard. The Committee had further noted that the Uganda Textile, Garments, Leather and Allied Workers' Union (UTGLAWU) had not been recognized by management in several enterprises following privatization despite the

fact that the union had managed to fulfil the stringent requirements set out in the Trade Unions Decree with regard to union recognition, and that the UTGLAWU had filed legal proceedings against a number of companies in order to obtain recognition for collective bargaining purposes. The Committee had therefore requested the Government to keep it informed of the outcome of these various court proceedings.

116. In a communication dated 24 August 2001, the Government points out that it has adopted a policy of consultation and dialogue as a strategy for dealing with trade disputes related to the non-recognition of unions. To this end, the Minister of Gender, Labour and Social Development had initiated dialogue between the UTGLAWU and the management of Nytil Picfare company. According to the Government, both management and union officials had indicated willingness and readiness to put aside their differences and negotiate for recognition of the UTGLAWU at the Nytil Picfare company. However, before the negotiations could yield any results, the company went into receivership and was bought by a new management which took over in December 2000. The company thus changed hands and now has a new name "Southern Range Nyanza Ltd.". The process of negotiation was disrupted and the UTGLAWU is now pursuing afresh the matter of recognition with the new management. A meeting is scheduled to take place by the end of this month to discuss the proposed Memorandum of Procedural and Recognition Agreement. It is the Government's hope that the matter which has been pending for so long will be resolved through the cooperation and understanding of the parties.

117. The Government adds that in the meantime, the inconsistencies in the relevant legal provisions of the Trade Unions Decree have been addressed within the framework of the Uganda Law Reform Project carried out under the ILO/UNDP Support for Policy and Programme Development (SPPD). The revised laws are in the form of two draft bills to be tabled before Cabinet for consideration in due course.

118. *The Committee notes that the Government took certain conciliatory measures in order to try and obtain Nytil Picfare company's recognition of the UTGLAWU for collective bargaining purposes but the process of negotiation was disrupted since the company was bought and taken over by a new management in December 2000. The Committee nevertheless observes that the UTGLAWU had pursued the matter of recognition with the new management and that a meeting is scheduled to take place on a related Memorandum of Procedural and Recognition Agreement. Recalling its previous conclusion [see 316th Report, para. 667] that employers should recognize for collective bargaining purposes the organizations representative of the workers employed by them or organizations that are representative of workers in a particular industry, the Committee trusts that the management of the new company, the Southern Range Nyanza Ltd., will recognize the UTGLAWU. It requests the Government to keep it informed of the outcome of the meeting to this end between the two parties. Furthermore, the Committee had noted previously that the UTGLAWU had filed legal proceedings against a number of companies (apart from Nytil Picfare Ltd.) in order to obtain recognition for collective bargaining purposes [316th Report, para. 667]. Noting that the Government has not provided any information in this regard, the Committee once again requests the Government to keep it informed of the outcome of these various court proceedings.*

119. *Finally, the Committee notes with interest that two draft bills, which would amend the provisions in the Trade Unions Decree inconsistent with freedom of association principles, are to be tabled before Cabinet for consideration in due course. Noting that these bills were drafted with ILO technical assistance, the Committee requests the Government to keep it informed of any progress made in their adoption.*

Case No. 2006 (Pakistan)

120. The Committee last examined this case at its June 2001 meeting when it had urged the Government to lift the ban on trade union activities in the Karachi Electric Supply Corporation (KESC) and to restore the trade union and collective bargaining rights of KESC workers without delay. It had also requested the Government to keep it informed of any developments in respect of union officials from the Pakistan Water and Power Development Authority (WAPDA) and KESC who were forcibly retired [see 325th Report, paras. 53-56].

121. In a communication dated 20 August 2001, the Government states that trade union activities and the check-off system have not yet been restored in KESC due to its ongoing financial and organizational restructuring. The organization is facing recurring operational deficits due to a number of factors. A technical and financial support agreement has been reached between the Government and the Asian Development Bank which could serve as an instrument to improve KESC's financial situation. The restoration of trade union rights in KESC depends on a favourable change in its financial situation.

122. *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 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 once again urges the Government to lift the ban on trade union activities in KESC. It further urges the Government to take the appropriate measures to ensure that the right of the KESC Democratic Mazdoor Union as collective bargaining agent is restored without delay. It requests the Government to keep it informed of developments in this regard.*

123. *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. 1965 (Panama)

124. The Committee last examined this case, concerning arrests and ill-treatment of trade unionists, at its March 2000 meeting [see 324th Report, paras. 769-778]. On that occasion, the Committee requested the Government to keep it informed of the results of: (a) the judicial procedures initiated by the workers of the Aribesa enterprise, Mr. Porfirio Beitia, Mr. Francisco López, Mr. Eugenio Rivas, Mr. Julio Trejos and Mr Darío Ulate, and as regards the dismissed workers for whom reinstatement is impossible, to make efforts to ensure that funds are secured to compensate them; and (b) the investigations undertaken by the Government Procurator's Office into the alleged raid on SUNTRACS headquarters and the alleged ill-treatment suffered by a number of Aribesa workers during their detention.

125. In a communication dated 30 May 2001, the Government attaches a copy of the note sent to the Procurator-General of the Nation requesting it to carry out the necessary investigations into the raid on SUNTRACS headquarters in January 1998 and the ill-treatment inflicted on those who were detained on that occasion.

126. *The Committee notes this information. In this regard, the Committee expresses the hope that the investigation will be concluded in the very near future and requests the Government to keep it informed of its final outcome. At the same time, the Committee regrets that the Government has not provided any information on the judicial proceedings initiated by the abovementioned workers of the Aribesa enterprise and on the fund to compensate those workers who cannot be reinstated. The Committee therefore urges the Government to send the information requested without delay.*

Case No. 1796 (Peru)

127. At its June 2001 meeting, the Committee requested 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 concerning their dismissal [see 325th Report, para. 60]. In a communication dated 24 February 2001 the General Confederation of Workers of Peru (CGTP) recalls that Mr. Arias Vildoso was dismissed in violation of his trade union immunity (as recognized by the court of first instance) and that the higher judicial authorities subsequently followed the opinion of a minority of the magistrates, with the result that he was denied reinstatement.

128. In its communications dated 26 June and 29 August 2001, the Government states that, as mentioned by the CGTP, the Supreme Court of Justice declared the appeal lodged by Mr. Iván Arias Vildoso inadmissible and that the Government must abide by this decision. The Government also indicates that it will inform the Committee of the decision of the Supreme Court of Justice in the case of Mr. Delfín Quispe Saavedra as soon as it is handed down.

129. *The Committee notes this information. The Committee requests the Government to keep it informed of the final outcome of the proceedings concerning the trade union leader Mr. Delfín Quispe Saavedra.*

Case No. 1880 (Peru)

130. At its March 2001 meeting, the Committee formulated the following recommendations concerning the pending allegations [see 324th Report, para. 861]:

– as concerns the dismissal of the trade union official Mr. Adriel Grispín Villafuerte Collado at the Electro Sur Este S.A. Puno enterprise, the Committee hopes that the judicial authorities will rapidly hand down their decision and that this decision will be in full conformity with the principles of freedom of association. The Committee urges the Government, if this decision concludes that there have been acts of anti-union discrimination, to take the necessary measures to ensure that the trade union official is reinstated in his post. The Committee requests the Government to keep it informed in this regard and to keep it informed of the final ruling handed down by the judicial authority;

– the Committee requests the Government to take the necessary measures to ensure that an investigation is carried out into the motives for the dismissal of the trade union official Mr. Barrueta Gómez and, if they are found to have an anti-union character, to reinstate him in his post. The Committee requests the Government to keep it informed of the outcome of this investigation;

– the Committee requests the Government to take steps to ensure that the decisions to cancel the registration of the [following] trade union organizations [the Single Trade Union of Light and Power Workers of Cerro de Pasco; the Single Trade Union of

Workers and Allied Workers of Tingo María; the Single Trade Union of Workers of Selva Central and Allied Workers; and the Single Trade Union of Light and Power Workers and Allied Workers of Ayacucho] are suspended until the courts give a ruling on the matter. The Committee requests the Government to keep it informed of any measures adopted in this regard;

– the Committee expresses the hope that the judicial authorities will give a ruling in the near future on the dismissal of the trade union official Mr. Walter Linares Sanz, and requests the Government to keep it informed of the final ruling.

131. In its communications dated 18 and 22 January, 22 February and 26 June 2001, the Government states that the judicial proceedings initiated by Mr. Adriel Grispín concerning his dismissal are still under way. As regards the dismissal of Mr. Walter Linares Sanz, the Supreme Court of the Republic ruled that the appeal for review lodged by the enterprise was inadmissible.

132. *The Committee takes note of this information. The Committee requests the Government to communicate the final outcome of the proceedings concerning the dismissal of Mr. Adriel Grispín. The Committee also requests the Government once again to carry out an investigation into the dismissal of trade union official Mr. Barrueta Gómez and, if it is found to be based on anti-union motives, to reinstate him. Lastly, the Committee again requests the Government to take steps to ensure that the decisions to cancel the registration of all of the trade union organizations mentioned above are suspended until the courts give a ruling on the matter. The Committee requests the Government to keep it informed of any measures adopted in this regard.*

Case No. 2076 (Peru)

133. At its March 2001 meeting, the Committee formulated the following recommendations on pending allegations [see 324th Report, para. 875]:

– concerning the dismissal of the trade union officials Sixto M. Olivos León, Heraldo Z. Torres Osnayo, Juan D. Ayulo Petzoldt and Luis Santiago Puertas at the Compañía Peruana de Radiodifusión S.A., the Committee expects that the judicial authorities will rapidly hand down their decisions and that these decisions will be in full conformity with the principles of freedom of association. The Committee urges the Government, if these decisions conclude that there have been acts of anti-union discrimination, to take the necessary measures to ensure that the trade union officials are reinstated in their posts. The Committee requests the Government to keep it informed of the judgements handed down in this respect;

– the Committee requests the Government to confirm whether the trade union leaders Mr. Rey Fernández Patiño and Adriel Vargas Cáritas have in fact been reinstated in their posts with full compensation, as ordered by the court.

134. In its communications of 7 and 21 May and 26 June 2001, the Government states that the court of first instance has ordered that Mr. Luis Santiago Puertas be reinstated and paid his wages due; however, the enterprise could still contest this decision. The courts of first and second instance also ordered the reinstatement of Mr. Sixto M. Olivos. In addition, the enterprise has lodged an appeal against the court ruling concerning trade union leader Mr. Torres Osnayo (whose reinstatement was ordered in first instance), who was awarded a provisional benefit of 1,432 new soles. As regards the dismissal of Mr. Ayulo Petzoldt, the court of first instance ruled in his favour but an appeal has been lodged against this decision.

135. *The Committee notes this information with interest and again requests the Government to confirm whether the trade union leaders Mr. Rey Fernández Patiño and Mr. Adriel Vargas Cáritas have in fact been reinstated in their posts with full compensation, as ordered by the courts. The Committee also requests the Government to communicate the final outcome of the proceedings concerning trade union officials Mr. Torres Osnayo and Mr. Ayulo Petzoldt.*

Case No. 1826 (Philippines)

136. The Committee last examined this case at its June 2001 session [see 325th Report, paras. 78-80]. On this occasion it had requested the Government to ensure that an impartial certification election be held at Cebu Mitsumi Inc. and to consider examining the legal framework for certification elections, with a view to preventing excessive and prejudicial delays in future. The Committee requested to be kept informed of any progress in this regard and also requested the Government to respond to new allegations concerning the suspension of Mr. Ferdinand Ulalan, President of the Cebu Mitsumi Employees' Union (CMEU).

137. In a communication dated 7 June 2001, the complainants provided detailed information concerning a certification vote held on 4 May 2001, alleging that several irregularities took place, amounting to violations of Convention No. 87 by the employer, namely: a few days before the election, the management of Cebu Mitsumi announced verbally that there would be no production on 4 May 2001 and that all employees would be on forced leave, due to lack of orders; officials of the Department of Labor and union representatives were allowed entry into the company premises only two hours after the scheduled voting time, and they underwent unusually stringent security checks (strict ban on tape recorders, cameras and any other audiovisual device); the voting time was delayed for several hours, due in part to delays in the construction of polling booths; posters calling for the boycott of CMEU were posted at the gate and inside the building; strong presence of security guards and unusual blockades outside the company site. As a result, out of the 16,000 employees at Cebu Mitsumi, no more than 150 employees showed up, most of whom were line managers excluded from the bargaining unit. According to the complainants, the absence of workers in and outside the company premises was due to the management's threats of dismissal. The current labour laws of the Philippines are inadequate as they provide no criminal sanctions against employers who refuse to cooperate in certification elections.

138. In a communication dated 31 August 2001, the Government indicates that out of 123 votes cast at the certification election of 4 May 2001, there were five votes in favour of the CMEU, 94 votes against it, three spoiled votes and 21 challenged votes. In view of the circumstances, the Government decided to submit the whole case, including a petition of protest received from the CMEU to a mediator-arbiter for appropriate action. The Government also filed a formal charge with the Philippine National Police against the security firm involved in the incidents, for the revocation of its licence and that of 11 security guards.

139. *The Committee takes note of the information provided in this case, which concerns the exercise of trade union rights in the Danao export processing zone. Recalling that the CMEU initial petition for a certification election was filed back in February 1994, and that this case has been examined on no less than six occasions [302nd Report, paras. 386-414; 305th Report, paras. 54-56; 308th Report, paras. 65-67; 316th Report, paras. 72-75; 323rd Report, paras. 72-74; 325th Report, paras. 78-80], the Committee notes with regret that the certification vote, when it finally took place after lengthy delays and several postponements, was marred by a number of irregularities, which led the Government to submit the case to a mediator-arbiter for "appropriate action". As regards the case immediately at hand, in view of the lengthy delays, the Committee expresses the firm hope*

that the mediator-arbiter will issue in the very near future a decision which would be compatible with the principles of freedom of association, and requests the Government and the complainant to keep it informed of developments in this regard. The Committee reiterates its request that the Government reconsider the relevant provisions, with a view to establishing a legislative framework allowing for a fair and speedy certification process, and providing adequate protection against acts of interference by employers in such matters. The Committee requests the Government, once again, to provide its observations concerning the suspension of Mr. Ulalan.

Case No. 1914 (Philippines)

140. When it last examined this case, which concerns dismissals of trade unionists further to strike action, detention of unionists and acts of violence against strikers, the Committee expressed its profound regret at the inordinately long delays already observed in this matter: five years since the first order for reinstatement (October 1995) of around 1,500 leaders of the Telefunken Semiconductors Employees' Union (TSEU); and three years since the Supreme Court had issued a decision (December 1997) ordering the immediate reinstatement, without exception, of all the TSEU workers concerned. The Committee urged the Government to guarantee expeditious and effective protection against acts of anti-union discrimination, and insisted that every effort be made to ensure that all these workers be reinstated in their functions.

141. In its communication of 31 May 2001, the Government states that the Supreme Court issued, on 18 December 2000, a decision dismissing the decision of 23 December 1999 and affirming the resolution of 19 April 2000 of the Court of Appeals.

142. *The Committee takes note of this communication, observing with regret that the Government merely states that the Supreme Court issued a judgement upholding or reversing the decisions of lower courts, without giving any substantive information on the practical effects of said judgement. On the basis of information at its disposal, the Committee is unable to draw any conclusions on the impact of the Supreme Court's judgement of 18 December 2000. Noting with deep concern that yet another year has elapsed since the anti-trade union dismissals (September 1995), without any concrete implementation of the initial reinstatement order (issued in October 1995) or of the Supreme Court decision to the same effect (issued in December 1997), the Committee recalls that justice delayed is justice denied and reminds the Government that it is responsible for preventing all acts of anti-union discrimination, and for ensuring that remedies in this respect are rapid and effective. The Committee urges once again the Government rapidly to take appropriate measures to ensure that all TSEU workers dismissed for their participation in strike action in September 1995 be immediately reinstated in their jobs under the same terms and conditions prevailing before the strike, with full compensation for lost jobs and benefits. The Committee requests the Government to keep it informed of developments by providing substantive information.*

Case No. 1785 (Poland)

143. The Committee last examined this case, which concerns the issues of cash compensations to trade union organizations and assignment of real estate property to NSZZ "Solidarność" and the Polish Trade Union Alliance (OPZZ), at its March 2001 meeting. Whilst mindful of the complexity of the case, the Committee recalled that this representation dated back to 1995, expressed the hope that all remaining issues could be settled by October 2001 as the Government had announced, and requested to be kept informed of developments [see 324th Report, paras. 73-77].

144. In a communication of 31 May 2001, the Government states that, as a result of interministerial consultations in September 2000, it turned out that the issuance of treasury bonds in connection with restitution of trade union property had to be dealt with through an act of Parliament rather than in a regulation of the Minister of Finance. The Government introduced a bill on a priority basis, which was adopted on 29 March 2001 and entered into force on 26 May 2001. This Act provides that outstanding and new state treasury liabilities will be paid with zero-coupon treasury bonds, freely tradable on the secondary market. The payments will be made in two stages: within three months of the entry into force of the Act as regards liabilities resulting from the Vindication Commission's rulings which become final before 31 December 2001; by 30 April 2002 for the others. As of 31 December 2000, the outstanding liabilities amounted to PLN158 million (including accrued interests), which means that most of the treasury liabilities would be satisfied during the first stage, i.e. no later than 26 August 2001. It is estimated that a maximum amount of PLN30 million (including interest) will have to be paid at the second stage, i.e. by 30 April 2002. As of 30 April 2001, 282 claims of restitution of trade union property seized under martial law were under review by the Vindication Commission, which believes that it will be able to close all cases by November 2001.

145. The Government indicates that drafting work is still in progress on the future regulation concerning the legal status of property of the former Trade Unions' Association and other trade union organizations dissolved under martial law (the sector and so-called "autonomous" trade unions). However, legal, social and political potential complications prevented that work to progress to the extent that consultations with the national commission of Solidarność would have been warranted. The Government will do so as soon as the drafting process brings about satisfactory results.

146. The Government adds, as regards two related issues (although not raised by Solidarność), that legal proceedings filed by OPZZ in respect of financial compensation allegedly owed by the State, and Solidarność's counter pleadings on the same issue, have now reached the stage of the Constitutional Court. In addition, the Sejm is currently examining a Senate bill on the Employees' Recreation Fund, which would determine the legal status of that property and set out the rules for its division.

147. *The Committee notes this information with interest, and requests the Government and the complainant to confirm that all claims pending before the Vindication Commission have actually been settled. The Committee further requests the Government to keep it informed on developments concerning the status of the Employees' Recreation Fund, and the future regulation of the legal status of property of the former Trade Unions' Association and other trade union organizations dissolved under martial law.*

Case No. 1972 (Poland)

148. The Committee last examined this case at its March 2001 meeting, where it expressed its hope that the judicial proceedings concerning the dismissal of Mr. Grabowski, chairperson of the trade union Sprawiedliwosc, would soon be concluded and requested to be provided with the final court decision. The Committee also requested the Government to provide the text of the Act on the Social and Economic Commission as soon as adopted [see 324th Report, para. 80].

149. In its communication of 31 May 2001, the Government indicates that Mr. Grabowski's case is still pending before the XIth Labour Division of the District Court for Warsaw-Praga South, whose next session has been set for 18 September 2001. The Act on the Social and Economic Commission has not yet been adopted, and the Government will forward it to the Committee as soon as this is done.

150. *The Committee takes notes of this information. It expresses, once again, the firm hope that the proceedings concerning the dismissal of Mr. Grabowski will be concluded soon and requests the Government to provide the final court decision. The Committee once again requests the Government to provide the text of the Act on the Social and Economic Commission as soon as it is adopted.*

Case No. 2091 (Romania)

151. The Committee examined the substance of this case at its March 2001 meeting, when it invited the Government, after consultation with the concerned parties regarding the appropriate practical details, to take the required measures to secure the prompt reinstatement of trade union leader Mr. Ion Mihale in his duties and to keep it informed of developments in this situation [324th Report, para. 896].

152. In its communication dated 12 September 2001, the Government states on the basis of the information obtained from the management of the Minmetal SA enterprise that Mr. Mihale was dismissed not because the strike was declared illegal by the court, but because of his disciplinary record and the circumstances of the case. According to the Government, Mr. Mihale was accused of several breaches of discipline at the time the strike (in which 314 out of 702 workers did not want to participate) was declared, and in particular of having forged the signatures of 19 workers. In line with the spirit of the Committee's recommendations, in August 2001, the Minmetal SA management had carried out a survey among the 345 workers (out of 524) who were present at work on the subject of reinstating Mr. Mihale; 94 per cent of those questioned responded negatively and 79 per cent of them felt that such a decision would be detrimental to the harmony and constructive spirit of the labour relations climate now prevailing in the enterprise. The management therefore considers that the prompt reinstatement of Mr. Mihale, disregarding both the decision of the competent court and the results of the survey carried out at the workplace, could have unforeseeable consequences for the working atmosphere in the enterprise.

153. While it is aware of its obligations ensuing from the ratification of international labour Conventions and is open to the recommendations made by the Committee, as evidenced by the amendment of the legislation respecting the settlement of labour disputes (Act No. 168/1999), the Government remains convinced that it must, first and foremost, ensure compliance with the law.

154. *The Committee notes all of this information. As regards the reasons for Mr. Mihale's dismissal, the Committee recalls that its examination of the case was based both on the documents and arguments put forward by the complainant and on those submitted by the Government concerning the courts' characterization of the dismissal. As regards the reasons for judgement of the court (Judgement No. 12712, Court of Constanta, of 11 August 1999, upheld by Judgement No. 2251, civil chamber of the Court of Constanta, of 15 September 1999), which do not mention the alleged forgery of signatures or Mr. Mihale's disciplinary record, the Committee concluded, inter alia, that: "the decisive factor in any analysis rests on whether the strike is lawful or not. Without taking a position as to whether the interpretation of these provisions as rendered by the court is founded in light of the particular circumstances, the Committee emphasizes that, whereas the right to strike is not an absolute right and must be exercised in observance of national legislation, the legal provisions must also conform to the principles of freedom of association" [324th Report, para. 891]. The Committee agrees with the Government that it is important to ensure compliance with the law, but must once again emphasize that the law must itself conform to the principles of freedom of association. The Committee recalls in addition that no one should be penalized for carrying out or attempting to carry out a legitimate strike [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 590].While taking account of the actual situation in the Minmetal*

SA enterprise, the Committee trusts that a solution can be found that is satisfactory for the company and for the person mainly concerned, Mr. Mihale. The Committee requests the Government and the complainant to keep it informed of the measures taken to follow up on its recommendations, and of developments in the situation.

Case No. 2043 (Russian Federation)

155. The Committee last examined this case at its meeting in November 2000 when it requested the Government to urgently take all appropriate measures so that the arrears owing to Zashchita be paid immediately by Murommashzavod Ltd., and that the situation be remedied as regards future remittances [see 323rd Report, paras. 493-505].

156. In a communication dated 6 June 2001, the Government indicates that, upon verification by the Directorate of the Ministry of Justice, it was found that the bailiff's office received a writ of execution on 9 June 1999 concerning the enforcement of payment of sums by the Murommashzavod joint-stock company to the Zashchita first-level trade union, on the basis of which enforcement proceedings were instituted. The bailiff is taking all the measures for the settlement of the debt, but this task is made difficult by the fact that during the period 1999-2000 writs of execution were issued against the same debtor containing claims ranking second and fourth in priority. All of the funds raised through the sale of the attached property have been distributed in accordance with the requirements laid down in section 78 of the Federal Act respecting enforcement proceedings. The claims of the Zashchita trade union rank fifth in priority, while the abovementioned Federal Act provides that the claims of each subsequent rank will be settled after the full settlement of the claims.

157. *The Committee takes due note of this information and requests the Government to keep it informed of the progress made in settling the claims of the Zashchita trade union to the union dues which were deducted from members' wages but never credited to the union account.*

Case No. 2018 (Ukraine)

158. The Committee last examined this case at its June 2001 meeting when it requested the Government to ensure that ILO principles relating to the right to strike were taken into account in the draft amendments to the Transport Act. The Government was further requested to reply to the observations contained in the communication of 20 April 2001 submitted by the complainant in this case, the Independent Trade Union of Workers of the Ilyichevsk Maritime Commercial Port (NPRP) [see 325th Report, paras. 85-88].

159. The complainant's communication of 20 April 2001 alleged that, following the submission of the Independent Trade Union's demands, the administration of the Ilyichevsk Maritime Commercial Port began to take steps aimed at liquidating the union by forcing union members, with intimidation and threats, to sign already prepared letters of resignation. Union members are being persecuted and unacceptable conditions are imposed. Furthermore, the complainant alleges that trumped-up criminal charges were brought against its president two years ago and there has still been no investigation or inquiry.

160. In a communication dated 18 July 2001, the Government indicates that the matters raised in the complainant's communication were investigated thoroughly by the Chief Labour and Social Security Directorate of the Odessa regional administration and by the regional labour inspectorate together with the Odessa Department of the National Mediation and Conciliation Service. The investigation showed that, in accordance with the Act respecting trade unions, their rights and guarantees of their activities, the five trade unions operating

at the port enjoyed equal rights, representatives of all the unions participated in collective talks and signed the collective agreement with the port administration – an agreement that was also signed on behalf of the Independent Trade Union. The investigation did not find a single case of pressure being brought to bear by the port authorities on workers to force them to leave the Independent Trade Union, although of course any worker has the right to join a different union or simply to leave his or her union. Nor were any cases found of dismissal on grounds of trade union membership. As concerns the criminal proceedings against the president of the Independent Trade Union, the Government indicates that the case was closed on 1 June 2001 in view of the failure to establish the president's guilt. The Government adds generally that formal legal complaints may be brought before the courts regarding any actions by the port authorities which may be considered to be unlawful. Finally, the Government states that a meeting of the council of the port's work brigade leaders unanimously adopted a resolution on 3 July 2001 censuring the leadership of the Independent Trade Union and proposing that the latter organize an extraordinary meeting for the purpose of holding new union elections and that the Independent Trade Union representatives were informed of this resolution.

161. In communications dated 12 July and 23 August 2001, the Confederation of Free Trade Unions of Ukraine (to which the complainant is affiliated) takes issue with the findings of the commission set up to investigate the complainant's allegations in respect of anti-union discrimination at the Ilyichevsk Maritime Commercial Port. The complainant (NPRP) submits further information in communications dated 7 August and 19 October 2001 concerning recent violations of its collective bargaining rights.

162. In a further communication dated 23 August 2001, the Government adds that the Ministry of Transport has been preparing a new transport bill which will include the following provisions:

> Voluntary cessation of work (strike) in transport undertakings may be initiated in accordance with the procedure established under relevant legislation. Except in cases where such cessation of work would endanger the life and health of individuals or pose an environmental threat, hinder the prevention of natural disasters, accidents or major incidents, epidemic or epizootic outbreaks, or impede efforts to deal with the consequences of such events.

163. *The Committee notes the information provided by the Government concerning the investigations carried out at the Ilyichevsk Maritime Commercial Port in respect of the allegations made on anti-union discrimination and harassment. Furthermore, while noting that the criminal case against the president of the Independent Trade Union has now been dropped, the Committee observes with regret that the charges against him were maintained for over two years, despite the apparent absence of any proof of misconduct. In this respect, the Committee wishes to recall the importance it attaches to the principle that allegations of criminal conduct should not be used to harass trade unionists by reason of their union membership or activities [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 43]. As concerns the information communicated by the Government concerning the resolution of the council of the port's work brigade leaders, and in the absence of any clear indication as to whether the work brigade leaders are actually members of the Independent Trade Union, the Committee wishes to recall that, according to Articles 2 and 3 of Convention No. 87, workers shall have the right to establish organizations of their own choosing and these organizations, through their members, shall have the right to elect their representatives in full freedom and the authorities should refrain from any undue interference in this regard [see 324th Report, para. 985]. The Committee trusts that the Government will, where necessary, ensure respect for this principle in the Ilyichevsk Maritime Commercial Port.*

164. *The Committee notes with interest the draft amendment in respect of section 18 of the Transport Act concerning strike action and requests the Government to keep it informed of the progress made in this respect and to transmit a copy of the new Act as soon as it has been adopted. Finally, the Committee requests the Government to reply to the additional allegations raised in the communications from the Confederation of Free Trade Union of Ukraine and the complainant's communications dated 7 August and 19 October 2001.*

Case No. 2038 (Ukraine)

165. The Committee last examined this case at its March 2001 meeting when it noted with satisfaction the prospects of a technical assistance mission to the country in respect of the implementation of the judgement of the Constitutional Court of Ukraine which had declared unconstitutional the clauses of sections 11 and 16 of the Trade Unions Act which restricted the right to freedom of association [see 324th Report, paras. 85-87].

166. In a communication dated 23 August 2001, the Government indicates that sections 11 and 16 of the Trade Unions Act are in the process of being amended and that the drafting process will take into account the conclusions of the ILO technical assistance mission which was undertaken in April 2001.

167. *The Committee notes with interest the Government's statement that the proposed amendments to the Trade Unions Act will take into account the conclusions of the ILO technical assistance mission. The Committee draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to the proposed amendments to sections 11 and 16 of the Trade Unions Act.*

Case No. 2075 (Ukraine)

168. The Committee last examined this case at its June 2001 meeting when it requested the Government to engage immediately in discussions with the All-Ukrainian Trade Union "Solidarnost" with a view to establishing the date 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 also called upon the Government to take the necessary measures to ensure the reactivation of the union's bank account [see 325th Report, paras. 89-91].

169. In its communication of 23 August 2001, the Government indicates that with regard to the refusal by the Ministry of Justice to register the All-Ukrainian Trade Union "Solidarnost", it had previously informed the Committee that an appeal was lodged by the union against the ruling given on 6 April 2000 by the Supreme Court of Arbitration (VASU). The appeal was heard by the arbitration college responsible for reviewing decisions and rulings of the VASU. On 25 July 2000, the arbitration college ruled that the original ruling of 6 April 2000 should stand. A protect was lodged with the VASU Presidium against the arbitration college ruling. The Presidium also ruled that the original VASU ruling of 6 April should stand, because the court had examined all the circumstances of the case and correctly assessed all the available evidence.

170. *The Committee takes note of this information. It notes with regret that the Government merely reiterates the information it had previously provided and that even if the complaint was lodged in March 2000, the complainant organization has still not been able to obtain its registration. It once again urges the Government to engage actively in discussions with the All-Ukrainian Trade Union "Solidarnost" with a view to establishing the date necessary for its registration. It once again requests the Government to keep it informed of*

the measures effectively taken to ensure the registration of the complainant organization as well as the measures taken concerning the reactivation of the union's bank account.

Case No. 1937 (Zimbabwe)

171. The Committee last examined this case at its meeting in November 2000 when it once again urged the Government to amend sections 98, 99, 100, 106 and 107 of the Labour Relations Act so as to ensure that compulsory arbitration may only be imposed with respect to essential services and in cases of acute national crisis. Furthermore, the Committee urged the Government to take the necessary measures to ensure that the workers dismissed from the Standard Chartered Bank were reinstated pending the conclusions of the disciplinary committee, reconstituted by the Supreme Court judgement, and trusted that the disciplinary committee would bear in mind the principles of freedom of association so that all those workers who were dismissed for the exercise of legitimate trade union activity would be fully reinstated in their jobs as soon as possible without loss of salary or benefits [see 323rd Report, paras. 106-111].

172. In a communication dated 28 August 2001, the Government indicates that this case has been amicably settled between the bank and its employees. Following the Supreme Court judgement ordering a new disciplinary committee, the parties engaged in protracted negotiations and a settlement was reached and signed by the bank and the workers' representatives. According to the Government, the bank established an independent administered trust fund for the former employees who have individually and collectively confirmed their satisfaction with the outcome of the dispute. As concerns the legislative changes recommended by the Committee, the Government states that these are being taken care of by the labour amendments processes.

173. *The Committee notes with interest that a settlement agreement has been reached between the Standard Chartered Bank and the workers' representatives, to the collective and individual satisfaction of the workers who were dismissed over four years ago. As concerns its recommendations of a legislative nature, the Committee once again recalls the need to amend the provisions of the Labour Relations Act which provide for compulsory arbitration and the availability of ILO technical assistance in this regard. The Committee requests the Government to keep it informed of any progress made in amending the Labour Relations Act and to transmit a copy of any draft legislation in this respect. 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. 2027 (Zimbabwe)

174. The Committee last examined this case at its March 2000 session and on that occasion requested the Government to: (1) take the necessary measures for a complete independent judicial inquiry to be carried out into the assault on Morgan Tsvangirai in order to determine those responsible and punish the guilty parties; (2) take the necessary measures to institute an independent investigation into the arson of the ZCTU offices; (3) provide a copy of the High Court judgement concerning the case brought by the CZTU concerning the temporary ban on industrial action issued in November 1998; (4) to keep it informed of the status of the Labour Relations Amendment Bill of 1999.

175. In its communication dated 30 August 2001, the Government indicates that concerning the case of Mr. Tsvangirai, the alleged assailant was brought before the courts of law and the magistrate acquitted the alleged assailant on the grounds of lack of adequate evidence to sustain the prosecution and conviction. Given the manner in which the assault was perpetrated, the Government had difficulty in establishing a judiciary inquiry as common

assaults are not unusual in urban areas. The Government states that the courts are competent enough to deal with the issues of common assault and hence stand by the court's judgment which has already been communicated to the ILO.

176. *The Committee takes note of this information. Concerning the case of Mr. Tsvangirai, while noting the Government's position, the Committee must recall that the rights of workers' and employees' 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 the organizations, and it is for governments to ensure that this principle is respected. Moreover, a genuinely free and independent trade union movement cannot develop in a climate of violence and uncertainty and the Government has the undeniable duty to promote and defend a social climate where respect of the law reigns as the only way of guaranteeing respect for and protection of individuals. The Committee requests the Government to establish a thorough and independent inquiry into this matter. With regard to the other issues concerning this case, the Committee regrets that the Government has not provided any information and requests it to keep it informed on all the pending issues related to this case.*

Case No. 2081 (Zimbabwe)

177. The Committee last examined this case at its November 2000 session [see 323rd Report, paras. 555-575] and on that occasion requested the Government: (1) to take the necessary measures to ensure that section 120(2) of the Labour Relations Act of 1985 is amended in line with freedom of association principles, and (2) to take the necessary measures to stop forthwith the ongoing investigations by a government-appointed investigator into the financial affairs of the Zimbabwe Congress of Trade Unions (ZCTU).

178. In its communication dated 30 August 2001, the Government indicates that both the ZCTU and the Employers' Confederation of Zimbabwe (EMCOZ) have made representation to the Parliamentary Portfolio Committee for it to consider the amendment of section 120(2) of the Labour Relations Act. The Government underlines the possibility for parliamentarians to lobby for the amendment of the section in the ongoing labour legislation amendments. Concerning the investigations into the financial affairs of the ZCTU, the Government explains that these investigations had been completed by the time the Committee had requested it to stop the investigations but the Government took due note that such investigations should be carried out by an investigator independent of the administrative authorities.

179. *The Committee takes note of this information. It requests the Government to continue to keep it informed of any measures taken to amend section 120(2) of the Labour Relations Act of 1985.*

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180. Finally, as regards Cases Nos. 1618 (United Kingdom), 1813 (Peru), 1843 (Sudan), 1851 (Djibouti), 1922 (Djibouti), 1953 (Argentina), 1959 (United Kingdom/Bermuda), 1978 (Gabon), 1992 (Brazil), 2012 (Russian Federation), 2022 (New Zealand), 2031 (China), 2037 (Argentina), 2042 (Djibouti), 2049 (Peru), 2052 (Haiti), 2053 (Bosnia and Herzegovina), 2058 (Venezuela), 2059 (Peru), 2065 (Argentina), 2072 (Haiti) and 2100 (Honduras), 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 Case No. 2009 (Mauritius), the Committee requests the Government to reply to the communications transmitted by the complainants. In addition, the Committee has just received information concerning Cases Nos. 1581 (Thailand), 1877

(Morocco), 1952 (Venezuela), 1957 (Bulgaria), 1975 (Canada/Ontario), 1991 (Japan), 2014 (Uruguay), 2048 (Morocco), 2051 (Colombia), 2083 (Canada/New Brunswick), 2106 (Mauritius) and 2110 (Cyprus), which it will examine at its next meeting.

CASE NO. 2095

INTERIM REPORT

Complaints against the Government of Argentina presented by
— the General Confederation of Labour (CGT)
— the National Civil Servants' Union, and
— the Asociación del Personal Técnico Aeronáutico de la República Argentina (APTA)

Allegations: Breach of a collective agreement; obligation to renegotiate collective agreements

181. The complaints are contained in communications by the General Confederation of Labour (CGT) and by the National Civil Servants' Union (UPCN) dated 16 August 2000 and October 2000 and by the Asociación del Personal Técnico Aeronáutico de la Republica Argentina (APTA), dated 26 March 2001.

182. The Government transmitted observations in communications of 20 July and 15 October 2001.

183. Argentina has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154).

A. The complainants' allegations

184. In its communications of 16 August and October 2000, the General Confederation of Labour (CGT) and the National Civil Servants' Union (UPCN) state their opposition to Decree 430/00 issued by the National Executive which imposes a wage reduction on national civil service employees, decentralized bodies, state limited liability companies, national banks and other bodies under the auspices of the national State, thus constituting a breach of the applicable labour regimes, regardless of whether the employment relationship is governed by duly approved public sector collective agreements, by legislation governing employment contracts or by collective labour agreements signed under the normative framework of Act 14250 and its amendments.

185. Article 1 of Decree 430/00 provides that:

> A reduction is hereby introduced in the gross, total, monthly, normal, regular and permanent remuneration, and complementary annual wage, excluding family benefits, for national civil service employees included in article 8, paragraphs (a) and (b) of Act 24156, including official banking entities and the armed and security forces and the federal police and national legislature, regardless of the labour regime applicable to such employees …

Article 2 provides that:

> The reduction in remuneration provided for in the previous article shall apply to the total of components of such remuneration, in accordance with the following scale:
>
> | | |
> |---|---|
> | Under 1,000 pesos | 0 per cent reduction |
> | Over 1,000 and under 6,500 | 12 per cent reduction |
> | Over 6,500 | 15 per cent reduction |

186. The CGT and UPCN further allege that the State signed the first collective agreement for the national civil service in January 1999, which provides that the Government undertakes to guarantee stability of position and function of civil servants, including, among other rights, normal, regular and permanent remuneration corresponding to the grade in question. The agreement provides moreover for the establishment of the Standing Commission for Application and Labour Relations, to carry out mediation and dispute settlement. This agreement is currently in force. The complainants further state that the First Sectoral Negotiating Commission agreed on a wage increase for level F of the SINAPA (Sistema Nacional de la Profesión Administrativa), ratified by resolution 99/99 of the National Ministry of Labour.

187. The CGT and UPCN allege moreover that the Government issues an emergency decree to reduce earnings by a significant percentage (the Decree provides for a reduction of 12 per cent for the lowest wage brackets and of 15 per cent for the higher brackets), and failed to activate the consultation mechanisms provided for in the collective agreement.

188. In its communication of 26 March 2001, the Asociación del Personal Técnico Aeronáutico de la República Argentina (APTA) alleges that the Ministry of Labour, Employment and Human Resource Training, under resolution ST 30/3001, ordered the association to renegotiate collective agreements with the companies Aerolíneas Argentinas S.A. and Austral Líneas Aéreas-Cielos del Sur S.A. in regard to the following matters: (a) an administrative programme to preclude unemployment in the sector; (b) the impact of production restructuring on conditions of work and of employment; and (c) vocational retraining and reintegration of affected employees.

B. The Government's reply

189. In its communication dated 20 July 2001, the Government states that contested Decree 430/00 was revoked by Decree 896 of 11 July 2001. It adds that Decree 430/00 was adopted for reasons of economic emergency and fiscal pressure necessitating prompt and effective action to alleviate the negative effects of Argentina's extremely difficult financial and budgetary situation. The Government adds that Decree 430/00 introduced wage reductions exclusively for the upper echelons of the administration (salaries over 1,000 pesos) whose remuneration was not fixed by collective agreement. The Government further states that agreement in regard to level F was respected and did not fall within the bracket affected by Decree 430/00.

190. In a communication dated 15 October 2001, the Government forwarded complementary observations concerning the APTA's complaint.

C. The Committee's conclusions

191. *The Committee notes that the complainant organizations, CGT and UPCN challenge Decree 430/00 issued by the Executive Power, providing for a reduction in the wages of*

national public administration employees, and allege that the Decree breaches the provisions of the first collective agreement for the national civil service sector concluded between the UPCN and the Government in January 1999 and that the consultation mechanisms established under that agreement were not respected.

192. *In regard to Decree 430/00 contested by the complainants and the alleged breach of the collective agreement concluded between the UPCN and the State, the Government states that: (1) the Decree in question has been revoked; (2) the Decree was originally adopted for reasons of financial emergency and fiscal pressure; (3) the Decree provided for reductions affecting only the upper echelons of the administration (over 1,000 pesos) and that such remuneration fell outside the agreement which is alleged to have been breached; and (4) level F of SINAPA was not affected by the Decree.*

193. *In this regard, the Committee notes the emergency situation referred to by the Government leading to the issue of Decree 430/00, and that the remuneration subject to reduction had not been fixed by collective agreement. Nonetheless, the Committee points out that "it is essential that the introduction of draft legislation affecting collective bargaining or conditions of employment should be preceded by full and detailed consultations with the appropriate organizations of workers and employers," [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 931]. Consequently, the Committee requests the Government to take the necessary measures to ensure that whenever it intends to adopt new decrees or provisions affecting the interests of workers, consultations be carried out with the most representative worker organizations of the sector in question.*

194. *As regards the allegations submitted by the APTA on the obligation to renegotiate particular provisions of collective agreements with the companies Aerolíneas Argentinas S.A. and Austral Líneas Aéreas-Cielos del Sur S.A., imposed by the Ministry of Labour, Employment and Human Resources Training under resolution ST 30/2001, the Committee notes that the Government has communicated its observations in a recent communication dated 15 October 2001. Therefore, the Committee decides that it will examine these observations at its next session.*

The Committee's recommendations

195. ***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 take the necessary measures to ensure that whenever it intends to adopt new decrees or provisions affecting the interests of workers, consultations be carried out with the most representative worker organizations of the sector in question.

(b) As regards the allegations submitted by the APTA on the obligation to renegotiate particular provisions of collective agreements with the companies Aerolíneas Argentinas S.A. and Austral Líneas Aéreas-Cielos del Sur S.A., the Committee notes that the Government recently communicated its observations and therefore proposes to examine these allegations in detail at its next session.

CASE NO. 2117

DEFINITIVE REPORT

Complaint against the Government of Argentina presented by the Association of State Workers (ATE)

Allegations: Provincial decree restricting the right to collective bargaining

196. The complaint submitted by the Association of State Workers (ATE) is contained in a communication dated February 2001. The Government forwarded its observations in a communication of 3 July 2001.

197. Argentina has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154).

A. The complainant's allegations

198. In its communication of February 2001, the Association of State Workers (ATE) states that Act 23328 ratifies Convention No. 151 and Act 23544/88 ratifies Convention No. 154 and that article14bis of the Argentinian constitution guarantees the right to collective bargaining as a fundamental right. Likewise, the complainant indicates that the Constitution establishes the representative, republican and federal system and provides, moreover, that each provincial state has legislative powers and that the procedure and holding of collective bargaining for public administration must be legislated in keeping with the existing normative framework. The Constitution of the Province of Buenos Aires, article 29, paragraph 4), explicitly provides for the right to collective bargaining for public officials of the province.

199. The ATE alleges that, on 12 January 2001, the Governor of the Province of Buenos Aires vetoed the Act adopted by the legislature (provincial legislative power), under file 237/99-00. According to the complainant, the Act that was vetoed conformed in every way with national Act 24185 on collective bargaining in the national public sector and with Convention No. 151. The Act covers employees of the provincial public administration as well as those of the legislature and the judiciary, and of the Instituto de Obra Médico Asistencial (IOMA) and the Social Security Institute, both of which are tripartite public administration bodies funded by the provincial budget.

200. The complainant states that Decree No. 33/01 which vetoes the Act legally adopted by the provincial legislature and which, by extension, prevents its application, constitutes an act of outright interference by the provincial administrative authority in matters pertaining to collective bargaining by public officials of the Province of Buenos Aires and is, therefore, an infringement of the principle of free and voluntary collective bargaining.

B. The Government's reply

201. In its communication dated 3 July 2001, the Government states that under Decree No. 33/01, article 1, and under the powers vested in it by article 108 of the Constitution of the Province of Buenos Aires, the government of the province decided to veto the law

adopted on 20 December 2000 by the legislature, regulating collective agreements for public officials of Buenos Aires.

202. The Government states, in response to the allegation that Decree No. 33/01 constitutes an act of outright interference by the provincial administrative authorities in collective bargaining by public officials in the Province of Buenos Aires and is, therefore, a breach of the principle of free and voluntary collective bargaining, that the veto was issued on unassailable legal grounds, in accordance with current provincial public law whereby promulgation of the vetoed Act was clearly inadmissible, first and foremost because it infringed the executive's so-called "reserve zone", by seeking to place the constitutional powers of a branch of state power within the ambit of collective agreement. The Government emphasizes that the possible existence of a breach in connection with Decree No. 33/1 should be dismissed, both in terms of constitutional principles and norms and of the international conventions in question.

203. The Government states that the Act contained irreparable material flaws, making valid enforcement impossible within the current federal and provincial order in Argentina. Specifically, the Government states that the flaws involve the scope of personal application of the Act; matters of trade union representation and administrative authority; restrictions on participation in collective bargaining by given trade union organizations; the content of collective bargaining (according to the Government, the Act places powers inherent in the provincial executive within the ambit of collective agreement); unequal treatment in terms of the duty to provide information; the levying of a trade union solidarity fee on employees, even if they are not members of workers' organizations and conflict prevention and settlement mechanisms.

204. Lastly, the Government states that the veto was imposed under constitutional powers vested in the provincial executive, of an exclusive nature that cannot be delegated, relating to operational and implementation matters which must ultimately be settled by the State, and which the ILO Conventions in question likewise attribute to national legislation and practice and which in no way constitute an anti-trade union attitude and much less a violation of the principle and implementation of free and voluntary collective bargaining.

C. The Committee's conclusions

205. *The Committee notes that in this case the complainant objects to Decree No. 33/01 issued by the executive of the Province of Buenos Aires, vetoing a provincial Act regulating collective agreements for public officials which, according to the complainant, conforms in every respect to national law on collective bargaining in the public sector and with Conventions Nos. 151 and 154. The Committee notes that the complainant alleges that this constitutes an act of outright interference by the provincial administrative authority in matters pertaining to collective bargaining by public officials of the Province of Buenos Aires and is, therefore, an infringement of the principle of free and voluntary collective bargaining.*

206. *In this regard, the Committee takes note that the Government states that: (1) under the powers vested in it by article 108 of the Constitution of the Province of Buenos Aires, the government of the province decided to veto the law regulating collective agreements for public officials of the province; (2) the veto was issued on unassailable legal grounds, in accordance with current provincial public law whereby promulgation of the vetoed Act was clearly inadmissible, first and foremost because it infringed the executive's so-called "reserve zone", by seeking to place the constitutional powers of a branch of state power within the ambit of collective agreement; (3) the flaws involve the scope of personal application of the Act; matters of trade union representation and administrative authority; restrictions on participation in collective bargaining by given trade union organizations;*

the content of collective bargaining (according to the Government, the Act places powers inherent in the provincial executive within the ambit of collective agreement); unequal treatment in terms of the duty to provide information; the levying of a trade union solidarity fee on employees, even if they are not members of workers' organizations and conflict prevention and settlement mechanisms; and (4) the veto does not constitute an anti-trade union attitude and much less a violation of the principle and implementation of free and voluntary collective bargaining.

207. *Firstly, the Committee emphasizes that it is not up to the Committee to give an opinion on the decision by a national or provincial government to veto an Act by a national or provincial legislature.*

208. *In regard to the right to collective bargaining of public officials in the Province of Buenos Aires, the Committee notes that Argentina ratified Convention No. 98, in 1956, whereby public officials who are not engaged in the administration of the State should enjoy the right to collective bargaining and that, through ratification of Conventions No. 151, in 1987, and No. 154, in 1988, this right has been recognized in general for all public officials. Under these circumstances, and bearing in mind that collective bargaining in the public administration provides for the establishment of specific application modalities, the Committee requests the Government to take measures to respect the right to collective bargaining of public officials in the Province of Buenos Aires, in accordance with the provisions of Conventions Nos. 98, 151 and 154 and reminds the Government that it may request the technical assistance of the Office in drafting a new bill for such employees.*

The Committee's recommendation

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

> ***Taking into account that the right to collective bargaining has not been granted to workers in the public sector in the Province of Buenos Aires, the Committee requests the Government to take measures to respect the right to collective bargaining of these public sector workers in the Province of Buenos Aires, in accordance with the provisions of Conventions Nos. 98, 151 and 154 and reminds the Government that it may request the technical assistance of the Office in drafting a new bill for such employees.***

CASE NO. 2090

INTERIM REPORT

Complaints against the Government of Belarus presented by
— the Belarus Automobile and Agricultural Machinery Workers' Union (AAMWU)
— the Agricultural Sector Workers' Union (ASWU)
— the Radio and Electronics Workers' Union (REWU)
— the Congress of Democratic Trade Unions (CDTU)
— the Federation of Trade Unions of Belarus (FPB)
— the Belarusian Free Trade Union (BFTU)
— 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

210. The Committee already examined the substance of this case at its May-June 2001 meeting, when it once again presented an interim report to the Governing Body [325th Report, paras. 111-181, approved by the Governing Body at its 281st Session (June 2001)]. The Federation of Trade Unions of Belarus (FPB) submitted additional information in respect of the complaint in a communication dated 25 May and 4 July 2001 and the Belarusian Free Trade Union (BFTU) made additional allegations in a communication dated 24 May 2001.

211. The Government transmitted additional information in reply to some of the new allegations in communications dated 28 May and 4 October 2001.

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

A. Previous examination of the case

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

(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.

B. The complainants' additional allegations

214. In its communication dated 23 March 2001, the Belarusian Free Trade Union (BFTU) provides new allegations concerning the violation of trade union rights and the civil and political liberties of some of its trade union members. In particular, the BFTU alleges that administrative obstacles are being created by officials of the Chief Economic Directorate of the Presidential Administration with a view to hindering the union's activities at its rented premises at 14 Dolgobrodskaya Street and 8 Kirov Street in Minsk, following the refusal of workers employed by the joint Belarusian-German undertaking (Universalnyj Dom) covered by the BFTU to pay monthly bribes. According to the complainant, on 2 March 2000, the state authorities issued a ban on union members entering the union premises and refused to grant them passes or recognition in order to deprive the union of its right to engage freely in its activities. At the same time, the authorities are attempting to break up the BFTU representing workers at the joint undertaking by denying the union access to its premises and interfering in its activities.

215. In particular, the complainant alleges that, on 12 July 2000, without any court order and in the absence of any union representative, district officials entered the rented premises at 8 Kirov Street and broke open cupboards in which were kept union papers and property. The premises were then sealed and the entrances blocked off, locks were arbitrarily fitted on all doors and property was removed. Despite reports of these arbitrary actions to the state authorities, nothing has been done in response.

216. The complainant further alleges violations by the state authorities of its members' right to stand for election to Parliament, as well as the creation of obstacles to the monitoring of the parliamentary election process. Included in the actions taken by the state authorities, the complainant alleges that on 26 December 2000 the Chief Economic Directorate of the Presidential Administration gathered and destroyed all BFTU's papers during a fire investigation at the union's premises at 8 Kirov Street. Finally, the BFTU refers to alleged violations of the basic civil liberties of two of its members who were election observers.

217. In its communication of 24 May 2001, the BFTU provides documentation on the refusal to register a certain number of their sub-organizational structures. The structures at the Mogilev Automobile Plant and OAO "Ecran" were denied registration due to the fact that they had carried out unauthorized picketing and the organization of workers at the joint enterprise "Samana Plus" was refused registration because the legal address given was that of an owner of a residential building. Furthermore, the decision of the court of the Leninski region ordering the Executive Committee of Grodno to register the BFTU local organization of workers of Grodno Production Amalgamation "Khimvolokno" has not been carried out and its leaders, V. Parfinovich and E. Liasotski, have been dismissed.

218. The Federation of Trade Unions of Belarus (FPB), in a communication dated 25 May 2001, provided additional documentation in support of its allegations. In particular, the complainant refers to the refusal to grant permission to the Belarus Automobile and Agricultural Machinery Workers' Union (AAMWU) to picket near the Ministry of Industry in protest of the Ministry's non-respect of the agreement on wages. The FPB also forwarded Presidential Decree No. 11 on several measures to improve the procedure for holding assemblies, rallies, street marches and other mass events and picketing actions, published in the newspaper on 11 May 2001.

219. The AAMWU had requested permission to picket outside the Ministry of Industry from 14 to 17 May 2001 because of the Ministry's failure to observe the part of the wage agreement relating to the timely transfer of trade union dues. Despite the provision of the Act on assemblies, rallies, street marches, demonstrations and picketing actions which permits picketing of state administration buildings at a distance of at least 50 meters from

the building, the Minsk Municipal Executive Committee granted the union's request, but assigned a location for the picketing 3.5 kilometres away from the Ministry. The AAMWU considers that such a condition amounts to a refusal to permit the picket. The union decided not to go ahead with the picket as, under such conditions, it would be completely ineffective, but considers the refusal to be an infringement of its constitutional right to hold assemblies, demonstrations, pickets, etc. The complainant also provides documentation concerning the refusal by the Minsk Municipal Executive Committee to grant permission to the AAMWU for a picket from 21 to 25 May because the union had proposed also to collect signatures for a petition to the Government during the picket and the Executive Committee maintained that picketing could not be carried out with other actions.

220. Finally, in its communication of 4 July 2001, the FPB asserts that the trade union situation in the country is worsening, despite assurances given by the Government representative of Belarus before the International Labour Conference that steps would be taken to improve the situation. On 21 June 2001, the Council of Ministers and the National Bank revoked their resolutions of 14 November 1996 (No. 726/14) on trade union membership dues. According to the complainant, employers may now delay the transfer of dues to trade union organizations for an indefinite period. The complainant further alleges that, on 28 June, during a meeting with the workers' representatives of the PA "BelAZ", the President of Belarus stated that the dues should not be transferred to trade union organizations, but should only be used in enterprise union organizations. According to the complainant, these actions are aimed at undermining the material basis of trade unions and the state mass media negatively assesses the activities of the unions in order to discredit them.

C. The Government's reply

221. In its letter of 28 May 2001, the Government replies to the allegations made by the Federation of Trade Unions of Belarus (FPB) in its communication dated 28 March 2001 (examined by the Committee at its last session). The Government asserts that the general and rhetorical nature of the assertions made by the FPB have made it extremely difficult for it to prepare its observations.

222. In the Government's view, the communication by the complainants of information on the whole range of social and labour relations issues in the Republic, which do not have a bearing on matters of freedom of association within the meaning of Conventions Nos. 87 and 98, does not correspond to the mandate of the Committee on Freedom of Association with regard to the examination of complaints and is not conducive to the effective resolution of Case No. 2090.

223. The Government considers that such matters should be dealt with in the framework of existing institutions of social partnership in the Republic, in particular the National Council on Labour and Social Affairs. In the course of it session on 24 May 2001 the Council definitively resolved disagreements on mattes relating to the General Agreement. At the same session, the Government also informed the social partners on the steps taken to carry out the Committee's recommendations in Case No. 2090. The outcome of the session was the conclusion on 25 May 2001 of the General Agreement for 2001-03 between the Government of Belarus and the republic-level associations of employers and trade unions.

224. As concerns the matters raised in the FPB's communication, the Government reiterates that the underlying causes of the withdrawal of trade union structural units from confederations lie in objective processes occurring in the Belarusian trade union movement itself. The Government intends neither to support nor to hinder lawful attempts to change membership of and affiliation to various trade unions, guided by the principle borne out by

international practice that workers should independently and freely choose the trade union they consider to be best able to express their occupational interests.

225. Concerning the withdrawal of the first-level trade union in the Belarus Metallurgical Plant from the metalworkers' branch union, the Government asserts that this was due to the lack of proper cooperation between the republic-level council of metalworkers' union and the first-level organization at the plant, as well as numerous proposals by metalworkers to set up a metalworkers' union in the Republic. The decision to set up a metalworkers' union of the plant was taken at the conference of the first-level trade union organization at the plant held on 2 March 2001. Prior to the conference, assemblies were held in all the first-level trade union organizations of the plant's structural units at which the question of establishing a metalworkers' union was discussed and delegates to the conference were elected.

226. According to the Government, individual applications from the workers at the plant resulted in the establishment of a trade union of metalworkers of the Belarusian Metallurgical Plant. As at 1 April 2001, over 14,500 workers had joined the new trade union, i.e. over 97 per cent of the enterprise workforce. The trade union was registered by the justice department of the Gomel regional executive committee on 23 March 2001.

227. Concerning the transfer of union dues, the Government recalls the Constitutional Court ruling of 21 February 2001, according to which the withholding of trade union membership dues from wages by means of non-cash payment to the accounts of trade union bodies was found to be in conformity with the Constitution, international law and the laws of Belarus. At the same time, the Constitutional Court drew the attention of the trade unions and employers to the fact that they had violated the legislation governing the procedure for the payment of union dues by workers who are members of trade unions and to the absence of proper supervision by the trade unions of compliance with the established procedure for the payment of trade union dues into their accounts.

228. As regards the information concerning the meeting held by the Head of the Presidential Administration, the Government states that the format of the document attached by the complainants shows that it was not a copy of a document issued by the Administration. No documents of this kind have been received by the Ministry of Labour and therefore it is not necessary to comment on the information that has not been confirmed.

229. As concerns Decree No. 8 respecting certain measures to improve the procedure for receiving and using free foreign aid, the Government indicates that the Decree was drafted with a view to improving the procedure whereby legal and natural persons in Belarus receive and use free aid provided by foreign governments, international organizations and citizens, as well as stateless persons and anonymous donors, and is not aimed, as the complainants assert, at isolating all democratic and opposition forces or declaring illegal any international assistance to all non-governmental organizations, including trade unions.

230. The Decree prohibits the use of free foreign aid for carrying out an activity aimed at changing the constitutional system of Belarus, seizing and overthrowing state power and inciting others to commit such acts, propaganda for war or violence for political ends, fomenting social, national, religious and racial enmity and other actions prohibited by law. Under the provisions of the Decree, free foreign aid of any kind cannot be used for preparing and holding a referendum, recalling a deputy or a member of the Council of the Republic, holding assemblies, (political) rallies, street processions, demonstrations, picketing, strikes, preparing and disseminating propaganda and holding seminars and other forms of propagandistic work among the population (aimed at the purposes mentioned above).

231. The Government considers that the restrictions on the use of foreign aid for carrying out the abovementioned activities, which are directly related to shaping and expressing the political will of the Belarusian people, cannot be perceived as a restriction on the right of foreign donors and international organizations to provide technical assistance to Belarus. This approach is in accordance with the provisions of the Constitution of Belarus and generally recognized international practice. The legislation of many foreign countries prohibits foreign financing of the activity of political parties, election campaigns and other similar activities. The provisions of the Decree do not affect questions of cooperation between the Government and social partners and the ILO.

232. The Government concludes that Belarus is a staunch supporter of the aims and principles of the ILO, enshrined in its Constitution and the Declaration of Philadelphia. The Government understands that the ILO's technical cooperation with member States is a crucial means of achieving the Organization's objectives and carrying out the specific social and labour tasks facing the ILO's tripartite constituents.

233. In its communication of 4 October 2001, the Government reiterates its intentions to amend Presidential Decree No. 2 so as to eliminate the obstacles to registration caused by the requirement of the legal address and to repeal the provision concerning restrictions requiring 10 per cent minimum membership at the enterprise level. The Government also indicates that local organizations at "Naftan" Production Amalgamation *(Novopolotsk)* and at "Zenith" Plant were registered on 25 May 2000 and 28 August 2000, respectively. As concerns the dismissals of Mr. Evmenov and Mr. Bougrov, the Government reiterates its previous comments that the dismissals were due to their violation of labour discipline and that no violation of the legislation by the plant's management has been established. This has been confirmed by the decision of the Oktyabrsky district court of Mogilev and the Mogilev regional court. Concerning Mr. Bougrov, the Government stresses that he was dismissed for being absent from work (on a working day and not on unpaid *subbotnik*) without any reasonable explanation.

234. As concerns the payment of the union dues owed, the Government provided a copy of a letter from the Ministry of Agriculture and Food Supplies, the Ministry of Statistics and Analysis and the Ministry of Economics, dated 8 August 2000, concerning the payment of trade union dues owed through the sale of cereal and other agricultural products. As concerns Decree No. 8, the Government once again indicates that the purpose of the Decree is to establish a transparent procedure for receiving foreign aid which, it states, is particularly important to the States of the ex-USSR where foreign aid is often not used as intended by the donors or does not even reach the people to whom it was sent. For that reason, the Decree had a positive reaction from foreign individuals, because they can now control the use of the aid sent by them. Moreover, the Government states that the Decree does not require prior authorization to receive such aid and the registration is not complicated and can be effectuated within a short period of time. Finally, the Government indicates that some of the complainant's allegations, particularly concerning the election system in Belarus, do not concern the application of Conventions Nos. 87 and 98.

D. The Committee's conclusions

235. *The Committee notes that the additional information provided by the complainants in this case refers to the continuing denial of registration of sub-organizational union structures and the dismissal of trade union leaders, the entering of trade union premises without a court order and the sealing off of these premises, the confiscation of trade union property and documents and the destruction of union papers. Additional allegations were made concerning the virtual denial of requests to carry out pickets and the eventual obstacles created in this respect by Decree No. 11. Finally, the Committee notes the allegations concerning the revocation of a resolution on the payment of trade union dues, which the*

complainants allege will enable employers to delay transfers to trade union organizations indefinitely.

236. *The Committee takes due note of the information provided in the Government's reply in respect of the earlier allegations made by the complainants of pressure and threats exerted by the administration of the Belarus Metallurgical Plant, forcing the workers to resign from the branch metalworkers' union and to set up a union under the control of the plant's administration. While noting the Government's assertion that the creation of a new metalworkers' union at the plant was the result of the free will of the workers, the Committee requests the Government to take the necessary measures to institute a truly independent investigation into the complainant's allegations that pressure and intimidation were used against the workers of the Belarus Metallurgical Plant with the aim of undermining the established trade union structure and to keep it informed of the outcome of the investigation.*

237. *As concerns trade union dues, the Committee noted at its last meeting in June 2001 the principles established in this regard by the Constitutional Court ruling. The Committee had recalled in this respect that the withdrawal of the check-off facility was not conducive to the development of harmonious industrial relations and expressed its deep concern that the appropriateness of such transfers had been called into question in the Presidential Instructions of January 2001. While taking due note of the Government's indication that the format of the document concerning the Presidential Instructions attached to the complaint was not a copy of a document issued by the Administration, the Committee must nevertheless observe that the substance of the Instruction to which the complainants referred (i.e. to intensify efforts to resolve the issue of the inappropriateness of transferring a proportion of trade union dues to higher level trade union structures [see 325th Report, para. 165]) appears nevertheless to have been put into action. The Committee considers that questions concerning the financing of trade union federations and their sub-organizational trade union structures should be governed by the by-laws of the trade unions, federations and sub-organizational structures concerned and that any interference by the state authorities in this respect is contrary to the right of workers to organize their administration and activities in accordance with Article 3 of Convention No. 87, ratified by Belarus. Bearing in mind the principle that the repartition of trade union dues among various trade union structures is a matter to be determined solely by the trade unions concerned, the Committee recalls the request made to the Government during its last examination of this case to establish, as a matter of urgency, a truly 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 [see 325th Report, para. 165]. It requests the Government to keep it informed of the outcome of these investigations.*

238. *As concerns Decree No. 8, the Committee first notes the general indication of the Government that the purpose of the Decree is to provide a transparent procedure for receiving foreign aid and that no previous authorization is required. It further notes the Government's indication that the use of free foreign aid for preparing or holding assemblies, demonstrations, picketing, strikes, etc., is prohibited when it is aimed at changing the constitutional system, overthrowing state power, propaganda for war or violence, etc. Nevertheless, the Committee must observe that the provisions of Decree No. 8 which treat the use of foreign aid for assemblies, demonstrations, pickets and strikes and the provision which concerns the overthrowing of the Government and war propaganda are in no way linked. It would therefore appear that paragraph 4.3 of the Decree prohibits the receipt of foreign aid for demonstrations, pickets, strikes, etc., regardless of the aim of these activities. The Committee therefore finds itself once again obliged to recall 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 Presidential Decree No. 8 is amended so that workers' and employers' organizations may benefit freely, and without previous authorization, from the assistance which might be provided by international organizations for activities compatible with freedom of association. The Government is requested to keep the Committee informed of the measures taken in this regard.

239. *The Committee notes that the Government has not replied to the new allegations made by the Belarusian Free Trade Union (BFTU) concerning a ban by the state authorities on union members entering union premises, the entering of union premises by public authorities without a court order, the seizing of papers and property and the subsequent sealing off of the premises. The Committee must recall in this respect the importance it attaches to the principles that any search of trade union premises without a court order constitutes an extremely serious infringement of freedom of association and that the occupation or sealing of trade union premises should be subject to independent judicial review before being undertaken by the authorities in view of the significant risk that such measures may paralyse trade union activities [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, paras. 177 and 183]. Furthermore, the access of trade union members to their union premises should not be restricted by the state authorities. The Committee therefore requests the Government to take the necessary measures to initiate an independent investigation into the allegations raised by the BFTU in this regard and to ensure that any remaining confiscated property and papers are promptly returned to the union. The Government is requested to keep the Committee informed of the outcome of the investigations.*

240. *As concerns the allegations that the state authorities have violated the union members' right to stand for election to Parliament and to participate in the monitoring of the parliamentary election process, the Committee must recall that, although respect for freedom of association is closely bound up with respect for civil liberties in general, it is nevertheless important to distinguish between the recognition of freedom of association and questions relating to a country's political evolution [see* ***Digest****, op. cit., para. 203]. In the absence of any connection made in the complaint between the actions taken by the authorities and the trade union status of the individuals concerned, the Committee does not consider itself competent to examine allegations concerning the right of certain individuals to be candidates in political elections or to monitor such elections. On the other hand, the Committee takes due note of the allegations concerning the destruction of trade union papers on 26 December 2000 by the Chief Economic Directorate of the Presidential Administration, raised within the context of the violations concerning the monitoring of the electoral process. The Committee recalls once again in this regard the importance it attaches to the principle of the inviolability of trade union premises and considers in this respect that trade union papers should not be destroyed by state authorities, even if the state authorities link such action to a more global political context, such as the observation of parliamentary elections. In the absence of any reply from the Government in respect of this allegation, the Committee requests the Government to take the necessary measures to initiate an independent investigation into this matter and to keep it informed of the outcome of the investigation.*

241. *As concerns the continuing refusal to register a certain number of sub-organizational structures of the BFTU, the Committee notes that the issue of the legal address remains an obstacle to registration, in particular as concerns the registration of a workers' organization at the joint enterprise, "Samana Plus". While noting the Government's indication that it intends to eliminate the obstacles to registration caused by Presidential Decree No. 2, as well as the indication that the sub-organizational structures at "Naftan" and "Zenith" have been registered, the Committee 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 remaining requests for registration noted in its previous examination of this case [see 325th Report, para. 155].

242. *The Committee also takes due note of the concerns raised by the complainants in respect of various practical and legal restrictions placed on picket actions (union registration denied on the grounds of the exercise of an unauthorized picket, refusal to allow a picket to take place in front of the Ministry of Industry and the issuance of Presidential Decree No. 11 on several measures to improve the procedure for holding assemblies, rallies, street marches and other mass events and picketing actions). The Committee considers that restrictions on pickets should be limited to cases where the action ceases to be peaceful or results in a serious disturbance of public order. The Committee notes in this respect that Presidential Decree No. 11 permits the dissolution of a trade union in the event that an assembly, demonstration or picketing action results in the disruption of a public event, the temporary termination of an organization's activities or disruption of transport, loss of life, or serious bodily harm to one or more persons. The Committee recalls that the dissolution of a trade union is an extreme measure and recourse to such action on the basis of a picket action resulting in the disruption of a public event, the temporary termination of an organization's activities or the disruption of transport is clearly not in conformity with the principles of freedom of association. The Committee therefore requests the Government to take the necessary measures to ensure that this provision of the Decree is modified so that restrictions on pickets are limited to cases where the action ceases to be peaceful or results in a serious disturbance of public order and so that any sanctions imposed in such cases will be proportionate to the violation incurred. The Committee also requests the Government to provide information in reply to the complainants' allegations concerning the restrictions placed on picketing action, in particular, the refusal to allow a picket to take place in front of the Ministry of Industry and the denial of registration of the Mogilev Automobile Plant and OAO "Ecran" sub-organizational structures due to the exercise of unauthorized picketing.*

243. *Finally, the Committee regrets that the Government has not provided the information requested at its last meeting concerning the measures taken to institute independent investigations into: the threats of dismissal made to members of the GPO "Khimvolokno" Free Trade Union and to the members of the Free Trade Union at the "Zenith" Plant; the allegations of the refusal to employ the re-elected chairperson of the Free Trade Union of Metalworkers at the Minsk Automobile Plant, Mr. Marinich; 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; and the allegations concerning threats and pressure placed upon the workers at the Rechitskij Hardware Plant in Gomel to leave the branch union and set up new unions. The Committee once again requests the Government to keep it informed of the progress made in instituting these investigations, as well as their outcome. Finally, the Committee notes that the Government repeats its previous comments concerning the dismissals of Mr. Evmenov and Mr. Bourgov. It recalls its previous conclusions in this respect, which were based on the respective court judgements, that it cannot accept that the failure to work on a non-workday should be considered a breach of labour discipline [see 325th Report, paras. 175 and 176]. It therefore once again requests the Government to provide information on the measures taken in accordance with its previous recommendations to ensure the reinstatement of Mr. Evmenov and Mr. Bourgov in their posts with full compensation for any lost wages and benefits.*

The Committee's recommendations

244. ***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 take the necessary measures to institute a truly independent investigation into the complainant's allegations that pressure and intimidation were used against the workers of the Belarus Metallurgical Plant with the aim of undermining the established trade union structure and to keep it informed of the outcome of the investigation.***

(b) ***Bearing in mind the principle that the repartition of trade union dues among various trade union structures is a matter to be determined solely by the trade unions concerned, the Committee once again requests the Government to establish, as a matter of urgency, a truly 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.***

(c) ***The Committee urges the Government to take the necessary measures, as a matter of urgency, to ensure that Presidential Decree No. 8 is amended so that workers' and employers' organizations may benefit freely, and without previous authorization, from the assistance which might be provided by international organizations for activities compatible with freedom of association. The Government is requested to keep the Committee informed of the measures taken in this regard.***

(d) ***The Committee requests the Government to take the necessary measures to initiate an independent investigation into the allegations raised by the BFTU concerning the unlawful entry into union premises and the confiscation and destruction of union property and papers and to ensure that any confiscated property and papers are promptly returned to the union. The Government is requested to keep the Committee informed of the outcome of the investigations.***

(e) ***The Committee requests the Government to take the necessary measures to initiate an independent investigation into the allegations concerning the destruction of trade union papers by the Chief Economic Directorate of the Presidential Administration and to keep it informed of the outcome of the investigation.***

(f) ***The Committee 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 remaining requests for registration noted in its previous examination of this case.***

(g) ***The Committee requests the Government to take the necessary measures to ensure that Presidential Decree No. 11 is modified so that restrictions on pickets are limited to cases where the action ceases to be peaceful or results in a serious disturbance of public order and so that any sanctions imposed in***

such cases will be proportionate to the violation incurred. The Committee also requests the Government to provide information in reply to the complainants' allegations concerning the restrictions placed on picketing action and, in particular, the refusal to allow a picket to take place in front of the Ministry of Industry.

(h) The Committee once again requests the Government to keep it informed of the progress made in instituting independent investigations into: the allegations of threats of dismissal made to members of the GPO "Khimvolokno" Free Trade Union and to the members of the Free Trade Union at the "Zenith" Plant; the allegations of the refusal to employ the re-elected chairperson of the Free Trade Union of Metalworkers at the Minsk Automobile Plant, Mr. Marinich; 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; and the allegations concerning threats and pressure placed upon the workers at the Rechitskij Hardware Plant in Gomel to leave the branch union and set up new unions. The Government is also requested to keep the Committee informed of the outcome of these investigations.

(i) The Committee requests the Government to provide information on the measures taken in accordance with its previous recommendations to ensure the reinstatement of Mr. Evmenov and Mr. Bourgov in their posts with full compensation for any lost wages and benefits.

CASE NO. 2135

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

Complaint against the Government of Chile presented by
— Trade Union No. 1, Metropolitan Sanitation Company
— Trade Union No. 2, Metropolitan Sanitation Company and
— the Professional and Technical Employees' Trade Union of the Metropolitan Sanitation Company

Allegations: Prohibition of the right to strike in an enterprise

245. The complaint is contained in a communication dated 22 January 2001 from Trade Union No. 1, Metropolitan Sanitation Company, Trade Union No. 2, Metropolitan Sanitation Company, and the Professional and Technical Employees' Trade Union of the Metropolitan Sanitation Company.

246. The Government sent its observations in a communication dated 13 August 2001.

247. 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 complainants' allegations

248. In their communication of 22 January 2001, Trade Union No. 1, Metropolitan Sanitation Company, Trade Union No. 2, Metropolitan Sanitation Company, and the Professional and Technical Employees' Trade Union of the Metropolitan Sanitation Company state that in resolution No. 71 of 21 July 2000, published on 14 August 2000, the Ministry of the Economy, Public Works and Reconstruction, in collaboration with the Ministries of Defence and of Labour and Social Security have included the Metropolitan Sanitation Company (EMOS S.A.) in the list of companies falling into the categories referred to in article 384 of the Labour Code which provides the possibility of prohibiting a strike and referring conflicts to compulsory arbitration, in particular, for those companies the interruption of the services of which would endanger the health or provision of services to the population.

249. The resolution implies that all workers in the company will be affected by the prohibition to strike and will be obliged, in the case of a labour dispute, to have recourse to compulsory arbitration.

250. The complainant acknowledges that the production and distribution of drinking water and the collection and treatment of waste water that is carried out by EMOS S.A. for those living in the metropolitan area can and should be registered as essential services, inasmuch as they involve the life and health of the population.

251. However, EMOS S.A. is involved in providing services other than these essential services that are clearly distinct from the latter, as are all the purely administrative services. Among those services which remain purely administrative should be mentioned, for example, those relating to legal advice (public prosecution), design projects, construction planning and works inspection, information technology, logistics, property registration, archiving, library services, public relations, infrastructure management, commercial management, financial management and administration, human resources, etc. Furthermore, in those sections dealing with production, and distribution of drinking water and collection and treatment of waste water there are professional, technical and administrative personnel whose jobs have nothing to do with the production of essential services.

252. The complainants believe that the right to strike should be prohibited only for those workers who are directly involved in essential services and not for the workers whose jobs do not encompass essential services and whose strike action would not prevent the company from fulfilling its obligation to provide essential services.

B. The Government's reply

253. In a communication dated 13 August 2001, the Government states that there are certain restrictions to the right to strike in Chilean legislation, the most relevant being when this right is prohibited.

254. This prohibition is to be found in article 19, No. 16, of the Political Constitution of the Republic and in article 384 of the Labour Code, the latter of which provides that some workers who may bargain collectively may not call a strike. The workers concerned include those who work in certain companies decided upon on a yearly basis under the joint resolution issued by the Ministries of National Defence, Economy, Public Works and Reconstruction, and Labour, to which the complainants refer.

255. This restriction to a constitutional right, as the right to strike should be, as such narrowly interpreted and therefore applicable only to those companies:

– which are public utilities;

– where a stoppage in services would seriously endanger health;

– where a strike would acutely affect the provision of essential services to the population;

– where a stoppage would mean that the economy of the country was endangered; and

– where a stoppage would seriously endanger national security.

256. With regard to these criteria it should be mentioned that since 1990, democratic governments have gradually reduced the original list, trying to ensure that the restrictions are imposed only on those companies that effectively provide essential services, such as those mentioned in the previous paragraph.

257. Furthermore, there is currently a series of labour reforms being carried out that will bring the country's labour legislation closer to that which is laid down in Conventions Nos. 87 and 98 on freedom of association and collective bargaining.

258. With regard to the rest, the description previously mentioned conforms with that laid down by the ILO Committee on Freedom of Association, which states that "to determine situations in which a strike could be prohibited, the criteria which has to be established is the existence of a clear and imminent threat to the life, personal safety or health of the whole or part of the population".

259. In this context the ILO has listed those services that, in its opinion, can be considered essential. These include the hospital sector, electricity services, water supply services, the telephone service and air traffic control.

260. Therefore, the ILO itself lists among the services that it considers to be essential services related to water supply, which is the case of the Metropolitan Sanitation Company which, without a shadow of a doubt, does supply an essential service.

261. Given the previous information, it should also be pointed out that the constitutional provision previously quoted expressly states in its final paragraph that public service employees shall not declare strike action. Neither shall those persons working in corporations or companies, whatever their category, purpose or function, that provide essential services to the public or whose stoppage would seriously endanger the health of the population, the economy of the country, the provision of essential services to the population or national security. The law lays down procedures available to those corporations or companies whose workers are subject to that prohibition.

262. Under constitutional law, this prohibition applies to the company in its entirety and, therefore, to all those working at that company. These workers may have recourse to compulsory arbitration, a procedure that replaces the right to strike.

263. Finally, the Government states that further investigation is needed as regards the claim presented by the complainants, in which the different sections or duties that are carried out within the company be defined so that only those workers who are directly linked to the provision of the essential service be subjected to that prohibition; that investigation shall be carried out by the Ministry of Labour and Social Security as soon as possible.

C. The Committee's conclusions

264. *The Committee observes that in the present complaint the complainants dispute that resolution No. 71 of 21 July 2000, issued by the Ministry of the Economy, Public Works and Reconstruction, should prohibit the right to strike not only for those workers at the Metropolitan Sanitation Company who are providing an essential service, but also for those who are involved in areas that are clearly separate from the provision of essential services, such as administrative tasks, legal advice, design projects, planning, construction and works inspection, information technology and others.*

265. *The Committee notes that the Government states that water supply services are an essential service.*

266. *The Committee recalls that "the right to strike may be restricted or prohibited: (1) in the* ***public service*** *only for public servants exercising authority in the name of the State; or (2) in essential services in the strict sense of the term (that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population)" [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 526].*

267. *The Committee also recalls that water supply services are an essential service where the right to strike may be prohibited with adequate protection to compensate for this limitation [see* ***Digest****, op. cit., paras. 544 and 546]. The Committee notes, however, that the Government states that further investigation is needed as regards the claim presented by the complainants, in which the different sections or duties that are carried out within the company be defined so that only those workers who are directly linked to the provision of the essential service be subjected to the prohibition of the right to strike; that investigation shall be carried out by the Ministry of Labour and Social Security as soon as possible. The Committee appreciates and encourages this initiative; it hopes that this investigation will be carried out very shortly and requests the Government to keep it informed in this regard.*

The Committee's recommendation

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

> ***The Committee notes that the Government states that further investigation is needed as regards the claim presented by the complainants, in which the different sections or duties that are carried out within the company be defined so that only those workers who are directly linked to the provision of the essential service be subjected to the prohibition of the right to strike; that investigation shall be carried out by the Ministry of Labour and Social Security as soon as possible. The Committee appreciates and encourages this initiative; it hopes that this investigation will be carried out very shortly and requests the Government to keep it informed in this regard.***

CASES NOS. 2017 AND 2050

INTERIM REPORT

Complaint against the Government of Guatemala presented by — the International Confederation of Free Trade Unions (ICFTU) and — the Trade Union of Workers of Guatemala (UNSITRAGUA)

Allegations: Acts of anti-union discrimination and intimidation; acts of violence against trade union officials; violation of a collective agreement

269. The Committee examined these cases at its meeting in November 2000 and on that occasion presented an interim report to the Governing Body [see the Committee's 323rd Report, paras. 285-309, approved by the Governing Body at its 279th Session in November 2000].

270. The International Confederation of Free Trade Unions (ICFTU) sent new allegations in connection with Case No. 2050 in communications dated 13 March, 18 April and 18 October 2001.

271. The Government sent its observations in a communication dated 24 August 2001.

272. Guatemala 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

273. In its previous examination of the case in November 2000, the Committee made the following recommendations on the allegations which remained pending [see 323rd Report, para. 309(c), (d), (e), (f) and (g)]:

- While noting that the Tamport S.A. company has already reinstated three unionists, the Committee requests the Government to confirm that these unionists have been given posts in which they receive at least the same wages as before.
- The Committee urges the Government to send its observations as a matter of urgency on the allegations concerning the detention of the SITRACOBSA officials Marvin Leonel Cerón and Julián Guisar García, and the numerous orders for the arrest of SITECOBSA and SITECOBSAGOSA officials (including Jorge Estrada and Marco Vinicio Hernández Fabián). The Committee requests the Government to carry out an investigation into this matter and to annul the orders and release the detainees if it is found that these actions were in response to legitimate trade union activities.
- The Committee urges the Government as a matter of urgency to send its observations on the allegations of anti-union discrimination and intimidation at the company Ace International S.A. The Committee requests the Government to carry out an investigation into this matter and, if the allegations are proven to be true, to take the necessary measures to remedy the situation.
- The Committee requests the Government as a matter of urgency to take steps to carry out a judicial investigation into the death threats made against the trade unionist José Luis Mendía Flores, and to ensure that he has been reinstated in his post in accordance with the court ruling. The Committee requests the Government to keep it informed in this regard.

– The Committee requests the Government to ensure compliance with the court orders to reinstate the workers dismissed at the company La Exacta and to send its observations promptly on the alleged delays in the investigation into the murders in 1994 of four rural workers who had tried to form a trade union. Moreover, the Committee requests the Government to keep it informed of the results of the judicial proceedings under way in respect of these murders and trusts that the guilty parties will be punished.

B. New allegations

CASE NO. 2050

274. In its communications of 13 March, 18 April and 18 October 2001, the International Confederation of Free Trade Unions (ICFTU) alleges the following acts of anti-union discrimination:

– *María de Lourdes Farm, Genova.* In June 2000, the members of this trade union held a general meeting for the purpose of electing new officers, since their mandate was due to end in July of the same year. However, as a result of other problems that had arisen in the meantime, the list of officers elected was not registered, and the employers took this as an opportunity to register their own list of union officers with the General Labour Directorate of the Ministry of Labour, unlawfully using the name of the union to do so. The documents submitted to the Ministry contain many formal and substantive errors to which the Directorate made no objection. On 2 October 2000, the General Labour Directorate approved a general meetings book for the union, and on 9 October approved the union's official membership list, executive committee register and accounts book. On 31 October 2000, the union's membership presented a complaint concerning these actions to the Ministry of Labour, which ruled that the registration of the union's officers had not been in compliance with the law and the registration was therefore annulled. To date, the usurping officers have still not been notified of the ruling and it has therefore not been possible to register the lawfully elected officers or to inform the union's members of the ruling, as required by the court. Following these events, the union's general secretary, Mr. Otto Rolando Sacuqui García, on 13 November began receiving death threats. These were reported to the prosecution authorities, and the national police were asked to provide Mr. García with protection. On 3 February 2001, Mr. Mota (the union's labour and disputes secretary), through an act of trickery, was charged with robbery and subsequently detained at a police station. After examining witness statements and hearing Mr. Mota's defence lawyer, the judge acquitted Mr. Mota and ordered his release. However, the representatives of the farm refused to sign the judge's ruling, and prosecution proceedings were initiated against the farm security agents who had illegally detained Mr. Mota.

– *Municipality of Tecún Umán.* Threats were made against Mr. Walter Oswaldo Apen Ruiz and his family to make him resign from the post he held in the town and from the post of union secretary. As a result of these threats, he was persuaded to resign from both posts, despite the legal immunity he enjoyed by virtue of being secretary for the settlement of disputes of the Trade Union of Workers of Tecún Umán Municipality and secretary of the Trade Union Confederation of Guatemala (CUSG). The municipal authorities sent a letter to the union's members referring to the notification by the Quetzaltenango Regional Directorate VI of the Ministry of Labour concerning the draft collective agreement on conditions of work which the union submitted for discussion by the direct procedure. Unfortunately, the mayor and the municipal corporation disregarded the law and convened a community meeting for 9 November 2000 for the purpose of allowing the local people to decide whether or not they accepted the conditions of the new collective agreement which, it was claimed,

violated the Constitution and the Declaration of Human Rights. To date the mayor has refused to negotiate the collective agreement on the grounds that he received no authorization from the community meeting to do so.

– *Hidrotecnica S.A.* A number of workers of the company Hidrotecnica S.A. took the decision to form a union in February 1997. The company then dismissed the workers involved in this initiative, and the situation has not been resolved because the company refuses to cooperate, despite court rulings ordering the reinstatement of the workers concerned and payment of wages owed to them.

– *Cardiz S.A.* Since October 2000, workers employed by the company have encountered serious problems as a result of trying to establish a trade union. On 5 October 2000, a group of workers obtained a summons order against the company and the court issued an order prohibiting any reprisals by one party against the other. On 6 October, the owner closed the undertaking and told the workers that he could not keep it open because of a shortage of raw materials and because a client had cancelled a contract. On 25 October 2000, the workers submitted documents required to register the union with the General Labour Inspectorate and, on 23 November 2000, notice of registration was published in the *Official Gazette*. From that date onwards the union was legally constituted and registered with the registration department of the Ministry of Labour. The owner began removing office equipment and machinery from the company's premises, and later suspended the contracts of 136 union members, subsequently terminating the contracts definitively by closing down the company and putting more than 600 workers out of work. As a result of all this, union members have occupied company premises since 6 November 2000 in order to prevent the removal of machinery and equipment. On 21 November, the owner ordered that the main doors to the company premises be secured with padlocks, trapping a group of union members inside; they were told by security guards that no one was now allowed to enter or leave the premises, by order of the owner. The workers who had been thus locked in reported what had happened by telephone and some hours later, the guards opened the door to let them out.

275. In its communication of 18 October 2001, the ICFTU alleges that:

– the members of the Workers' Union of Banana Plantations of Isabel (SITRABI) have received death threats;

– the enterprise Bandegua has threatened to leave the country if the workers do not accept a lowering of their rights provided by the collective agreement and they have already started to dismiss workers;

– the trade union premises of the Trade Union of Electricity Workers of Guatemala were searched by armed men who destroyed some of the properties and stole the rest.

C. The Government's reply

276. In its communication of 24 August 2001, the Government states the following:

– *Tamport S.A.* In the Labour Inspectorate file, note is taken of the conciliation initiatives that have been undertaken. (The Government also supplies some information that is not related to the Committee's recommendations.)

– *COBSA.* The Government states that the trade union SITRACOBSA is an employer organization organized with workers of trust employed by the company, and that the workers Marvin Leonel Cerón and Julián Guisar García, who are behind the

complaint, are officials of SITECOBSA, not of SITRACOBSA. The Government also states that no worker is currently being detained, and that the trade unionist Jorge Estrada, an UNSITRAGUA adviser, was detained on charges of damaging property and inciting others to break the law, charges of which he was acquitted by a judge. An investigation by the Ministry concluded that there were no detention orders against any member of the trade unions in question. Any applications for detention that were made have already lapsed, and there is thus no judicial or police action under way against the workers concerned.

– *Ace International S.A.* Following wide-ranging inquiries by the General Labour Inspectorate, administrative proceedings were ruled to be exhausted. The parties then initiated judicial proceedings, and two cases are currently before the courts.

– *María Lourdes Farm, Costa Cuca Quezaltenango.* As regards the judicial proceedings involving the accused trade union official Dimas Mota, the Government states that the employer's refusal to sign the court ruling acquitting him does not affect the ruling or the proceedings against the agents accused of unlawfully detaining Mr. Mota. On 29 March 2001, the Attorney-General's Office was asked to provide information on the status of those proceedings, and the Quetzaltenango regional director said that in the case in question (No. 568-2-000, *of.* III), "Mr. Isdaro Humberto López Hernández and Mr. Dimas Mota appear as the plaintiffs alleging assault by the accused, Mario Luis Catalán Miranda and Lucio Alfredo Miranda Vásquez; the case is closed by a voluntary settlement freely agreed by the parties and thus set aside, given that no further proceedings need to be pursued and no matters remain to be resolved …". The case is deemed to be closed, since the aggrieved workers obtained a settlement with the police officers who had been accused of unlawfully detaining them.

– *Municipality of Tecún Umán, San Marcos.* As indicated in the complaint, the mayor of Tecún Umán in San Marcos Department, in an effort to avoid having to negotiate the collective agreement, convened a community meeting on 9 November 2000 and that meeting duly rejected any discussion of said collective agreement. It should be noted that the philosophy behind these community meetings is that of giving more power to the municipalities by enhancing political participation by citizens. Unfortunately, on this occasion, the system was used for purposes contrary to labour law. The municipalities, in accordance with the political Constitution, are autonomous, and are thus not subject to restrictions in the way they operate their institutions, in this case, the community meeting. In order to resolve the problem of negotiating the draft collective agreement, the Ministry of Labour instructed the General Labour Inspectorate to carry out a visit to the locality and the local mayor. The meeting took place in the mayor's office, to which the workers' delegates were refused admission, and resolution No. 882 of the Regional Labour Directorate was executed on 28 November 2000 in the workers' absence. According to point 5 of the record of the meeting, "The undersigned labour inspectors drew the attention of the mayor to the mandatory procedure established in the Labour Code for negotiating draft collective agreements on conditions of work ...". For reasons connected with the autonomy of the municipalities, the General Labour Inspectorate intervened solely in a conciliation and advisory capacity.

– *Cardiz S.A.* This case was examined by the Tripartite Committee for International Labour Issues which appointed a special investigation and conciliation commission. The latter was unable to reach any agreement because the employers stated that they were unable to pay the benefits and wages owed to workers.

D. The Committee's conclusions

277. *The Committee notes that, with regard to the allegations that had remained pending at its meeting in November 2000, it had requested the Government: (1) to confirm that the three trade unionists who were given new posts in the company Tamport S.A. have been given posts in which they receive at least the same wages as before; (2) to send its observations as a matter of urgency on the allegations concerning the detention of the SITRACOBSA officials Marvin Leonel Cerón and Julián Guisar García, and on the numerous orders for the arrest of SITECOBSA and SITECOBSAGOSA officials (including Jorge Estrada and Marco Vinicio Hernández Fabián), to carry out an investigation into this matter and annul the orders if it is found that these actions were in response to legitimate trade union activities; (3) as a matter of urgency to send its observations on the allegations of anti-union discrimination and intimidation at the company Ace International S.A., to carry out an investigation into this matter and, if the allegations are proven to be true, to take the necessary measures to remedy the situation; (4) as a matter of urgency to take steps to carry out a judicial investigation into the death threats made against the trade unionist José Luis Mendía Flores, and to ensure that he has been reinstated in his post in accordance with the court ruling; (5) to ensure compliance with the court orders to reinstate the workers dismissed at the company La Exacta and to send its observations promptly on the alleged delays in the investigation into the murders in 1994 of four rural workers who had tried to form a trade union; the Committee requests the Government to keep it informed of the results of the judicial proceedings under way in respect of these murders, and trusts that the guilty parties will be punished. The Committee also notes that the new allegations presented by the ICFTU refer to the following: (1) at the María de Lourdes Farm, the impossibility of registering the union's officers, the death threats against the union's general secretary Mr. Otto Rolando Sacuqui García, the detention and indictment for robbery of the union's labour and disputes secretary, Mr. Mota, and the refusal by farm representatives to sign the judicial ruling acquitting him; (2) in the Municipality of Tecún Umán, the threats made against the union's secretary for the settlement of disputes, Mr. Walter Oswaldo Apen Ruiz, and his family, to force him to relinquish his posts in the municipality and in the union and the refusal by the authorities to negotiate a collective agreement; (3) in the company Hidrotecnica S.A., the dismissal of the founders of the trade union established in 1997; and (4) in the company Cardiz S.A., the closure of the company following the establishment of a union and the unlawful imprisonment of workers who had remained on company premises in order to prevent the removal of machinery and equipment.*

278. *As regards the Committee's request for confirmation that the three trade unionists who were given new posts in the company Tamport S.A. (having been dismissed for forming a trade union and subsequently reinstated) have been reinstated in posts in which they are paid at least as much as before, the Committee notes the Government's statement to the effect that the administrative authority has made attempts to achieve conciliation between the parties. Under these circumstances, the Committee requests the Government to take effective measures immediately to ensure that the workers in question, who were dismissed for anti-union reasons and whose reinstatement was ordered by a court, are allocated work with the same pay and benefits as they received before.*

279. *As regards the allegation concerning the detention of the SITRACOBSA officials Mr. Marvin Leonel Cerón and Mr. Julián Guisar, and the issue of detention orders against officials of SITECOBSA and SITECOBSAGOSA (including Mr. Jorge Estrada and Mr. Marco Vinicio Hernández Fabián), the Committee notes the Government's statements to the effect that: (1) Mr. Marvin Leonel Cerón and Mr. Julián Guisar are officials of SITECOBSA, not SITRACOBSA, and are not being detained; (2) the trade unionist Jorge Estrada was detained on charges of damaging property and inciting others to break the law, but was acquitted by the judge; and (3) there are no detention orders against trade*

unionists. In this regard, the Committee recalls that the arrest by the authorities of trade unionists concerning whom no grounds for conviction are found or charges made involves restrictions on trade union rights. Governments should take steps to ensure that the authorities concerned have appropriate instructions to eliminate the danger which arrest for trade union activities implies [see ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 81]. The Committee requests the Government to take steps to ensure that this principle is fully respected.*

280. *As regards the allegations of acts of anti-union discrimination and intimidation (including a case of sexual harassment against one female trade union member, dismissals and attempts to put pressure on trade union members to leave their jobs) at the company Ace International S.A., the Committee notes the Government's statements to the effect that following wide-ranging inquiries by the General Labour Inspectorate, the available administrative proceedings were declared to be exhausted and the parties initiated judicial proceedings. In this respect, the Committee requests the Government to communicate the results of the administrative investigation, and expresses the hope that the judicial authorities will rule on the very serious allegations in this case, dating from 1999, in the very near future. The Committee requests the Government to supply a copy of any judicial ruling as soon as it is handed down.*

281. *As regards the detention and indictment on charges of robbery of the labour and disputes secretary at the María de Lourdes Farm, Mr. Mota, and the refusal by the farm representatives to sign the judicial ruling acquitting him, the Committee notes the Government's information to the effect that the employer's refusal to sign the ruling does not affect it in any way, and that the aggrieved workers (including Mr. Mota) obtained a settlement with the police accused of illegally detaining them. Under these circumstances, the Committee will not pursue its examination of this allegation.*

282. *As regards the allegation that the authorities in the Tecún Umán municipality in San Marcos refused to negotiate a collective agreement, the Committee notes the Government's statements to the effect that: (1) in order to avoid discussion on the draft collective agreement, the authorities convened a community meeting during which the participants rejected any discussion of said collective agreement; (2) the philosophy behind the institution of the community meeting is that of giving greater power to the municipal authorities, by broadening political participation by citizens, but on this occasion unfortunately it was used in a way contrary to labour law; (3) the Ministry of Labour instructed the General Labour Inspectorate to carry out visits to the municipal authorities, to which the workers' delegates were refused admission, with a view to resolving the problem of negotiating the collective agreement; and (4) for reasons connected with the autonomy of the local authorities, the General Labour Inspectorate has intervened only in a conciliation and advisory capacity, as permitted under labour law. In this regard, the Committee notes that a "community meeting" held in order to avoid negotiating a collective agreement does not stimulate or encourage the full development and application of voluntary bargaining procedures aimed at regulating conditions of employment through collective agreements, as provided for in Convention No. 98 which has been ratified by Guatemala. Under these circumstances the Committee requests the Government to take measures to ensure that the authorities in Tecún Umán, San Marcos and the trade union of that municipality negotiate the collective labour agreement in good faith and do everything possible to reach an agreement.*

283. *As regards the allegation concerning the closure of Cardiz S.A. following the establishment of a trade union, and the unlawful imprisonment of workers who had remained on company premises in order to prevent the removal of machinery and equipment, the Committee notes the Government's statement that this case was examined by the Tripartite Committee on International Labour Issues which appointed a special*

commission of inquiry and conciliation, and that the commission had failed to come to any agreement because the company representatives had said that they were unable to pay the benefits and wages owed to the workers. In this respect, the Committee notes that the allegations go beyond the payment of wages and therefore requests the Government to take steps immediately to begin an inquiry covering all the allegations and to communicate all the necessary information it may receive during such an investigation.

284. *Lastly, the Committee greatly regrets that the Government has not communicated its observations on certain allegations that had remained pending or on the new allegations presented in Case No. 2050. Under these circumstances, the Committee strongly reiterates its previous recommendations that the Government should: (1) take steps as a matter of urgency to carry out a judicial investigation into the death threats made against the trade unionist José Luis Mendía Flores, to ensure that he has been reinstated in his post in accordance with the court ruling, and to keep the Committee informed in this regard; and (2) strongly insists that the Government ensure compliance with the court orders to reinstate the workers dismissed at the company La Exacta and send its observations promptly on the alleged delays in the investigation into the murders in 1994 of four rural workers who had tried to form a trade union; the Committee requests the Government to keep it informed of the results of the judicial proceedings under way in respect of these murders and insists that the guilty parties will be punished. The Committee stresses that justice delayed is justice denied [see* ***Digest****, op. cit., para. 56].*

285. *The Committee also requests the Government to communicate its observations in relation to the following allegations: (1) at the María de Lourdes Farm, the impossibility of registering trade union officers and the death threats made against the union's general secretary Mr. Otto Rolando Sacuqui García; (2) in the municipality of Tecún Umán, the death threats made against the union's secretary for the settlement of disputes, Mr. Walter Oswaldo Apen Ruiz, and his family, to force him to relinquish his job; and (3) in the Hidrotecnica S.A. enterprise, the dismissal of the founders of the union established in 1997.*

286. *The Committee notes that the ICFTU has recently presented new allegations (18 October 2001) and requests the Government to forward urgently its observations in this regard.*

The Committee's recommendations

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

(a) The Committee requests the Government to take immediate and effective steps to ensure that the three trade unionists who were given new jobs at the Tamport S.A. company after being dismissed for anti-union reasons are given posts in which they receive at least the same wages and benefits as before.

(b) As regards the allegations of anti-union discrimination and intimidation (including one case of sexual harassment of a female trade unionist, dismissals and attempts to put pressure on trade unionists to resign from their posts) at the company Ace International S.A., the Committee requests the Government to communicate the results of the investigation that has been carried out into this matter and expresses the hope that the judicial authorities will rule on these serious allegations, dating from 1999, in the

very near future. The Committee requests the Government to supply a copy of any court ruling that is handed down.

(c) The Committee requests the Government to take measures to ensure that the authorities in Tecún Umán, San Marcos and the trade union of that municipality negotiate the collective labour agreement in good faith and do everything possible to reach an agreement.

(d) As regards the allegation concerning the closure of Cardiz S.A. following the establishment of a trade union, and the unlawful imprisonment of workers who had remained on company premises in order to prevent the removal of machinery and equipment, the Committee requests the Government to take measures immediately to begin an inquiry covering all the allegations and to communicate all the necessary information it may receive during such an investigation.

(e) The Committee strongly reiterates its recommendation that the Government should: (1) as a matter of urgency take steps to carry out a judicial investigation into the death threats made against the trade unionist José Luis Mendía Flores, ensure that he has been reinstated in his post in accordance with the court ruling, and keep the Committee informed in this regard; and (2) recalling that justice delayed is justice denied, strongly insists that the Government ensure compliance with the court orders to reinstate the workers dismissed at the company La Exacta and send its observations promptly on the alleged delays in the investigation into the murders in 1994 of four rural workers who had tried to form a trade union, and keep the Committee informed of the results of the judicial proceedings under way in respect of these murders.

(f) The Committee requests the Government to communicate its observations on the following allegations: (1) at the María de Lourdes Farm, the impossibility of registering the union's officers, and the death threats against the union's general secretary Mr. Otto Rolando Sacuqui García; (2) in the municipality of Tecún Umán, the threats made against the union's secretary for the settlement of disputes, Mr. Walter Oswaldo Apen Ruiz, and his family, to force him to relinquish his post in the municipality; and (3) in the company Hidrotecnica S.A., the dismissal of the founders of the trade union established in 1997.

(g) The Committee urges the Government to send without delay its observations concerning the recent allegations put forward by the ICFTU in its communication of 18 October 2001.

CASE NO. 2103

INTERIM REPORT

Complaint against the Government of Guatemala presented by
— the Workers' Union of the Office of the Auditor General (SITRACGC) and
— the Organization for Worker Unity (Unidad Laboral)

Allegations: Anti-union discrimination, anti-union dismissals

288. This complaint is contained in communications from the Workers' Unions of the Office of the Auditor General (SITRACGC) and the Organization for Worker Unity (Unidad Laboral) dated 26 September and 7 November 2000.

289. Since there was no reply from the Government, the Committee twice had to postpone consideration of this case. In addition, at its meeting of May-June 2001 [see 325th Report, para. 8], the Committee made an urgent appeal to the Government and drew its attention to the fact that, in line with the procedure laid down in its 127th Report, paragraph 17, approved by the Governing Body, it would present at its next meeting a report on the substance of the case, even if the information or observations from the Government had not been received in time. So far, the Government has not sent its observations.

290. Guatemala 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

291. In its communications of 26 September and 7 November 2000, the Workers' Unions of the Office of the Auditor General (SITRACGC) and the Organization for Worker Unity (Unidad Laboral) allege that since the current incumbents of the Office of the Auditor General of the Republic of Guatemala have assumed office, numerous acts of anti-union discrimination have been committed against its leaders and members, including the following:

– compulsory resignations involving the termination of membership of 200 union members;

– dismissal of five members (Ms. Ligia del Carmen Jiménez Baldizón on 10 April 2000; Mr. Francisco Ramiro Miranda Montenegro and Mr. Walter Daniel Godoy Vargas on 31 July 2000; Mr. César Soto García on 7 August 2000; and Ms. Silvia Lisbeth Lara Sierra on 21 August 2000) on grounds of reorganization;

– dismissal proceedings started on 12 July 2000 against members of the SITRACGC and Unidad Laboral executive committees (Messrs. Manuel Antonio Cospín López, Roberto Espinosa Prado, Nery Gregorio López Alba, Marco Polo Menchu Arreaga, Marco Antonio Alvarado Rojas) in reprisal for failing to perform their duties by refusing to accept appointments outside the central department;

– transfer of the secretary for public relations and advertising, Mr. Sergio René Gutiérrez Parrilla, who was assigned to the central office in reprisal for making use of

the right of petition and, for failing to implement that transfer, was suspended from work without pay on 6 September 2000 for a period of 30 days;

– dismissal of members, Ms. Ivana Eugenia Chávez Orozco and Mr. Otoniel Antonio Zet Chicol on 4 October 2000 despite legal rulings of August and September 2000 which prohibited any dismissal without a legal ruling because of the labour dispute between the unions and the Auditor General's Office;

– failure to assign duties despite the complaint made on 10 October by workers Roberto Espinoza Prado, Nery Gregorio López Alba, Marco Polo Menchu Arreaga, Marco Antonio Alvarado Rojas and René Gutiérrez Parrilla; and

– relocation of union headquarters owing to restructuring of the enterprise.

B. The Committee's conclusions

292. *The Committee regrets that despite the time that has elapsed since the complaint was lodged, the Government, contrary to the desire to cooperate expressed during the direct contacts mission in April 2001, has not replied to any of the complainants' allegations, even though it was urged on several occasions, including through an urgent appeal, to send its observations or information on the case. The Committee urges the Government to cooperate fully with the Committee in the future.*

293. *Under these circumstances and in accordance with the applicable procedure [see 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 hoped to receive from the Government.*

294. *The Committee reminds the Government that the purpose of the whole procedure is to ensure respect for trade union rights in law and in fact. The Committee is convinced that although the procedure protects governments against unfounded accusations, governments on their side should recognize the importance of presenting detailed and precise replies to the substance of the alleged facts with a view to an objective examination [see First Report of the Committee, para. 31].*

295. *The Committee observes that in the present case the complainants allege various acts of anti-union discrimination including: (1) compulsory resignations involving the termination of membership of more than 200 union members; (2) dismissals on grounds of reorganization; (3) dismissal proceedings started as reprisal for alleged failure to perform duties; (4) transfers and suspensions without pay; (5) dismissals for failure to implement legal rulings; and (6) failure to assign duties and relocation of union headquarters. In this respect, the Committee would first like to recall 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 workers [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 695].*

296. *As regards the alleged compulsory resignations which involved the termination of membership of more than 200 union members and the dismissal of five members (Ligia del Carmen Jiménez Baldizón, Francisco Ramiro Miranda Montenegro, Walter Daniel Godoy Vargas, César Soto García and Silvia Lisbeth Lara Sierra) on grounds of reorganization, the Committee requests the Government to ensure that investigations are made to determine whether the resignations and dismissals were effected for anti-union reasons. Should the anti-union nature of these acts be confirmed, the Committee requests the Government to take the necessary steps to have those who were dismissed reinstated in*

their posts without loss of pay and so that the workers forced to resign be offered reinstatement in their posts without loss of pay, and to ensure that such acts are not repeated in future. The Committee requests the Government to keep it informed in this respect.

297. *As regards the allegations concerning the dismissal proceedings and the failure to assign duties to the members of the SITRACGC and Unidad Laboral executive committees, as reprisal for their failure to perform their duties by refusing to perform tasks outside the central office (transfers according to the complainants), the Committee recalls that transfers may be included in acts of anti-union discrimination, as stated previously. Finally, the Committee requests the Government to urge the Auditor General's Office to desist from the dismissal actions referred to above and proceed by common agreement with the assignment of duties in such a way that the performance of union activities is not affected. The Committee requests the Government to keep it informed in this respect.*

298. *With regard to the alleged transfer and subsequent suspension without pay of Mr. Sergio René Gutiérrez Parrilla, as reprisal for exercising the right of petition, the Committee recalls 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]. Accordingly, the Committee requests the Government to take the necessary steps to have investigations carried out and, should the transfer and subsequent suspension prove to be the result of legitimate union activities, ensure that the transfer be rescinded and, should the suspension have been made effective, undertake compensation with the payment of outstanding wages. The Committee requests the Government to keep it informed in this respect.*

299. *As regards the alleged dismissals of Ms. Ivana Eugenia Chávez Orozco and Mr. Otoniel Antonio Zet Chicol, despite the legal rulings of August and September 2000 prohibiting any dismissal without a legal ruling because of the labour dispute between the unions and the Auditor General's Office, the Committee requests the Government, in compliance with the legal ruling, to reinstate the workers concerned in their posts. The Committee requests the Government to keep it informed in this respect.*

300. *As regards the alleged relocation of union headquarters, the Committee observes that the measure consists solely of transferring the headquarters from one floor to another in the building where the Auditor General's Office is located. The Committee requests the Government to urge the parties to consider by joint agreement to what extent the transfer may affect the normal performance of union activity and possibly to take steps to abandon the planned transfer.*

The Committee's recommendations

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

(a) The Committee regrets that the Government, contrary to the desire to cooperate expressed during the direct contacts mission in April 2001, has not responded to any of the complainants' allegations in this case and urges the Government to cooperate fully with the Committee in the future.

(b) With respect to the compulsory resignations involving the termination of membership of 200 union members and the dismissal of five members, the Committee requests the Government to ensure that investigations are made to determine whether the resignations and dismissals were effected for anti-

union reasons. Should the anti-union nature of these acts be confirmed, the Committee requests the Government to take the necessary steps to have those who were dismissed reinstated in their posts without loss of pay and so that the workers forced to resign be offered reinstatement in their posts without loss of pay, and ensure that such acts are not repeated in future. The Committee requests the Government to keep it informed in this respect.

(c) As regards the dismissal proceedings and the failure to assign duties to the members of the SITRACGC and Unidad Laboral executive committees, the Committee requests the Government to urge the Office of the Auditor General to desist from the actions described and to assign duties by common agreement in such a way that union activities are not affected. The Committee requests the Government to keep it informed in this respect.

(d) With regard to the transfer and subsequent suspension without pay of Mr. Sergio René Gutiérrez Parrilla, in reprisal for exercising the right of petition, the Committee requests the Government to take the necessary steps to ensure that investigations are made and, should the transfer and subsequent suspension prove to be the consequence of legitimate union activities, rescind the transfer and, should the suspension have been made effective, undertake compensation with the payment of outstanding wages. The Committee requests the Government to keep it informed in this respect.

(e) Concerning the dismissal of Ms. Ivana Eugenia Chávez Orozco and Mr. Otoniel Antonio Zet Chicol, the Committee requests the Government, in compliance with the legal ruling, to reinstate the workers concerned in their posts. The Committee requests the Government to keep it informed in this respect.

(f) The Committee requests the Government to urge the parties to consider by joint agreement to what extent the transfer of the union central office may affect the normal performance of union activity and possibly to take steps to abandon the planned transfer.

CASE NO. 2122

DEFINITIVE REPORT

Complaint against the Government of Guatemala presented by the General Trade Union of Employees of the Ministry of Labour and Social Welfare (SIGEMITRAB)

Allegations: Refusal by the authorities to negotiate a collective agreement on terms and conditions of employment – changes in duties, transfers and dismissals of trade union officials and members – establishment of a trade union promoted by the authorities

302. The complaint is contained in a communication from the General Trade Union of Employees of the Ministry of Labour and Social Welfare (SIGEMITRAB) dated 30 March 2001. The SIGEMITRAB sent new allegations in a communication dated 29 June 2001.

The Government sent its observations in communications dated 3 and 31 May, and 3 September 2001.

303. Guatemala 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

304. In its communications of 30 March and 29 June 2001, the General Trade Union of Employees of the Ministry of Labour and Social Welfare (SIGEMITRAB) alleges that in the year 2000 the Ministry authorities refused to negotiate a new collective agreement on terms and conditions of employment, which led to a collective dispute of an economic and social nature being referred to the First Labour Court. As a result, and since trade union officials or members were involved, the Ministry authorities took the following measures:

– they changed the conditions of work or transferred to other departments (according to the complainant, this had already occurred and been mentioned in a complaint to the Committee in 1995) the following trade union officials and members holding the post of labour inspector: Manuel de Jesús Luna Mendoza (member of the consultative council), Víctor Manuel Dávila Rivera (disputes secretary), María Cristina Chay Medrano, Juan Ortiz Camey, Pedro Armando Ortiz Quintanilla (organization and propaganda secretary), Mizraid Otoniel Velásquez, Pedro Boror López, Angelina Sánchez Vela, Gilma Nora Hicho de León and Mario Rodolfo Morales Solares;

– they dismissed over 50 workers without going through the statutory procedures or obtaining the authorization of the competent judge. According to the complainant, petitions for reinstatement were filed with the judiciary, which ordered their immediate reinstatement. However, the complainant states that the Ministry authorities appealed against the judicial decision, thus holding up the reinstatement order to the detriment of the workers. It adds that the Second Labour Court of Appeal upheld four of the reinstatement orders that had been issued with respect to Priscila Esperanza Vargas Ponce de Portillo, Edgar Alfredo Mancilla Cuellar, Carlos Enrique López Merida and Hilario Vicente;

– they initiated plenary proceedings for the termination of contracts (based on time-barred acts which are not certain to have occurred and do not constitute grounds for dismissal) against Juan Pablo Ochoa Reyes, Víctor Manuel Dávila Rivera and Néstor Estuardo de León Mazariegos, members of the SIGEMITRAB executive committee, and members Paco Bernabé Vera Lopez and Nérida Ixiomara Antonio.

305. In addition, the complainant alleges that a second trade union was established and promoted by the authorities in the Ministry of Labour, called the General Trade Union of Workers of the Ministry of Labour and Social Welfare (SITRAMITRAPS). According to the complainant, the Ministry of Labour authorities encouraged members to withdraw by offering them wage increases and authorized the SITRAMITRAPS to use official vehicles, while denying this possibility to the SIGEMITRAB.

B. The Government's reply

306. In its communication dated 2 May and 3 September 2001, with regard to the allegations concerning transfers of labour inspectors to other departments (in particular to the conciliation department) the Government states that it is the rule for inspectors to be transferred from one department to another, firstly in application of the principle of *ius*

variandi which allows any employer to carry out staff movements; secondly, this does not affect them in any way since they maintain their status of inspectors and their benefits and rights remain unchanged, but it also has the advantage that inspectors have experience in handling cases and have been trained as mediators and conciliators for the settlement of disputes. Against this background and in the context of the increase in disputes which occurred in 1994, the Ministry of Labour issued Ministerial Agreement No. 85-94 of 29 November 1994 regulating the modernization and organization of the General Labour Inspectorate, which organized the staff, clearly defining the three departments; section 17 of the Agreement establishes the functions of social work and mediation, and provides that these are to be carried out by the general labour inspector. Based on these provisions, the department was strengthened by transferring inspectors who had been trained in conciliation.

307. As regards the establishment of a new trade union (SITRAMITRAPS), the Government states that it is inadmissible to say that this was aimed at destroying the SIGEMITRAB; according to the Government, what is happening is that the complainant does not wish to lose its hegemony, but the establishment of a new trade union is the result of its bad behaviour, which prompted a group of workers to seek to form an organization that would genuinely defend their rights and would not be limited to the Labour Inspectorate. The Government emphasizes that it has not interfered in the establishment and functioning of the SITRAMITRAPS; what it is doing is responding to its requests for hearings and to handle the labour problems of its members, which is not the attitude taken by the SIGEMITRAB, which never brings its alleged problems directly to the higher authorities, and this is basically due to the fact that when they do present issues to the higher authorities it is with the purpose of seeking privileges which the Government is in no position to grant, as they are illegal and immoral. The Government states that the SITRAMITRAPS trade union was established when the Minister of Labour was attending the 88th Session of the International Labour Conference and the Ministry authorities do not have anything to do with its organization and functioning; it is not the Government's fault if the workers decide to found two or more organizations. As regards withdrawals from membership of the SIGEMITRAB, these take place at the workers' request, because the SIGEMITRAB refuses to recognize the right to freedom of association which means the freedom to join, remain in or withdraw from membership of a trade union; this is not understood by the members of the SIGEMITRAB, who attempt to force people to remain members and disregard repeated requests to withdraw from membership, violating the right to freedom of association.

308. As regards the allegations concerning dismissals, the Government states that the Ministry has had to terminate some employment relationships and that those who have sought reinstatement in the courts have not succeeded, since, according to the rules of procedure and legal provisions, the judge of the court of first instance had to immediately order reinstatement, but in the second instance, having examined each case in depth, the jurisdictional body has already revoked the reinstatement orders in three cases. In this respect, it should be borne in mind that Decree No. 35-96 amending the Act respecting trade union organization and strikes of employees of the State allows authorizations of dismissal for just cause even if cases where a court summons has been served, and clearly indicates that these cases do not constitute reprisals by the employer. The Government adds that the Ministry of Labour brought plenary suits against three of the members of the executive committee for gross misconduct at work: Mr. Néstor Estuardo de León was charged with 11 instances of misconduct and grounds for dismissal; proceedings were filed against Mr. Juan Pablo Ochoa based on nine grounds for dismissal and against Mr. Víctor Dávila on one serious ground.

309. The Government states that when the current administration took up its activities the Ministry was faced with the following situations: (1) many workers were not occupying

their proper posts, without any transfers having been carried out in accordance with the law, i.e. the workers held the posts of their choice, and therefore it was decided that this situation would be regularized and workers were prohibited from choosing where they wished to work. Despite the illegality, the responsible chief was given the opportunity of taking responsibility for the situation and submitting an opinion on the need for a worker to continue occupying a post other than that which he or she was required to hold; (2) hours of attendance were not being observed and workers were evading checkpoints at the entrance to the building by entering through the basement. This practice was prohibited and workers were required to adhere to the work schedule; (3) staff have a 40-minute lunch break but were taking two to three hours to eat lunch and when the trade union leaders were asked to give their support to ensure that the legal framework was observed, they replied that they used this time because it was an acquired right; (4) some Ministry workers enter and leave the building during working hours and refuse to carry identification in order to avoid being identified; (5) the SIGEMITRAB had reserved a certain number of rooms in recreation centres administered by the Ministry and allocated them as they saw fit to trade union members and personal friends, violating the right of all public employees who contribute one day's wages per year to maintain these centres. This practice was eliminated as immoral and illegal; (6) the SIGEMITRAB wished to be entitled to a parking space for the trade union's vehicle, but as it turned out the trade union does not have a vehicle and they wanted to use the space for personal vehicles; and (7) the SIGEMITRAB wishes to have a vehicle permanently at its disposal to use for private purposes, disregarding the fact that the Ministry would be reducing the already limited resources at its disposal to attend to the needs of workers in general.

310. The Government states that all of the above compelled it to adopt measures based on the law, but taking a firm stand, so that the Ministry of Labour could discharge its obligation of attending to the workers and employers in general who seek assistance from the Ministry. All of this has meant that it has had to carry out staff rotations or transfers in an effort to energize the work of the inspectorate, which was not to SIGEMITRAB's liking, as it objected to any change that might mean greater efficiency and control over work in order to counteract the generally unfavourable opinion workers have of the General Labour Inspectorate. The Government emphasizes that there is no discrimination against the SIGEMITRAB, but neither can there be any privileges, and that unfortunately the officials of this trade union confuse rights with abuses and have neglected their obligations as workers.

311. As regards the allegation concerning the refusal of the Ministry authorities to negotiate a new collective agreement on terms and conditions of employment, the Government states that direct negotiation and conciliation did not take place owing to the intransigence of SIGEMITRAB delegates and their poor knowledge of the meaning of dialogue and consultation, since they expect their demands to be accepted without discussion; this is evidenced by the statement made by the General Secretary of the National Trade Union Federation of State Employees of Guatemala, who on 23 November, in point 5.1, stated that the union was withdrawing from bargaining because the first five points had not been accepted by the bargaining committee. The Government adds that on the basis of this the SIGEMITRAB officials filed a collective action of an economic and social nature to have the collective agreement discussed through the labour and social welfare courts, and that the complainant conceals the fact that section 4 of Legislative Decree No. 35-96 provides that negotiations at the conciliation and direct bargaining stage may be personally attended by the Minister, but that proceedings in court had to be handled by the Office of the Procurator-General of the Nation, which is the legal institution handling legal negotiations of the State and hence when SIGEMITRAB referred the dispute to the labour courts it removed the case from the jurisdiction of the Minister, who is not empowered to act in this instance as he is prevented from doing so by law and would be usurping the functions of the Procurator-General's Office.

312. The Government states that the SIGEMITRAB does not indicate that the collective dispute was referred to the courts on 14 June 2000, when the Minister of Labour was attending the 88th Session of the International Labour Conference, as was noted in the record of proceedings, and therefore they did not speak to the responsible official of the Ministry and point out their alleged problems. The Government adds that SIGEMITRAB received and illegally concealed a notification sent by the labour court to the Ministry, which is an illegal act and a criminal offence because it constitutes an attempt to impede the right of defence, and as a result it was not possible to contest a resolution in time, which meant that other objections had to be raised, delaying the collective proceedings. Owing to this anomaly, the authorities have brought criminal charges and initiated labour proceedings for the authorization of termination of the contracts of employment of the persons responsible. According to the Government, the SIGEMITRAB is careful not to mention that it intends to maintain the summons served on the Ministry of Labour in order to prevent it from applying the disciplinary measures necessary to combat corruption. Lastly, the Government states that in this context and in an effort to provide a better service to the workers requesting the assistance of the Ministry of Labour, workers were dismissed with just cause, which means that the worker has violated his or her labour obligations and is guilty of misconduct at work which warrants direct and justified dismissal.

313. In its communication of 31 May 2001, the Government states that on 18 May 2001 a complaint was lodged with the Attorney-General's Office of the Republic against Mr. Juan Pablo Ochoa Reyes, for stealing documents.

C. The Committee's conclusions

314. *The Committee observes that in this case the complainant alleges: (1) refusal by the Ministry of Labour authorities to negotiate a new collective agreement on terms and conditions of employment; (2) changes in conditions of employment, transfers, dismissal and initiation of proceedings to terminate contracts of trade union officials and members of the SIGEMITRAB, with the result that an economic and social collective dispute was referred to the judiciary following refusal to negotiate the abovementioned collective agreement; and (3) the establishment of a new trade union promoted by the authorities in the Ministry of Labour called the SITRAMITRAPS, and the consequent encouragement of SIGEMITRAB members to withdraw from membership, and the award of benefits to the new trade union.*

315. *As regards the alleged refusal of the Ministry of Labour authorities to negotiate a new collective agreement on terms and conditions of employment, the Committee notes that the Government states that: (i) bargaining did not take place owing to the intransigence of the SIGEMITRAB delegates, who expected their demands to be accepted without discussion; (ii) as a result of this intransigence the SIGEMITRAB delegates withdrew from bargaining because the first five points of their list of demands were not accepted by the bargaining committee and instituted collective proceedings of an economic and social nature so that the collective agreement would be discussed through the labour and social welfare courts; (iii) the collective dispute was referred to the courts while the Minister of Labour was attending the International Labour Conference, without contacting the responsible officials of the Ministry; and (iv) the SIGEMITRAB received and illegally concealed a notification sent by the labour court to the Ministry of Labour, which constitutes an illegal act and a criminal offence; the Government states that as a result of this act, criminal charges have been brought and labour proceedings initiated for the authorization of termination of the contracts of employment of those responsible.*

316. *In this respect, the Committee recalls that it has pointed out on a number of occasions that "it is 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 of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 815]. The Committee observes that according to the versions presented and decisions taken by the complainant (to refer to the courts in the context of an economic and social dispute) and the Government (bringing criminal charges and initiating dismissal proceedings) in the present case the abovementioned principle has not been fully applied. In these circumstances, the Committee requests the Government and the complainant to endeavour to negotiate in good faith the new collective agreement with a view to regulating terms and conditions of employment. Moreover, the Committee requests that, in order to maintain harmonious labour relations between the Government and the SIGEMITRAB in this process of collective bargaining, consideration be given to withdrawing the criminal charges and dismissal proceedings which the Government stated had been initiated against the persons responsible for having concealed a judicial notification sent to the Ministry of Labour.*

317. *As regards the allegation concerning changes in conditions of employment, transfers, dismissals and the initiation of proceedings for the termination of contracts of the SIGEMITRAB officials and members named by the complainant, as a result of which an economic and social collective dispute was referred to the judiciary following refusal to negotiate the abovementioned collective agreement, the Committee notes that the Government states that:* ***with respect to transfers*** *(i) it is the rule for inspectors to be transferred from one department to another, firstly in application of the principle of* ius variandi *which allows any employer to carry out staff movements, and secondly this does not affect them in any way since they maintain their status of inspectors and their benefits and rights remain unchanged; (ii) when the current administration took over the activities of the Ministry of Labour many workers were not occupying their proper posts and discharging their duties, without any transfers having been carried out in accordance with the law; the workers occupied the posts of their choice, and hence it was decided that this situation would be regularized and workers were prohibited from choosing where they wished to work; and (iii) given this situation, the authorities were obliged to carry out rotations or transfers in an effort to energize the inspectorate's work;* ***with respect to dismissals*** *(i) the Ministry has had to terminate certain employment relationships; (ii) certain workers have sought reinstatement before the court; (iii) in the first instance, in accordance with the established procedure, reinstatement was ordered, but in the second instance, the jurisdictional court has already revoked it in three cases;* ***with respect to proceedings for the termination of contracts (dismissals)*** *the Ministry of Labour brought plenary actions against three of the members of the executive committee of SIGEMITRAB for gross misconduct at work.*

318. *In this respect, taking into account the versions of the complainant and the Government, the Committee can neither affirm nor deny that the measures in question are anti-union in nature. In any case, the Committee cannot but observe that the existing climate between the Ministry authorities and the SIGEMITRAB is by no means conducive to the development of harmonious labour relations. In these circumstances, the Committee requests the Government: (1) in consultation with the SIGEMITRAB trade union, to take steps to suspend the transfers or changes in duties of the trade union officials and members where this prevents them from carrying out their trade union activities; (2) to consider the possibility of reinstating the trade union officials and members who were dismissed after presenting a new collective agreement on terms and conditions of employment, except in cases of serious professional misconduct for which there should be impartial appeal proceedings; (3) to ensure compliance with the decision of the court of second instance to reinstate Priscila Esperanza Vargas Ponce de Portillo, Edgar Alfredo Mancilla Cuellar, Carlos Enrique López Merida and Hilario Vicente; and (4) in consultation with the SIGEMITRAB, to reconsider the situation of the trade union officials against whom proceedings have been initiated for the termination of their contracts.*

319. *As regards the allegation concerning the establishment of a new trade union promoted by the authorities in the Ministry of Labour, called SITRAMITRAPS, and the consequent encouragement of SIGEMITRAB members to withdraw from membership (offering wage increases) and the grant of benefits to the new trade union (specifically, the use of vehicles), the Committee notes that the Government states that: (i) it has not interfered in the establishment and functioning of the SITRAMITRAPS; (ii) concerning withdrawals of membership from the SIGEMITRAB, these have taken place at the workers' request; and (iii) as regards the use of vehicles, the SIGEMITRAB wishes to have a vehicle at its permanent disposal in order to use it for private purposes, disregarding the fact that the Ministry would have to reduce the already limited resources at its disposal to attend to the needs of workers in general. In this respect, the Committee requests the Government to ensure that no favouritism is shown to either of the existing trade unions in the Ministry of Labour.*

The Committee's recommendations

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

(a) The Committee requests the Government and the complainant to endeavour to negotiate in good faith on the new collective agreement concerning terms and conditions of employment. Moreover, the Committee requests that, in order to maintain harmonious development of labour relations between the Government and the SIGEMITRAB in this process of collective bargaining, consideration be given to withdrawing the criminal charges and dismissal proceedings which the Government stated had been initiated against the persons responsible for having concealed a judicial notification sent to the Ministry of Labour.

(b) As regards the allegation concerning changes in conditions of employment, transfers, dismissals and the initiation of proceedings for the termination of contracts of the SIGEMITRAB officials and members named by the complainant following refusal by the authorities to negotiate a new collective agreement on conditions of employment, the Committee requests the Government: (1) in consultation with the SIGEMITRAB trade union, to take steps to suspend the transfers or changes in duties of the trade union officials and members where this prevents them from carrying out their trade union activities; (2) to consider the possibility of reinstating the trade union officials and members who were dismissed after presenting a new collective agreement on terms and conditions of employment, except in cases of serious professional misconduct, for which there should be impartial appeal proceedings; (3) to ensure compliance with the decision of the court of second instance to reinstate Priscila Esperanza Vargas Ponce de Portillo, Edgar Alfredo Mancilla Cuellar, Carlos Enrique López Merida and Hilario Vicente; and (4) in consultation with the SIGEMITRAB, to reconsider the situation of the trade union officials against whom proceedings have been initiated for the termination of their contracts.

(c) The Committee requests the Government to ensure that no favouritism is shown to either of the existing trade unions in the Ministry of Labour.

CASE NO. 2116

INTERIM REPORT

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

Allegations: Arrest and detention of striking trade unionists; large-scale dismissals of unionists pursuant to strike action; physical assault on a trade union leader

321. In communications dated 23 February 2001, the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) presented a complaint of violations of freedom of association against the Government of Indonesia. It supplied additional information in communications dated 16 and 22 March 2001. The IUF submitted new allegations in communications dated 24 July as well as 15 and 16 October 2001.

322. The Government supplied its observations in communications dated 15 June and 31 August 2001.

323. Indonesia 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

324. In its communication dated 23 February 2001, the IUF states that it is presenting a complaint on behalf of its Indonesian affiliate, the Shangri-la Hotel Independent Workers' Union (SPMS), against the Government of Indonesia for violations of Conventions No. 87 and 98.

325. More specifically, the IUF explains that the SPMS in Jakarta initiated negotiations with the management in September 2000 regarding the establishment of a pension scheme, the granting of an annual indemnity and the equitable distribution of a percentage of gratuities. The negotiations held with the management on 30 October and 1 and 22 November were unproductive.

326. On 11 December 2000, the management stated that it refused to have the President of the union and elected delegate, Mr. Halilintar Nurdin, attend the scheduled negotiations, and that it intended to reopen the issue that had previously been agreed upon as to the matters under discussion. The principle of setting up a picket line on 31 December 2000 was the subject of a vote on 14 December. On 20 December, the management prohibited any posting or distribution of leaflets in the hotel.

327. On 22 December 2000, the management laid off Mr. Halilintar Nurdin before dismissing him and prohibited him from entering the hotel in order to do his work. The hotel employees met together in the hotel lobby and signed a petition protesting this action. At 4 p.m., the management decided to transfer the guests to other hotels in Jakarta; at 6 p.m. the

management declared the hotel closed and locked out all the employees. In a communication of 10 January 2001, the union stated that the management had bribed a representative of the Ministry of Labour in order to facilitate the dismissal of the President of the union, Mr. Halilintar Nurdin.

328. On 26 December 2000, at 1.15 a.m., approximately 350 members of the police force attacked the striking workers and, at the request of the hotel management, had the hotel evacuated by force. Approximately 20 unionists, including the IUF representative in Indonesia, Hemasari Dharmabumi, were detained at the police station for a day.

329. At the beginning of January 2001, the management sent approximately 400 trade unionists a letter stating that their participation in the strike would result in their losing their jobs unless they were prepared to resign from the union. Since then, the management has refused to take part in any negotiations.

330. On 20 February 2001, Muhammed Zulrahman, treasurer of the union and an employee of the hotel, was hospitalized after having been attacked by the head of the hotel's bodyguards. The police released one of the assailants without laying any charges. On the same day, Governor Sutiyosa, who is in charge of the administration of the city of Jakarta, announced that he would put at the hotel's disposal special security forces in the event the management succeeded in reopening the hotel with non-striking workers.

331. The IUF asserts that despite the union's repeated requests, neither the Ministry of Labour nor the labour tribunal intervened concretely to protect the workers' rights to freedom of association and to bargain collectively. In the IUF's view, the Indonesian Government failed to meet its obligation to ensure respect for the laws of Indonesia concerning freedom of association and protection of trade unionists, particularly regarding the use of a lockout as a means of resolving a collective dispute, and the collective dismissal of over 400 employees due to their trade union membership. It also denounces the use of governmental police forces to assist the employer and to break up the collective protest action of the employees.

332. In its communication dated 16 March 2001, the IUF refers to a letter dated 15 March 2001, sent by it to the President of Indonesia. In this letter the IUF expresses its grave concern at the reported planned reopening of the Shangri-la Hotel in Jakarta on 17 March 2001. The IUF requests the President to use his good offices to persuade the management of the Shangri-la Hotel to postpone this reopening. It explains that the current situation can only be made more difficult as a result of an act that could be interpreted as blatant provocation. Reopening at a time when locked-out workers continue to exercise their legitimate right to protest the denial of their fundamental rights can only increase the atmosphere of tension and crisis.

333. The IUF points out that the situation at the Shangri-la Hotel is the subject of widespread interest within the international community. In the event that the Shangri-la Hotel management is not willing to postpone the opening, there is clearly a risk that tensions will rise dramatically and an attendant risk of violence against those who would choose to exercise their legitimate right of protest. The IUF emphasizes that in this situation the Indonesian Government will necessarily be held fully accountable for any violence by private or state security forces that might be inflicted on those workers. The IUF therefore urges the President to act as a guarantor of the rights of those workers who are currently locked out of the hotel and being denied their rightful employment. It also asks the President to ensure that those workers are provided protection in the event that anyone seeks through force to prevent them from fully exercising their rights.

334. In its communication dated 22 March 2001, the IUF claims that the Government's mediation efforts have not been followed up by the hotel management. In effect, the hotel management sabotaged tripartite negotiations with the Ministry of Manpower and Transmigration by refusing to deliver to the union (the SPMS) an invitation by the Ministry on the talks. The invitation was only delivered by the hotel to the SPMS on Tuesday, 20 March 2001, while talks to discuss the dispute had been set for Wednesday, 14 March 2001. The IUF claims that the hotel management must have received the letter to be delivered to the union before 14 March and considers that the management intentionally tried to hide the letter.

335. The IUF adds that the SPMS comprises nearly 500 employees of the hotel who were dismissed after holding a strike pursuant to which the management closed the hotel for almost three months. The hotel reopened on Saturday, 17 March 2001. Meanwhile, the issue of the dismissals of the workers affiliated with the SPMS is going through an arbitration process at the government-sanctioned Central Committee for the Settlement of Labour Disputes (P4P), which has yet to hand down its decision. According to the IUF, only 232 SPMS members have accepted severance payment and officially resigned from the hotel, while 273 others continue to demand reinstatement.

336. In its communication dated 24 July 2001, the IUF makes more detailed allegations in respect of the dispute at the Shangri-la Hotel. The IUF also attaches letters and other documentation in support of its allegations. First of all, it contends that the reasons presented by the company for the dismissal of Mr. Halilintar Nurdin, Chairperson of the SPMS, are merely an excuse for a greater purpose, namely the disintegration of the union established independently within Hotel Shangri-la Jakarta. In relation to this, the Government through the Ministry of Manpower and Transmigration has supported the management's attempt to break the union. This anti-union attitude is further illustrated by the fact that the Ministry granted the company the permission to terminate the working relationship of hundreds of workers who are members of the SPMS, in order to assist the management in the process of breaking the union. This is proven by the large number of testimonies from workers who were intimidated when they were summoned for registration for re-employment, as they were made to sign an affidavit conveying their resignation from the membership of the SPMS (affidavit testifying the occurrence of this event is enclosed by the IUF).

337. The IUF further claims that the workers did not hold an illegal strike. The spontaneous protest in the afternoon of 22 December 2000 was attended by representatives of each outlet, the objective of which was to protest against the management's suspension and subsequent dismissal over Mr. Halilintar Nurdin. Since only representatives were present, the protest did not involve all members of the SPMS who were on duty at the time. Since it did not involve all union members, the protest was not intended to cause a cessation of all hotel activities. The strike held due to the management's refusal to negotiate was planned to be held on 31 December 2000 as stated in the signed notification from SPMS dated 27 December 2000 and submitted to the proper authorities. The management had in fact anticipated the occurrence of the non-premeditated spontaneous protest as the union members' response to the dismissal of their Chairperson as apparent from the fact that from the early morning of 22 December 2000 the management had prepared an increase in the number of security personnel and had requested the presence of police and military personnel to be on guard. The majority of SPMS members kept working as usual until they were sent home or dismissed by the company on 23 December 2000 because the company announced that the hotel was temporarily closed (lockout). Several hours following the workers' spontaneous protest, a function in commemoration of the anniversary of the South Korean independence organized by the South Korean Embassy was still held from 7 pm to 9.30 pm.

338. The IUF then contests the fact that workers had occupied the hotel lobby. An occupation is a coercive act of taking control over a thing or place. The workers in their protest had never coercively taken control of the hotel lobby. There was no act of compelling other parties to leave the premises; there was an attempt to hinder other parties from entering the hotel lobby. From 23 December 2000 the workers were the ones present in the hotel lobby not because they had compelled other people to leave but because the company had emptied the lobby and the whole of the hotel (lockout). The emptying and evacuation of guests from hotel premises carried out by the company had actually disadvantaged the workers, as it reduced their bargaining position which initially was intended to impel the company to fairly negotiate with them.

339. The IUF also contests that the workers' protest caused the cessation of hotel activities. The company had executed a lockout on 23 December 2000. The temporary closing of the hotel by the company was accompanied by the evacuation of guests staying at the hotel, the cancellation of various functions and events previously ordered, and sending home or temporarily dismissing workers who were still working on that day. To secure hotel premises from the potential access or other parties to take advantage of the situation (theft or looting), the following day on 24 December 2000, workers through hotel security personnel closed the entrance to the main lobby of the hotel as a security precaution. When the hotel entrance was closed by the hotel security, the hotel was already empty and non-operational due to the lockout executed by the company the day before.

340. Finally, the IUF asserts that the workers had not even in the slightest caused physical damage to hotel facilities and neither had they broken hotel glass doors. The company had never officially filed charges concerning the damages to the police. The glass door was broken by the police in the early morning of 26 December 2000 at 1.15 am when hundreds of police personnel rushed into the hotel, attacked the workers, and evacuated the workers to the Central Jakarta Police Station (testimony of a hotel security guard is enclosed by the IUF). The police had also caused more damage when they searched the hotel premises and when they carried out what they called a "sweeping" causing damage to hotel employee lockers (the written complaint of the SPMS of the damage to the lockers of its members is enclosed by the IUF). According to the IUF, the company was aware of the fact that the damage, particularly that to the employee lockers, was not caused by the workers. And therefore, the company awarded compensation for the damaged lockers to resigning workers in the amount of Rp.300,000.00 each (the testimony of receipt of locker compensation is enclosed by the IUF).

B. The Government's reply

341. In its communications dated 15 June and 31 August 2001, the Government provides the following observations. First of all, it explains that the SPMS (Reformation Tourism Workers' Union) was previously established in the Shangri-la Hotel, Jakarta, and its President was Mr. Halilintar Nurdin. This union and the management had successfully set up a collective labour agreement (CLA) that among others covered, inter alia, matters concerning bonus, premium, service charge and pension scheme. The SPMS then changed its name to SPM (Independent Workers' Union). Mr. Halilintar Nurdin remained President of this union as well.

342. On 7 September 2000, this union initiated negotiations with the management for renewal of the CLA that was to expire on December 2001. Based on Act No. 21 of 1954 on labour agreements, negotiation for renewal of the CLA should be conducted at least three months before the prevailing CLA expires. The negotiation for improvement of the CLA is connected with the existence of Manpower Ministerial Regulation No. 02 of 1999 on service charge that states that the distribution of service charge should be based on

"seniority". There is no further explanation about the term "seniority". Therefore, the workers understand seniority to be based on the length of service.

343. The Government then indicates that prior to negotiations between management and the workers, guidance on the meaning of the mentioned provision was given by inviting officials/mediators of the District Office of the Department of Manpower, Central Jakarta, in order to reach mutual understanding on the mentioned regulation. This guidance meeting was attended by two persons who were employees of the Grand Hyatt Hotel and of the Regent Hotel. These two persons knew Mr. Halilintar Nurdin but were not invited by the management to the meeting. The presence of the mentioned persons created a disorderly situation that was followed by the dissatisfaction of other workers with the explanation of the provisions in question.

344. Moreover, on 8 December 2000, in a workers' union meeting, Mr. Halilintar Nurdin humiliated the general manager of Shangri-la Hotel and his secretary. The mentioned humiliation is proven by a statement signed by a number of participants of the meeting. On 11 December 2001, there was a meeting between the management and Mr. Halilintar Nurdin who was accompanied by a number of executive members of SPMS. The meeting was designed to obtain clarification on the humiliation made by Mr. Halilintar Nurdin as such action is classified as an infringement of article 18, paragraph 1, point (f) of Manpower Ministerial Regulation No. 150/Men/2000 on termination of employment, service period award, severance pay and compensation pay and of the provisions stipulated under the CLA of Shangri-la Hotel.

345. On 12 December 2000, the management found a poster made by Mr. Halilintar Nurdin. As the poster shows a picture of a bomb, it was considered as an intimidation by the management. Nevertheless, in the meetings that followed on 22 and 23 December 2000, when a strike and a further meeting at the District Office of the Department of Manpower were going on, Mr. Halilintar Nurdin kept attending as the President of the workers' union. The management never prevented Mr. Halilintar Nurdin from attending the meetings on employment issues between the management and SPMS.

346. However, on 22 December 2000, the management decided to suspend Mr. Halilintar Nurdin as an employee of the hotel based on serious violations of provisions stipulated under the CLA. These violations include:

– provoking other employees to strike by putting up an intimidating poster;

– inviting outsiders who were not employees of the Shangri-la Hotel to a guidance programme without prior notification to the management;

– humiliating the general manager and his secretary through his statement of 8 December 2000;

– carrying out disturbing acts that created a sense of dissatisfaction and distrust among employees of the Shangri-la Hotel and disturbed industrial peace.

347. The Government points out that the suspension in question was based on article 47.2.3 of the prevailing CLA of Shangri-la Hotel that states that each employee of the Shangri-la Hotel who seriously violates provisions stipulated under the CLA and under existing employment regulations may be directly terminated from employment. On the same date (22 December 2000), about 500 employees affiliated with the SPMS went on strike and demonstrated at the Shangri-la Hotel. The demonstration was carried out by occupying areas of the hotel and by closing all entrance doors to the hotel as well as by searching all people coming in and going out of the hotel. Such action frightened guests of the hotel.

The management closed the hotel because of such actions by the employees from 22 to 26 December 2000.

348. Furthermore, the allegation that a bribe was paid to officials of the Department of Manpower amounting to Rp.5,500,000 is not true. The sum of money was delivered to Mr. Nefo Dradjati, Director of HRD of Shangri-la Hotel, as severance payment to Mr. Nuril Fuadi, whose case was being processed at the Regional Committee for Labour Dispute Settlement on 1 September 2000. It was predicted that his case would lead to a decision of severance payment. The total amount of that money was calculated to be Rp. 5,500,000. However, since Mr. Nuril Fuadi appealed for his case to a higher court, the severance payment has not yet been given. None of the officials of the Department of Manpower received such money.

349. The Government explains that the evacuation of the workers was carried out by the police since the employees affiliated with SPMS had occupied the hotel area. The police carried out an investigation suspecting that criminal action had occurred in the hotel. Meanwhile, about 20 members of the SPMS and the representative of IUF in Indonesia, Ms. Hemasari Dharmabumi, were arrested and detained for a day merely to obtain information on the chronology of the suspected criminal action in the hotel.

350. The Government then refers to correspondence allegedly sent by the management to a number of SPMS members to ask them to resign from their union. According to the Government, what actually happened was that in early January 2001 the management sent a letter to the employees involved in the illegal strike and the demonstration and occupation of the hotel area, stating that they had committed a serious violation of the provisions of the CLA and that their cases would be processed through the District Office of the Department of Manpower.

351. Meanwhile, the security guards of the hotel never assaulted Mr. Zulharman on 20 February 2001. The fact was that Mr. Zulharman was involved in fighting with an unknown party who was absolutely not related with the events that had occurred in the Shangri-la Hotel.

352. The Government indicates that that case of Shangri-la Hotel resulted in the application for termination of employment of 580 workers submitted by the management. The application for termination of employment was divided into the cases of 420 workers and of 159 workers which were brought to the Central Committee for Labour Dispute Settlement (P4P) and the case of one person (Mr. Halilintar Nurdin) which was brought to the Regional Committee for Labour Dispute Settlement (P4D). Both committees gave permission to the employer to terminate the employment of the workers who had not already resigned on their own initiative because they considered that occupation of the hotel lobby could disturb hotel activities and even result in losses for the employer, morally and materially. Although P4D considered that Mr. Halilintar's actions in his capacity as union leader could be classified as a serious offence, the P4P considered that the actions of the workers under its jurisdiction could not be classified as serious offences. Hence, they were entitled to severance and service payments as well as compensations in accordance with the provisions of the prevailing ministerial regulation.

353. In conclusion, the Government stresses that it is striving to improve its industrial relations climate including through the elaboration of three draft laws, one of which (the Trade Unions Act of 2000), has already been enacted. The Labour Dispute Settlement Bill is currently being debated by Parliament. The Government is also attempting to improve the composition of P4P. However, since Indonesia is still in a period of transition, there are many constraints to be found in the process of improvement. Finally, the Government indicates that it will send its reply in due course to the new allegations of the IUF in its communication dated 24 July 2001.

C. The Committee's conclusions

354. *The Committee notes that the allegations in this case concern the large-scale dismissals of members of the Shangri-la Hotel Independent Workers' Union (SPMS), an affiliate of the complainant, pursuant to strike action undertaken by employees of the hotel. The allegations also relate to violent police intervention to break the strike and to evacuate the hotel lobby of the striking employees leading to the arrest and detention of approximately 20 unionists. Finally, the allegations involve the physical assault on the SPMS's treasurer by the head of the hotel's bodyguards and the release by the police of one of the assailants without laying any charges.*

355. *As regards the alleged large-scale dismissal of SPMS members pursuant to strike action undertaken in the Shangri-la Hotel in December 2000, the Committee notes that according to the complainant's more recent communication, approximately 500 hotel employees were dismissed. The Committee observes that the Government's statement that the management of the Shangri-la Hotel had applied to the Central and Regional Committees for Labour Dispute Settlement for the termination of employment of 580 workers involved in the strike action and that both committees gave permission to the employer to terminate the employment of those workers who had not already resigned on their own initiative. The Committee further notes the Government's statement that the workers were terminated because their actions were deemed to be offences although not serious ones thereby entitling them to severance and service payments as well as compensation.*

356. *It would appear to the Committee from the information at its disposal that in effect the 580 SPMS members were dismissed by the management of the Shangri-la Hotel for their involvement in strike action in late December 2000. There is nothing to indicate to the Committee that the strike action in question was illegal. The hotel industry is not an essential service in the strict sense of the term in which strikes can be prohibited. Moreover, the reasons put forward by the labour dispute settlement committees, namely that the occupation of the hotel lobby by striking unionists disturbed hotel activities and resulted in material and moral losses for the employer do not, in the Committee's view, constitute sufficient grounds justifying the termination of employment of the unionists concerned. In this respect, the Committee would draw the Government's attention to the principle that the dismissal of a worker because of a strike, which is a legitimate trade union activity, constitutes serious discrimination in employment and is contrary to Convention No. 98. When trade unionists or trade union leaders are dismissed for having exercised the right to strike, the Committee can only conclude that they have been punished for their trade union activities and have been discriminated against [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, paras. 591 and 592]. Furthermore, it would not appear that sufficient protection against acts of anti-union discrimination, as set out in Convention No. 98, is granted by legislation in cases where employers can, in practice, on condition that they pay the compensation prescribed by law for cases of unjustified dismissal, dismiss any worker if the true reason is the worker's trade union membership or activities [see* ***Digest****, op. cit., para. 707]. In this respect, the Committee notes the complainant's statement that only 232 SPMS members have officially resigned from the hotel, while 273 others continue to demand reinstatement. Noting that the Government does not provide its observations in this regard, the Committee would request the Government to indicate exactly how many dismissed SPMS members are demanding reinstatement in their jobs at the Shangri-la Hotel; it further requests the Government to take steps to ensure the reinstatement of those persons if they so wish.*

357. *Turning to the allegation that the abovementioned police intervention on 26 December 2000 resulted in the arrest and detention of approximately 20 unionists, including the IUF representative in Indonesia, the Committee notes the Government's statement that in effect*

about 20 SPMS members and the IUF representative in Indonesia were arrested and detained for a day merely to obtain information on the chronology of suspected criminal events in the hotel. The Committee fails to see what criminal activities could have been committed by unionists occupying the lobby of a hotel that was completely evacuated of its guests and employees by the management a few days earlier. In this regard, the Committee reminds the Government that the arrest and detention, even if only briefly, of trade union leaders and trade unionists for exercising legitimate trade union activities constitute a violation of the principles of freedom of association. Moreover, measures depriving trade unionists 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****, op. cit., paras. 70 and 77].*

358. *Regarding the alleged assault on Mr. Muhammed Zulharman, treasurer of the union, by one of the hotel's bodyguards, and the release by the police of one of the assailants without any charges being laid, the Government contends that the security guards of the hotel never assaulted Mr. Zulharman on 20 February 2001. According to the Government, Mr. Zulharman was involved in fighting with an unknown party who was absolutely not related with the events that had occurred in the Shangri-la Hotel. The Committee notes nevertheless that the Government does not deny that Mr. Zulharman was assaulted resulting in his subsequent hospitalisation. In this regard, the Committee would recall that the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and it is for governments to ensure that this principle is respected. Moreover, 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. 47 and 53]. Consequently, the Committee would urge the Government to establish without delay an independent judicial inquiry into the physical assault in Mr. Zulharman on 20 February 2001 with a view to fully clarifying the facts, determining responsibility, punishing those responsible and preventing the repetition of such acts. It requests the Government to keep it informed of the results of such an inquiry*

359. *As regards the allegation that the management had bribed a representative of the Ministry of Labour in order to facilitate the dismissal of the union President, Mr. Halilintar Nurdin, the Committee notes that the Government categorically refutes this allegation. The Committee would request both the complainant and the Government to provide further clarification on this issue.*

360. *In order to pronounce itself on this case in full knowledge of all the facts, the Committee would request the Government to transmit a copy of the collective labour agreement (CLA) prevailing during the time of the dispute at the Shangri-la Hotel, as well as the observations of the national organizations of workers and employers involved in this dispute.*

361. *Finally, noting that the Government has not replied to the complainant's new allegations contained in communications dated 24 July as well as 15 and 16 October 2001, the Committee requests the Government to provide its observations thereon without delay.*

The Committee's recommendations

362. ***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 indicate exactly how many members of the Shangri-la Hotel Independent Workers' Union (SPMS) who were dismissed pursuant to their involvement in strike action are demanding reinstatement in their jobs at the Shangri-la Hotel. It further requests the Government to take steps to ensure the reinstatement of these persons if they so wish.

(b) The Committee reminds the Government that the arrest and detention, even if only briefly, of trade union leaders and trade unionists for exercising legitimate trade union activities constitute a violation of the principles of freedom of association, and that measures depriving trade unionists 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.

(c) The Committee urges the Government to institute without delay an independent judicial inquiry into the physical assault on Mr. Mohammed Zulharman, Treasurer of the SPMS, on 20 February 2001 with a view to fully clarifying the facts, determining responsibility, punishing those responsible and preventing the repetition of such acts. It requests the Government to keep it informed of the results of such an inquiry.

(d) The Committee requests both the complainant and the Government to provide further clarification on the allegation of bribery surrounding the dismissal of Mr. Halilintar Nurdin, President of the SPMS.

(e) In order to pronounce itself on this case in full knowledge of all the facts, the Committee requests the Government to provide a copy of the collective labour agreement (CLA) prevailing during the time of the dispute at the Shangri-la Hotel, as well as the observations of the national organizations of workers and employers involved in this dispute.

(f) The Committee requests the Government to provide its observations without delay on the new allegations presented by the complainant in communications dated 24 July as well as 15 and 16 October 2001.

CASE NO. 2113

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

Complaint against the Government of Mauritania presented by the Democratic Trade Union Organization of African Workers (ODSTA)

Allegations: Obstruction of the exercise of freedom of association, arbitrary arrest of trade union members

363. The complaint in this case is contained in communications from the Democratic Trade Union Organization of African Workers (ODSTA), dated 3 and 22 January 2001.

364. The Government sent its observations in communications dated 31 May and 12 July 2001.

365. Mauritania 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

366. In its communication of 3 January 2001, ODSTA states that, following an ordinary constitutive congress, small-scale fishermen established a trade union organization, the Fédération nationale des travailleurs et professionnels de la pêche (FNTPP), affiliated to the Free Confederation of Workers of Mauritania (CLTM). Subsequently, the administrative authorities are alleged to have embarked upon a wide-ranging campaign of intimidation and dissuasion to encourage fishermen to withdraw from the CLTM. On 20 May 2000, the Secretary-General of the CLTM sent a letter of protest to the authorities but received no positive response. Indeed, it would appear that subsequently the Director-General of the Nouakchott fish market decided to forbid any trade union activity inside the market.

367. The complainant organization further states that, although small-scale fishermen are not considered to be engaging in a liberal activity, the National Fisheries Federation required them to pay a sea access tax and to carry a census disk. Moreover, fishermen belonging to the CLTM are not entitled to maritime credit or to tax exemption on equipment and diesel or to the subsidies and aid from donors granted to the small-scale fishery sector. In protest against such measures, the fishermen organized a march during which four federation leaders were arrested, namely Messrs. Mohamed Nagem, Moctar Mohamed, Moctar Mohamed and Mbaye Ndiaye. They were subsequently released.

B. The Government's reply

368. In its communication of 31 May 2001, the Government states that small-scale fishermen are not prohibited from freely organizing or joining any trade union they wish. In regard to the situation in the Nouakchott fish market, the director of the market issued a notice to the public, and not to employees, regarding trade union activities. Given that the market is administered by a company and that fishermen are merely users, nothing is to prevent the latter from meeting, but they should do so in a place or elsewhere outside in order to avoid overcrowding within the market. The Government states that such was the purpose of the public notice of 7 June 2000. Moreover, following the controversy caused by the notice, a further public notice was issued on 16 July 2000 to clarify the original notice, specifying that "the ban on any trade union activities means that gatherings and other meetings in the work environment are not authorized for reasons of safety and inconvenience to visitors, but it is understood that company workers, in the same way as other workers, are free to exercise their trade union activities within the limits permitted by law".

369. In regard to the taxes levied on fishermen, the Government specifies that only vessel owners are subject to employers' taxes, and not fishermen who do not own vessels who are considered to be workers. Therefore, the latter are not eligible for maritime credit or tax exemption on equipment and diesel since they do not own vessels.

370. Lastly, the Government states that no march is forbidden in Mauritania, provided that it has received authorization by the competent authority in conformity with current legislation. In this connection, the Government states that no march or attempted march took place, even of an illegal nature, by fishermen.

C. The Committee's conclusions

371. *The Committee notes that this case involves allegations of obstruction of the exercise of freedom of association of fishermen, specifically at Nouakchott fish market, and the arrest of the trade union members following the organization of a protest march by fishermen.*

372. *On the subject of the obstacles to free exercise of freedom of association of fishermen, the Committee notes that, according to the complainant organization, following establishment of the FNTPP, the public authorities are said to have engaged in a wide-ranging campaign of intimidation and dissuasion, seeking to encourage fishermen to withdraw from the CLTM. However, the complainant provides no specific details of such action. In regard to the situation at the Nouakchott fish market, the Committee notes the Government's explanation that the public notice of 7 June 2000, clarified by that of 16 July 2000, does not prohibit free trade union membership or the exercise of any trade union activity by fishermen but specifies that gatherings and other meetings at the place of work are not authorized. In this connection, the Committee would like to point out that, under the principles of freedom of association, all workers, without distinction of any sort, including without discrimination in regard to occupation, should have the right to establish any organizations they so wish and to join them. Moreover, while trade unions should respect legal provisions which are intended to ensure the maintenance of public order, the public authorities should, for their part, refrain from any interference which would restrict the right of trade unions to organize the holding and proceedings of their meetings in full freedom [see* ***Digest of decisions and principles of the Freedom of Association Committee,*** *4th revised edition, 1996, para. 144].*

373. *In regard to allegations concerning the levying on vessel owners of a sea access tax and census disk requirement, the Committee notes that available information does not justify the conclusion that such taxes have been levied only on members of the FNTPP. Therefore, this matter would not appear to relate to the exercise of trade union rights and the Committee is of the view that this matter does not call for further examination.*

374. *In connection with allegations with regard to the fishermen's protest march which allegedly led to the arrest of four trade union leaders, who were subsequently released, the Committee notes that, according to the Government, no march organized by fishermen, lawful or otherwise, took place. In the light of these contradictory accounts, the Committee considers it appropriate to recall certain principles. Firstly, the Committee has always been of the view that workers should be able to enjoy the right of peaceful demonstration to defend their occupational interests. Moreover, the Committee has emphasized in the past that the fact that measures depriving trade unionists 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*** *op. cit., paras. 77 and 132]. In this respect, the Committee requests the Government to provide clarification on the alleged arrest of the four trade union leaders mentioned by the complainant. In the event that the anti-union nature of these arrests is confirmed, the Committee requests the Government to take measures so that the appropriate instructions are given in order to prevent the danger involved for trade union activities by such arrests. It requests the Government to keep it informed in this respect.*

The Committee's recommendations

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

(a) The Committee recalls that all workers, without distinction of any sort, including without discrimination in regard to occupation, should have the right to establish any organizations they so wish and to join them, and that the public authorities should, for their part, refrain from any interference which would restrict the right of trade unions to organize the holding and proceedings of their meetings in full freedom.

(b) Recalling that workers should be able to enjoy the right of peaceful demonstration to defend their occupational interests and that measures depriving trade unionists of their freedom on grounds related to their trade union activity constitute an obstacle to the exercise of trade union rights, the Committee requests the Government to provide clarification on the alleged arrest of the four trade union leaders mentioned by the complainant. In the event that the anti-union nature of these arrests is confirmed, the Committee requests the Government to take measures so that the appropriate instructions are given in order to prevent the danger involved for trade union activities by such arrests. It requests the Government to keep it informed in this respect.

CASE NO. 2013

DEFINITIVE REPORT

Complaint against the Government of Mexico presented by the Academic Workers' Union of the National College of Technical Occupational Education (SINTACONALEP)

Allegations: Refusal to register an organization, acts of interference and anti-union discrimination by the employer

376. The Committee examined this case at its March 2000 and March 2001 meetings and submitted interim reports to the Governing Body [see 320th Report, paras. 723-734 and 324th Report, paras. 685-716, approved by the Governing Body at its 277th and 280th Sessions (March 2000 and March 2001)].

377. At the Committee's request, the Government sent new observations in a communication dated 31 May and 26 October 2001 and the complainant in a communication dated 1 June 2001.

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

A. Previous examination of the case

379. In its previous examination of the case, the Committee formulated the following conclusions and recommendations [see 324th Report, paras. 710-715]:

– The Committee notes that the questions raised by the complainant teachers' organization relate to the following: (1) the refusal to register SINTACONALEP since its establishment on 2 February 1997; and (2) acts

of interference and discrimination against the members of this organization by the National College of Technical Occupational Education (CONALEP).

– As regards the refusal to register SINTACONALEP since it was established on 2 February 1997, the Committee notes that according to the Government, the judgements handed down in the actions for *amparo* lodged by SINTACONALEP illustrate that the administrative authority acted in accordance with the law by refusing to register this organization. The Committee observes in this respect that it is a requirement for the registration of a trade union that it be made up of at least 20 workers and that SINTACONALEP did not prove to the General Directorate for the Registration of Associations that at least 20 of its members had the status of worker; similarly, the competent labour authority ascertained through inspections in various schools that there was no labour relationship between the members of SINTACONALEP and CONALEP but instead a relationship of a civil nature based on the provision of professional services. The Committee notes that according to the Government's declarations these contracts for the provision of services are justified: (1) as a result of imbalances between available technical teaching and local and regional requirements; (2) because different industries provide CONALEP, on the basis of its needs, with highly specialized individuals working in the sector of production, and the fees they are paid do not, in principle, constitute their sole or principal source of income; and (3) given that the staff is contracted by semester with the groups of teachers frequently varying from semester to semester on the basis of the requirements of the labour market in each region, with it not being possible to have permanent instructors.

– The Committee notes that, according to the Government, at no time did CONALEP stop its staff from establishing associations as they saw fit in order to be able to conclude collective agreements, as demonstrated by the fact that they have a trade union (SUTSEN) which has signed a collective agreement and also a civil association made up of teachers from the institution. Similarly, according to the Government, nothing prevents the members of SINTACONALEP from setting up a civil association to defend and promote validly and effectively its members' interests.

– The Committee considers that before formulating definitive conclusions about the allegation relating to the denial to grant trade union registration to SINTACONALEP it is necessary for the Government and the complainant to indicate specifically whether in the framework of a civil association the members of SINTACONALEP could conclude collective agreements with CONALEP, go on strike and engage in other types of action to enforce their claims, and whether they would have legal protection for any prejudicial acts they might carry out in defence of their economic and social interests, indicating, if so, the scope of this protection and its legal basis.

– Furthermore, the Committee notes that the members of SINTACONALEP carry out teaching activities for a period of at least six months and that this type of activity is performed by hundreds or even thousands of people. Although the Committee observes that, according to the Government, the persons concerned sign contracts for the provision of services, it is unable to determine as yet whether they are workers in the sense of Convention No. 87, and specifically if their status can be likened to that of workers employed on a fixed-term basis. Consequently, the Committee requests the Government and the complainant to provide further details on the content of the contracts for the provision of services, and also to send copies of such contracts together with as much information as possible on conditions of work (hours of work, paid leave, etc.), the employment relationship – if any – of the management staff of CONALEP, the application of occupational safety and health standards and social security standards,

and the legal provisions regulating the termination of the contractual relationship between the parties.

– Lastly, the Committee notes the Government's observations concerning the alleged acts of interference and discrimination against the members of SINTACONALEP, but it considers that it should postpone its examination until it is in a position to formulate definitive conclusions on the allegations addressed in previous paragraphs.

380. As regards the recommendation of the Committee on Freedom of Association concerning the allegations of interference and discrimination by CONALEP, in which the Committee requested the Government to conduct an inquiry into the acts and to provide detailed and specific information, the Government had declared that the competent authorities had carried out an exhaustive investigation into the cases submitted to the boards of conciliation and arbitration relating to the allegations of interference and discrimination by CONALEP against the complainants, but had not found any evidence of claims in this respect by the trade union of workers (SUTSEN) of CONALEP or by the civil association established by teachers in that institution for the purpose of reaching collective agreements. With respect to the accusation that CONALEP obliged the complainants to sign various documents contrary to their interests, no evidence of this had been found. At present this educational institution employs approximately 17,000 teachers in its 261 centres, distributed throughout the country, and no other complaints had been made [see 324th Report, paras. 705 and 706].

B. The Government's first reply

381. In its communication dated 31 May 2001, referring to the recommendation contained in paragraph 716(a) of the 324th Report, the Government explains that civil law and labour law are entirely different. Matters relating to civil associations are regulated in civil law and those pertaining to trade unions in labour law. Moreover, it should be pointed out that the sphere of activity of a civil association does not fall within the subject matter of the complaint raised by the complainant, neither is it covered by the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), ratified by Mexico in 1950.

382. The objective or social aim of a civil association may vary, as long as it meets the following characteristics: (a) it is feasible; (b) it is legal; (c) it is not of a predominantly economic nature. Section 2670, Title I, Chapter I, of the Civil Code provides that: "where a number of individuals join together in a manner that is not entirely transitory in pursuit of a common purpose that is not prohibited by law and is not of a predominantly economic nature, they shall form an association". The Government adds that within the legal framework established by the civil legislation in force in the United Mexican States, civil or ordinary law does not lay down more extensive requirements and formalities for a group of citizens legally establishing an association vested with its intrinsic rights and obligations in pursuit of a common purpose which is not prohibited by law and is not of a predominantly economic nature (general rule), sections 267-268(7) of the Federal Civil Code and the corresponding sections of the Civil Code for the Federal District.

383. It should be pointed out that upon being established a civil association gives rise to a body corporate which is different from that of its members. Should the members of the SINTACONALEP form an association which is civil in nature, it would only be able to enter into contracts with CONALEP in those aspects which its own social aim allows.

384. In the labour sphere, on the other hand, section 356 of the Federal Labour Act defines the *sui generis* legal concept of a trade union or trade union association as "an association of

workers or employers set up for the study, improvement and defence of their respective interests". A trade union is deemed to be a permanent coalition for the purposes of calling a strike in accordance with the provisions of section 441 of the same Act.

385. It is clear from the above that an association in the civil sphere is entirely different from one in the labour sphere, as they pursue different objectives. While the first type of association is not of a predominantly economic nature, the latter has as its objective the study, improvement and defence of the workers' or employers' interests, as the case may be (section 356 of the Federal Labour Act). A strike should have as its objective the achievement of an equilibrium between the different factors of production, harmonizing the rights of labour and capital (clause I of section 450 of the Federal Labour Act).

386. That being so, in the framework of a civil association, the members of SINTACONALEP would not be able to conclude collective labour agreements with CONALEP, since, as stated by the Federal Labour Act (section 386), it is the unions, whether of workers or of employers, which can conclude this type of agreement. The sine qua non condition for declaring a strike is that this right be exercised by workers. A strike is the temporary suspension of work brought about by a coalition of workers under section 440 of the Federal Labour Act. The requirements for holding a strike are contained in section 451, clause II, of the same Act.

387. According to section 450 of the Federal Labour Act, a strike shall have the following objectives:

I. achieving equilibrium between the different factors of production, harmonizing the rights of labour and capital;

II. making the employer or employers agree to conclude a collective labour agreement and demanding its revision on the expiry of its term, pursuant to Chapter III of Title VII;

III. making the employers agree to conclude an agreement having generally binding force and demanding its revision on the expiry of its term, pursuant to Chapter IV of Title VII;

IV. demanding compliance with a collective labour agreement or an agreement having generally binding force in enterprises or establishments where such agreement is not observed;

V. demanding compliance with the legal provisions respecting profit sharing;

VI. supporting a strike having as its objective any of the purposes enumerated in the previous clauses;

VII. demanding a revision of the wages fixed in collective agreements, referred to in sections 399*bis* and 419*bis*.

388. It should be made clear that the right to strike comes exclusively within the sphere of labour law which, as mentioned above, is independent of civil law.

389. As regards the possibility of a civil association obtaining legal protection in the event of violation of guarantees or against acts of the authorities, they have the possibility of lodging an action for protection of their constitutional rights *(amparo),* pursuant to articles 103 and 107 of the Political Constitution of the United Mexican States.

390. As regards the recommendation contained in paragraph 716(b) of the 324th Report, the Government reiterates that the legal nature of a contract for the provision of professional

services is very different from that of employment contracts; the former is a civil contract and the latter a labour contract. The rights and obligations deriving from each type of contract are accordingly different. The two branches of law are independent of one another. A contract for the provision of professional services is concluded in very specific circumstances and at no time is intended to replace employment contracts. In accordance with the civil legislation in force, the complainants and CONALEP concluded contracts for the provision of professional services subject to the payment of fees for a specified period, pursuant to the principle prevailing in civil law of autonomy of the will of the parties to enter into a contract or an obligation, thus expressing the complete willingness of both parties to enter into a civil relationship in which all the essential statutory requirements for existence and validity are met in order for these legal documents to be fully effective in civil law. The content of the civil contracts in question is intended to establish an agreement of will for the *provision of professional services* subject to the payment of fees pursuant to Chapter II, Title X, Part II, Book IV, of the Federal Civil Code and the corresponding provisions of state legislation.

391. A contract for the provision of professional services is one under which one person, referred to as a *professional*, undertakes to provide specified services requiring technical training and in some cases a professional certificate to another person, referred to as the *client*, who undertakes to pay a specified remuneration, referred to as the *fee*.

392. It should be pointed out that a provider of professional services subject to the payment of fees who teaches in CONALEP is characterized by his or her professional qualities, specialty or specific skills, and teaches students following the various courses different subjects contained in the curricula.

393. Given the nature of the training process and the curriculum content, which are directly linked to technological developments, preference is given to persons working in the production sector when selecting instructors with whom to conclude contracts for the provision of professional services. Providers of professional services are *technicians or professionals*. Section 2608 of Chapter II of Title X of the Civil Code provides that persons who do not hold the relevant certificate and engage in occupations for which such a certificate is required by law, in addition to being liable to the applicable penalties, are not entitled to receive remuneration for the services which they provided.

394. It is also important to point out that the contract for the provision of professional services does not give rise to a subordinate relationship such as exists under employment contracts, but such persons merely exercise their profession and work on their own account.

395. As regards the employment relationship, if any, of the management staff of CONALEP, it should be mentioned that this is a civil and not a labour relationship. Therefore the civil contracts entered into by the parties solely require the provider of professional services to provide such services for a specified period. As for CONALEP, it is obliged to remunerate such services by paying a fixed amount of fees for the period fixed by mutual agreement as the term of the civil contract. Therefore contracts for the provision of professional services concluded between CONALEP and instructors by no means contain clauses including benefits other than those under civil law, such as wages, paid leave, end-of-year bonuses, occupational safety and health or social security standards.

396. As regards the legal provisions regulating the termination of the contractual relationship between the parties, the law does not provide for specific grounds for termination of this contract, and therefore the grounds for such termination are those which are normal and common to all contracts.

397. It is important to emphasize that in each civil contract concluded by the providers of professional services and CONALEP, the term of the contract and period of effect of the civil relationship which they enter into is established by mutual agreement, and therefore such agreements between the parties cease to have legal effect upon expiry of the term agreed to by the parties; the contract may also be terminated before the expiry of its term either by agreement between the parties or because one of the parties is in breach of contract, giving rise to its rescission in accordance with the specific and general provisions laid down in the Federal Civil Code and the corresponding provisions of the Civil Code for the Federal District, which is the applicable legislation, in the light of which the abovementioned agreements termed contracts for the provision of professional services subject to the payment of fees are sanctioned. In response to the request of the Committee on Freedom of Association, a copy of one of these contracts is attached.

398. Concerning the recommendation contained in paragraph 716(c) of the 324th Report of the Committee, the Government states that it is not responding to this paragraph, given that the Committee on Freedom of Association does not request information.

399. Having stated the above, the Government of Mexico wishes to point out that after examining the labour legislation in force, Convention No. 87 and ILO case law on freedom of association, it notes that no provision refers to civil associations; and therefore the Committee's request for information does not lie within the scope of labour law which, as has already been demonstrated, has nothing to do with the system of civil law. Once again, the legal relationship between the complainants and CONALEP lies entirely within the scope of civil law.

400. The Government considers that ample explanations have been given concerning the elements that initially gave rise to the present complaint, specifically with regard to the grounds on which registration was denied to the complainants' trade union. The Government of Mexico points out that the complainants availed themselves of the appropriate remedies before the competent judicial authorities to contest the refusal to register their trade union. The authorities which examined the actions of *amparo* and appeals for review (in this case the first district labour court of the Federal District and the second district labour court of the Federal District; see paragraphs 703 and 704 of the 324th Report) were different from the administrative authority which initially denied registration, i.e. the General Directorate for the Registration of Associations. This is in accordance with paragraphs 246 and 264 of the *Digest of decisions and principles of the Freedom of Association Committee* ("246. The absence of recourse to a judicial authority against any refusal by the Ministry to grant an authorization to establish a trade union violates the principles of freedom of association"; "264. An appeal should lie to the courts against any administrative decision concerning the registration of a trade union. Such a right of appeal constitutes a necessary safeguard against unlawful or ill-founded decisions by the authorities responsible for registration"). The Government attaches a copy of a contract for the provision of services currently in force in CONALEP.

C. New information provided by the complainant at the Committee's request

401. In its communication of June 2000, the Academic Workers' Union of the National College of Technical Occupational Education (SINTACONALEP), referring to the Committee's recommendation contained in paragraph 716(a) of its 324th Report, states that there is a major difference between a trade union and a civil association in Mexico, given that the latter cannot exercise the right to strike or the right to conclude collective agreements, since Mexican legislation restricts the legal exercise of this right solely to trade unions; therefore a civil association has no effective means of enforcing its claims and hence it is impossible in practice for collective agreements to be concluded with CONALEP. If the

instructors of SINTACONALEP were to establish a civil association and wished to engage in a strike movement or seek to conclude collective agreements, in doing so they would be committing an offence, i.e. they would have no legal protection given that the protection afforded them by law allows them only to associate in defence of a common purpose, but by no means permits them to exercise the right to strike. Therefore in Mexico civil associations and trade unions are governed by different laws, the former by the Civil Code and the latter by the Federal Labour Act, which regulates the right to strike.

402. To conclude, in Mexico trade unions are the only groups that may legally exercise the right to strike and conclude collective agreements, given that civil associations do not enjoy this right.

403. Concerning recommendation (b) of the Committee, the complainant attaches four payslips indicating the pay levels at which CONALEP recruits its instructors, hours of work, work schedules and amount of remuneration, as well as 15 original contracts for the provision of professional services which CONALEP requires its instructors to sign. What is distinctive about these contracts is that they contain a waiver of essential labour rights such as job security, paid leave and holiday bonuses, and provide that the hours of work are unilaterally changed every six months by CONALEP. Concerning these contracts for the provision of professional services, which were recently examined by the *amparo* courts in Mexico, it was found that they give rise to an employment relationship of the academic staff providing services to CONALEP (*amparo* 19832/2000); a certified copy is attached, as well as a copy of the final ruling handed down by the labour authority in Action No. 1068/97 brought by David Pedroza Aparicio and others. The concluding part of this judgement orders CONALEP to recognize the right of various instructors as employees of this institution and to pay social security contributions, leave pay and holiday bonuses. A copy of this judgement is also attached.

404. According to the complainant, the instructors of CONALEP in question perform continuous, permanent and necessary work for the National College of Technical Occupational Education and, in performing their personal services, they have a work schedule (class schedule), a physical area where this takes place (classrooms), wages paid for their work, an immediate supervisor, staff who give instructions and provide guidance in carrying out their work, staff supervising their work, curricula previously drawn up by CONALEP in the different subjects they teach, and training courses to achieve academic excellence; moreover, the work was performed using resources provided by CONALEP and was directly related to the predominant and sole activity of CONALEP. There is therefore a relationship of subordination between the plaintiff and CONALEP.

405. CONALEP also has the obligation – among others – to train its academic staff, to design, prepare, approve, supervise, evaluate, update and modify its curricula and design training and refresher courses and specialization courses to enhance the professional skills of its teaching staff; adapt training, refresher courses and specialization courses for instructors according to the curricula in force, drafting the training materials for such courses; it also issues the documents and certificates to academic staff who pass the training, refresher courses and specialization courses required of all the instructors; moreover, CONALEP revises and updates the curricula, courses and teaching materials for instructor training. This is laid down in the Statutes of the National College of Technical Occupational Education (CONALEP) of 1998.

406. To demonstrate the employment relationship that exists between CONALEP and its teaching staff, the complainant provides the following example: Ms. Martha Ceron Arroyo, who held a position of trust in the Aragón establishment of CONALEP, filed a labour complaint against the College in writing with the Clerk of the Federal Board of Conciliation and Arbitration on 27 September 1997 demanding reinstatement in her post as

deputy chief specialist technician in the academic services coordination department of the Aragón establishment of the College, in view of the fact that she was wrongfully dismissed. This labour complaint was filed with Special Board No. 14 of the Federal Board of Conciliation and Arbitration under Case No. 1626/97. In a hearing on 5 June 1998 the National College of Technical Occupational Education contested this complaint and in reply to item (3) of the complaint the College acknowledged that Ms. Martha Ceron Arroyo, among other tasks, drew up the work schedules of CONALEP instructors in the Aragón establishment, supervised progress in the curricula, verified whether instructors were teaching the programme in an appropriate manner, checked attendance of instructors and reported on tardiness, among other activities; her immediate supervisor was a coordinator of academic services of the Aragón establishment of CONALEP. The foregoing amply demonstrates the subordinate relationship that exists between the College and its teaching staff through the express admission made by the College before the labour authority (copies attached).

407. Lastly, the complainant points out that CONALEP has not registered its teaching staff with any social security scheme, neither does it apply occupational safety and health programmes, despite the fact that the Mexican social security laws clearly stipulate that all employers have the obligation of registering their employees with the social security institutions.

D. The Government's further reply

408. As regards the new information submitted by SINTACONALEP, the Government reiterates its previous observations and states that it is erroneous to assert that only trade unions may strike, since workers' associations may also exercise the right to strike under section 440 of the Federal Labour Act. Furthermore, it is not true that the contracts for professional services contain a list of labour rights to be waived. In the case of the complaint, the Government explains that these contracts are not labour contracts, but rather civil contracts for services rendered.

409. Regarding SINTACONALEP's argument that the court which examined the *amparo* proceedings No. 19832/2000 decided that the contracts for professional services had created an employment relationship between CONALEP and the teachers in respect of services provided, the Government points out that one out of the five persons who filed *amparo* proceedings had recourse to conciliation in order to settle the dispute with CONALEP, but that no final decision has been issued to date. The Government adds that said decision applies only to the five persons who filed *amparo* proceedings, and not to all the teaching staff of CONALEP.

410. The Government adds that there exists another *amparo* decision of the lower court of the first Circuit (ADL 232/2001), dated 16 August 2001, where the judges concluded that CONALEP had clearly established that the contract for professional services created only a civil relationship between itself and SINTACONALEP.

411. As regards SINTACONALEP's assertion that CONALEP admitted to the judge at the hearing on the complaint filed by Mrs. Martha Ceron Arroyo that she had "inter alia exercised functions with the same work hours as teachers ...", the Government points out that this does not constitute evidence of a hierarchical relationship between teachers and CONALEP, since such relationship cannot exist in the absence of an arbitral award to that effect.

412. CONALEP did not register any of its teachers with a social security body because they have been hired to provide professional services, that being so, CONALEP is under no obligation to insure them.

E. The Committee's conclusions

Refusal to register SINTACONALEP since its establishment on 2 February 1997

413. *The Committee had noted from its previous examination of the case that the judicial authority found that the administrative authority had acted in accordance with the law by refusing to register SINTACONALEP, since this organization had not proved to the administrative authority that at least 20 of its members had the status of worker of the institution. The Committee had also noted that CONALEP had a trade union (SUTSEN) which had signed a collective agreement and also a civil association. The Government had stated that nothing prevented the members of SINTACONALEP from setting up a civil association to defend and promote its members' interests validly and effectively.*

414. *The Committee notes the recent observations of the Government to the effect that as members of a civil association the members of SINTACONALEP cannot conclude collective labour agreements with CONALEP, since they are not workers within the meaning of the Federal Labour Act, but holders of contracts for the provision of professional services for a specified period, i.e. in a civil relationship in which there is no relationship of subordination such as that which exists under employment contracts, and if there is a dependent relationship it is of a civil, not a labour, nature; these contracts for the provision of services do not contain clauses covering benefits other than those under civil law, such as wages, paid leave, holiday bonuses, occupational safety and health or social security standards; neither can the members of SINTACONALEP exercise the right to strike, since they are not workers within the meaning of the Federal Labour Act.*

415. *The Committee concludes that the organization of the members of SINTACONALEP as a civil association, contrary to the Government's statements, does not allow them to defend and promote the interests of their members in a valid and effective manner from the standpoint of the requirements of Convention No. 87 and the principles of freedom of association in general, which is incompatible with such principles. The Committee notes the recent judgement communicated by SINTACONALEP in which the judicial authority recognizes the status of worker of several instructors of SINTACONALEP who had signed contracts for the provision of services. The Committee notes that, according to the Government, no final decision has been issued yet in this matter, only the five persons who have filed proceedings are protected, and that there exist other recent judicial decisions concerning CONALEP which have recognized that a civil relationship had been established. Nonetheless, it does not appear to be feasible to carry out a case-by-case examination of the 17,000 instructors of CONALEP to determine whether or not they are workers* ***within the meaning of the Federal Labour Act****.*

416. *The Committee recalls that "by virtue of the principles of freedom of association, all workers – with the sole exception of members of the armed forces and police – should have the right to establish and to join organizations of their own choosing. The criterion for determining the persons covered by that right, therefore, is not based on the existence of an employment relationship, which is often non-existent, for example, in the case of agricultural workers, self-employed workers in general or those who practice liberal professions, who should nevertheless enjoy the right to organize" [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th (revised) edition, 1996, para. 235]. Specifically, with regard to the instructors governed by contracts for the provision of services, the Committee considers that since Convention No. 87 only allows exclusion from its scope of the armed forces and the police, the instructors in question should be able to establish, and join, organizations of their own choosing (Article 2 of Convention No. 87). In these circumstances, the Committee requests the Government to take steps to guarantee that the teaching staff in question who are governed by contracts*

for professional services and other categories in similar conditions may legally establish, and join, organizations of their own choosing for the promotion and defence of their interests.

Allegations of acts of interference and anti-union discrimination

417. *The Committee notes that according to the Government, after an exhaustive investigation the authorities did not find any complaints lodged in this respect; moreover, according to the Government, no evidence has been found that anyone was compelled to sign documents contrary to their interests. Given the contradiction between the allegations of the complainant and the Government's reply, the Committee is not in a position to formulate conclusions.*

The Committee's recommendation

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

The Committee requests the Government to take steps to guarantee that the teaching staff in question who are governed by contracts for professional services and other categories in similar conditions may legally establish, and join, organizations of their own choosing for the promotion and defence of their interests.

CASE NO. 2096

INTERIM REPORT

Complaint against the Government of Pakistan presented by the United Bank Employees' Federation

Allegations: Restrictions on trade union and collective bargaining rights for employees of the banking sector

419. In communications dated 6 and 30 August, 4 September and 2 October 2000, the United Bank Employees' Federation presented a complaint of violations of freedom of association against the Government of Pakistan.

420. The Government supplied its observations in communications dated 3 May and 20 August 2001.

421. Pakistan 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

422. In its communications of 6 and 30 August 2000, the United Bank Employees' Federation asserts that the Government has violated Conventions Nos. 87 and 98 by introducing an amendment (section 27-B) to the Banking Companies Ordinance, 1961, on 2 June 1997

which infringes the trade union and collective bargaining rights of all employees in the banking sector, including members of its Federation. Section 27-B was introduced in the Banking Companies Ordinance, 1962, by the legislature through enactment of the Banking Companies Ordinance (Amendment) Act, 1997 (Act No. XIV of 1997). Section 27-B reads as follows:

> 27-B. Disruptive union activities:
>
> (1) No officer or member of a trade union in a banking company shall use any bank facilities including a car or telephone to promote trade union activities, or carry weapons into bank premises unless so authorized by the management, or carry on trade union activities during office hours, or subject bank officials to physical harassment or abuse, nor shall he be a person who is not an employee of the banking company in question.
>
> (2) Any person violating any of the provisions of subsection (1) shall be guilty of an offence punishable with imprisonment of either description which may extend to three years, or with fine, or with both.

423. In a communication dated 4 September 2000, the United Bank Employees' Federation asserts that, pursuant to the enactment of section 27-B of the Banking Companies Ordinance, 1962, employees of the banking sector in general and its members in particular, have been ruthlessly victimized by the management of the banks concerned. Further restrictions had been imposed on trade union activities in all banks, particularly in the United Bank Limited (UBL). Furthermore, over 500 trade union leaders in the banking sector had been dismissed or terminated from their employment including Mr. Maqsood Ahmad Farooqui, President of the UBL Employees' Federation of Pakistan and Mr. Rahmat Ullah Kazmi, General-Secretary, UBL Labour Union Karachi. These dismissals and terminations are being used by the UBL management as a pretext to undermine the very existence of the United Bank Employees' Federation. In effect, the management of the UBL submitted two applications, in 1999 and 2000 respectively, to the Registrar of the National Industrial Relations Commission to cancel the registration of the United Bank Employees' Federation on the grounds that many of the latter's office-bearers ceased to be in the UBL's employment in violation of section 27-B of the Banking Companies (Amendment) Act, 1997 (copies of the application for cancellation of registration are attached to the complaint). However, these applications were rejected by the Registrar on the grounds that section 27-B of the Banking Companies (Amendment) Act, 1997, was not applicable to the formation or cancellation of trade unions and, as such, the Registrar of Trade Unions who was appointed under section 12 of the Industrial Relations Ordinance (IRO), 1969, was not required to act other than for violations of the provisions of the IRO, 1969.

424. In a communication dated 2 October 2000, the United Bank Employees' Federation contends that the management of the UBL is continuing to victimize activists and officers of the Federation by way of transfers, dismissals and compulsory termination (copies of termination and dismissal letters are attached to the complaint). By resorting to the aforesaid tactics, the number of office-bearers of the United Bank Employees' Federation have been considerably reduced and the UBL management refuses to enter into negotiations with it. Moreover, the management of other nationalized commercial banks are adopting the same negative tactics. In short, the United Bank Employees' Federation concludes that if the ILO does not take effective and timely action, then all unions and/or collective bargaining agents will cease to exist in the banking sector shortly.

B. The Government's reply

425. In its communication dated 3 May 2001, the Government states that section 27-B of the Banking Companies Ordinance does not curtail trade union activities within the meaning of Conventions Nos. 87 and 98 and the Industrial Relations Ordinance, 1969. Moreover, the introduction of section 27-B has been upheld as a valid piece of legislation by the superior courts in Pakistan. According to the Government, it was inserted in the Banking Companies Ordinance, 1962, due to the increasingly disruptive labour situation in the banking industry as well as the deteriorating economic conditions in the country. However, the Government will review this as soon as economic conditions improve. In its communication dated 20 August 2001, the Government indicates that section 27-B does not impair the right to undertake negotiations with the management. Moreover, the restrictions imposed by this provision are in the overall interest of the banking industry. This provision provides safeguards against those who in the name of trade union leadership try to damage the industry. Hence, this provision was enacted for the larger interests of workers in the banking sector.

C. The Committee's conclusions

426. *The Committee notes that the allegations in this case concern restrictions on the trade union and collective bargaining rights of employees in the banking sector pursuant to the enactment of section 27-B of the Banking Companies (Amendment) Act, 1997 (Act No. XIV of 1997). The Committee observes that, according to the Government, section 27-B does not curtail activities within the meaning of Conventions Nos. 87 and 98.*

427. *Under the terms of section 27-B, the Committee notes that only employees of the bank in question may become a member or officer of a trade union in the bank, under penalty of up to three years' imprisonment. In this regard, the Committee would emphasize that, if the national legislation provides that all trade union leaders must belong to the occupation in which the organization functions, there is a danger that the guarantees provided for in Convention No. 87 may be jeopardized. In fact, in such cases, the laying off of a worker who is a trade union official can, as well as making the person forfeit their position as a trade union official, affect the freedom of action of the organization and its right to freely elect its representatives, and even encourage acts of interference by employers. For the purpose of bringing legislation which restricts union office to persons actually employed in the occupation concerned into conformity with the principle of free election of representatives, it is necessary at least to make these provisions more flexible by admitting as candidates persons who have previously been employed in the occupation concerned and by exempting from the occupational requirement a reasonable proportion of the officers of an organization [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, paras. 369 and 371].*

428. *The Committee observes the Government's statement that section 27-B was enacted due to the increasingly disruptive labour situation in the banking industry as well as the deteriorating economic conditions in the country. The Committee recalls, however, 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****, op. cit., para. 186]. Noting that section 27-B was enacted over four years ago (on 2 June 1997), the Committee would urge the Government to take the necessary steps without delay to amend section 27-B so as to admit as candidates persons who have previously been employed in the occupation concerned, and by exempting from the occupational requirement a reasonable proportion of the officers of an organization. It requests the Government to provide information on any progress made in this regard.*

429. *Moreover, the Committee notes the complainant's allegations that this provision is being used by the management of the United Bank Limited (UBL) and of other banks to lay off trade union leaders and activists in a bid to undermine the position of the complainant as well as that of other unions in the banking sector. In particular, the complainant alleges that over 500 trade union leaders in the banking sector have been dismissed or terminated from employment, including Mr. Maqsood Ahmad Farooqui, President of the UBL Employees' Federation of Pakistan and Mr. Rahmat Ullah Kazmi, General-Secretary, UBL Labour Union Karachi. In this regard, the Committee takes note of the copies of termination and dismissal letters provided by the complainant, which were also sent to the Government. The Committee also notes with serious concern that the management of UBL submitted applications for the cancellation of registration of the complainant (without any success) in 1999 and 2000 on the grounds that many of the complainant's office-bearers had ceased to be in the UBL's employment in violation of section 27-B. Noting with regret that the Government has not provided any observations in respect of these serious allegations, the Committee would urge the Government to reply without delay to the complainant's allegations that over 500 union leaders in the banking sector, including Mr. Maqsood Ahmad Farooqui, President of the UBL Employees' Federation of Pakistan and Mr. Rahmat Ullah Kazmi, General-Secretary, UBL Labour Union Karachi, were dismissed or terminated from employment pursuant to the enactment of section 27-B of the Banking Companies (Amendment) Act, 1997 (Act No. XIV of 1997). It further requests the Government to inform it of the current status of these trade union leaders.*

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

The Committee's recommendations

431. ***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 take the necessary steps without delay to amend section 27-B of the Banking Companies (Amendment) Act, 1997, so as to admit as candidates for union office persons who have previously been employed in the occupation concerned, and by exempting from the occupational requirement a reasonable proportion of the officers of an organization. It requests the Government to provide information on any progress made in this regard.

(b) The Committee urges the Government to reply without delay to the complainant's allegations that over 500 union leaders in the banking sector, including Mr. Maqsood Ahmad Farooqui, President of the UBL Employees' Federation of Pakistan and Mr. Rahmat Ullah Kazmi, General-Secretary, UBL Labour Union Karachi, were dismissed or terminated from employment pursuant to the enactment of section 27-B of the Banking Companies (Amendment) Act, 1997. It further requests the Government to inform it of the current status of these trade union leaders.

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

CASE NO. 2105

INTERIM REPORT

Complaint against the Government of Paraguay presented by
— the International Confederation of Free Trade Unions (ICFTU) and
— the Trade Union of Workers of the National Electricity Authority (SITRANDE)

Allegations: Anti-union discrimination; sanctions for exercising the right to strike

432. The present complaint is contained in communications from the International Confederation of Free Trade Unions (ICFTU) and the Trade Union of Workers of the National Electricity Authority (SITRANDE) dated 5 August and 9 October 2000.

433. Since no reply was received from the Government, the Committee was obliged on two occasions to postpone its examination of this case. At its meeting in May-June 2001 (see the 325th Report, paragraph 8), the Committee issued an urgent appeal and drew the Government's attention to the fact that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body, it may present a report on the substance of this case, even if the Government's complete observations or information have not been received in due time. To date the Government has not sent its observations.

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

A. The complainants' allegations

435. In their respective communications of 5 August and 9 October 2000, the International Confederation of Free Trade Unions (ICFTU) and the Trade Union of Workers of the National Electricity Authority (SITRANDE) allege acts of anti-union discrimination, violations of the right to strike and interference by senior managers of the National Electricity Authority (ANDE).

436. As regards the alleged violation of the right to strike, the complainants state that SITRANDE has carried out two strikes. The first, lasting 24 hours, was called on 27 January 2000 in protest at the failure to implement an agreement between the Government and the Trade Union and Social Front (which encompasses the main public-sector trade unions). The second, which lasted 37 days, began on 22 February 2000 and was motivated by a failure to implement a collective agreement and by the presence of police on company premises for the purpose of intimidating workers. During the strike, about 50 workers were dismissed, and 70 staff members of ANDE were dismissed subsequently.

437. Both the strikes in question were ruled by the courts to be illegal. In the first case, this was because of the organizers' failure to give due strike notice to the Ministry of Justice and Labour, although ANDE had been informed. An appeal was lodged against this ruling in the Supreme Court, which ruled the appeal admissible, thereby suspending the measures

taken against the strikers by the lower courts. Despite this, in defiance of the Supreme Court ruling, ANDE initiated 800 summary proceedings as a result of which 70 workers were dismissed, another 80 were suspended, 30 were transferred and hundreds of others were given warnings. SITRANDE again appealed against these measures before the Supreme Court, which issued interim rulings on 29 June and 3 and 26 July ordering the suspension of the dismissals, suspensions, transfers and warnings; there has to date been no response from ANDE. At the same time, the labour courts ordered the reinstatement in their former posts of nine trade union officers, but despite this, ANDE transferred them. The workers in question disregarded this decision and as a result, summary administrative proceedings were initiated and payment of their wages was stopped.

438. The complainants allege that ANDE is waging a campaign of discrimination against SITRANDE by paying special bonuses to trade unionists who did not join the strike.

439. They also allege that, when the union announced its intention to begin talks with ANDE, the latter refused to recognize the nomination of one member of the SITRANDE negotiating committee on the grounds that he had been dismissed by the company. The complainants also allege that the company, in a harsh internal clampdown, has decided that trade union officers will be required to clock in and out of the workplace and request special leave to go out on trade union business, under penalty of having their wages withheld.

440. The complainants allege further that the dismissed workers are picketing in front of the ANDE central office and that other workers who come to express their solidarity suffer intimidation and threats of dismissal or suspension. They also allege that pressure is brought to bear on members to make them leave SITRANDE.

B. The Committee's conclusions

441. *The Committee regrets that, despite the time that has elapsed since the complaint was first presented, the Government has not responded to any of the allegations made by the complainants, despite the fact that it has been urged on a number of occasions to send its observations or information on the case, including through an urgent appeal. The Committee urges the Government to cooperate fully with the Committee in the future.*

442. *In these circumstances, in accordance with the applicable procedural rule [see para. 17 of its 127th Report, approved by the Governing Body at its 184th Session], the Committee finds itself obliged to present a report on the substance of the case without being able to take into account the information it had hoped to receive from the Government.*

443. *The Committee reminds the Government that the purpose of the whole procedure is to promote respect for trade union freedoms in law and in fact. The Committee is convinced that, if it protects governments against unreasonable accusations, governments on their side must recognize the importance for the protection of their own good name of formulating for objective examination detailed factual replies to such allegations made against them. [See the Committee's First Report, para. 31].*

444. *The Committee notes that the complainants have alleged dismissals, suspensions, transfers and sanctions against workers employed by the National Electricity Authority for having participated in the strikes of 27 January and 22 February 2000, as well as the refusal to recognize one member of the union's negotiating committee and acts of intimidation against workers at the company to force them to leave the union.*

445. *As regards the allegations of dismissals, suspensions, transfers and warnings against workers for participating in the strikes, the Committee notes that, according to section 362*

of the Paraguay Labour Code, strikes in the electricity supply sector are permitted on condition that minimum services are maintained. The Committee notes that, according to the information supplied by the complainants, the strikes of 27 January and 22 February were declared illegal under the anti-strike law adopted as part of the state reform programme; the first strike was declared illegal because of the failure by the organizers to meet the notification requirements, in that they notified ANDE and not the Ministry of Justice and Labour; the complainants do not indicate the reasons for which the second strike was declared illegal. The Committee notes that the Supreme Court, in decisions handed down on 29 June and on 3 and 26 July, temporarily suspended all the measures adopted previously by the lower courts against the strikers, and notes with concern that even after these rulings, ANDE initiated 80 summary proceedings resulting in the dismissal of 70 workers, the suspension of 80 workers, the transfer of 30 workers and hundreds of warnings being issued. At any event, the Committee recalls that arrests and dismissals of strikers on a large scale involve a serious risk of abuse, and place freedom of association in grave jeopardy. The competent authorities should be given appropriate instructions so as to obviate the dangers to freedom of association that such arrests and dismissals involve [see ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 604]. Under these circumstances, the Committee requests the Government to mediate between the parties with a view to enabling them to achieving a joint negotiated settlement of this dispute.*

446. *As regards the allegations that special bonuses were paid to workers who had not taken part in the strike, the Committee has taken the view, when examining other similar allegations, that such discriminatory practices constitute a major obstacle to the right of trade unionists to organize their activities [see* ***Digest****, op. cit., para. 605]. The Committee requests the Government to take the necessary steps to carry out investigations into these allegations and, if it is established that the allegations are true, to ensure that there is no repetition of such acts in future within the administration.*

447. *With regard to the refusal to recognize one of the members of the union's negotiating committee (Mr. Trinidad) because he had been dismissed by the company, the Committee recalls that, given that workers' organizations are entitled to elect their representatives in full freedom, the dismissal of a trade union leader, or simply the fact that he leaves the work which he was carrying out in a given undertaking, should not affect his trade union status or functions unless stipulated otherwise by the constitution of the trade union in question [see* ***Digest****, op. cit., para. 373]. The Committee requests the Government to ensure that ANDE does not oppose the nomination of the deputy general secretary.*

448. *As regards the restrictions with regard to the use of trade union leave, the Committee recalls that legal provisions should not infringe the basic guarantees of freedom of association, nor should they sanction activities which, in accordance with the principles of freedom of association, should be considered as legitimate trade union activities [see* ***Digest****, op. cit., para. 726]. The Committee requests the Government to ensure that no unnecessary restrictions are placed on normal trade union activities.*

449. *Lastly, with regard to the alleged anti-union practices against workers in the form of intimidation, threats of dismissals and suspensions, and pressure put on workers to make them leave their trade unions at the National Electricity Authority, the Committee recalls that such practices are contrary to Article 2 of Convention No. 98, according to which workers' and employers' organizations should enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration. The Committee requests the Government to take the necessary measures to carry out an investigation to establish the facts and to provide its observations in this respect.*

C. The Committee's recommendations

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

(a) The Committee regrets that the Government has not responded to any of the allegations made by the complainants, and urges the Government to cooperate fully with the Committee in the future.

(b) As regards the allegations of dismissals, suspensions, transfers and warnings against workers for participating in the strikes, the Committee requests the Government to mediate between the parties with a view to enabling them to achieving a joint negotiated settlement of this dispute.

(c) As regards the allegations that special bonuses were paid to workers who had not taken part in the strike, the Committee requests the Government to take necessary steps to carry out investigations into these allegations and, if it is established that these allegations are true, to ensure that there is no recurrence of such acts in future within the administration.

(d) With regard to the refusal to recognize one of the members of the union's negotiating committee, the Committee requests the Government to ensure that ANDE does not oppose the nomination of the deputy general secretary.

(e) As regards the restrictions with regard to the use of trade union leave, the Committee requests the Government to ensure that no unnecessary restrictions are placed on normal trade union activities.

(f) Lastly, with regard to the alleged anti-union practices against workers in the form of intimidation, threats of dismissals and suspensions, and pressure put on workers to make them leave their trade unions, the Committee requests the Government to take the necessary measures to carry out an investigation to establish the facts, and to provide its observations in this respect.

CASE NO. 2111

INTERIM REPORT

Complaints against the Government of Peru presented by — the General Confederation of Workers of Peru (CGTP) and — the Federation of Peruvian Light and Power Workers (FTLFP)

Allegations: Dismissals of trade union officers and members and delays in collective bargaining

451. The complaints are contained in communications from the General Confederation of Workers of Peru (CGTP) dated 27 November and 1 December 2000 and in a communication of the Federation of Peruvian Light and Power Workers (FTLFP) dated 9 May 2001. The Government sent its observations in communications dated 31 May and 16 August 2001.

452. 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

453. In its communications dated 27 November and 1 December 2000, the General Confederation of Workers of Peru (CGTP) explains that Telefónica del Perú SAA, a private enterprise operating in the telecommunications sector in Peru, is the main enterprise in this branch, with plants and installations virtually throughout the national territory, and that the membership of the Single Trade Union of Workers of Telefónica del Perú and the Trade Union of Workers of Telefónica del Perú (SITENTEL) covers a large number of Telefónica del Perú SAA employees.

454. The CGTP alleges that since May 2000 these trade union organizations have initiated a number of proceedings seeking protection from the judicial authorities and the suspension of a redundancy plan affecting a large number of workers, put forward by the human resources department of Telefónica del Perú SAA, especially in view of the fact that no definitive decision had yet been handed down by the public law tribunals of the Lima Judicial District. Despite the proceedings that had been initiated, Telefónica del Perú SAA introduced a gradual redundancy plan beginning in August 2000, which in the first stage affected approximately 800 workers, especially trade union members, many of whom were rehired with lower pay and working conditions and threatened with dismissal again if they renewed their membership in the abovementioned trade unions. These actions occurred in the context of a systematic policy of lay-offs initiated by the enterprise in the 1990s, when over 8,000 workers were retrenched nationwide over a period of six years, representing over 70 per cent of the original workforce, through compulsory redundancy programmes *(programas conminativos)* and retirement.

455. In order to implement this policy, Telefónica del Perú SAA has embarked on a process of subdivision, outsourcing and restructuring by establishing subsidiaries and contracting work to external enterprises.

456. Faced with a new wave of dismissals, the trade unions initially exhausted various procedures and made overtures with the aim of achieving mutually acceptable agreements and even appealed to the authorities, but no agreement was reached.

457. In addition, the CGTP alleges that, in the midst of this adverse climate, the trade unions and the enterprise were engaged in a process of collective bargaining for 2000-01 (which lasted over 12 months without any results), without any substantial results to date, principally owing to the fact that negotiations have been delayed by the wave of dismissals carried out by the employer, undermining the effectiveness of this natural forum for negotiation.

458. In this context, the members of both trade unions decided to hold an open-ended general strike beginning on 15 November 2000 in order to demand an immediate stop to the wave of dismissals, the reinstatement of the workers already dismissed and the settlement of their demands; this strike is still continuing against direct opposition from the Ministry of Labour and Social Welfare. Instead of attempting to seek an agreement, the management of Telefónica del Perú SAA responded by carrying out various measures which escalated the labour dispute. Specifically, they ordered the dismissal of numerous trade union officers, including members of strike pickets, on various charges and/or accusing them of misconduct; moreover, the administrative authorities have issued a number of resolutions declaring the strike inadmissible and illegal despite the fact that a subsequent directorate decision, No. 083-2000-DRTPSL-DPSC of 27 November 2000, annulled the decision

taken in the administrative proceedings concerning the exercise of the right to strike. Repressive measures were also taken against the strikers by the police and security personnel of the enterprise.

459. In addition, in its communication dated 9 May 2001, the Federation of Peruvian Light and Power Workers (FTLFP) alleges that the regional electricity utility enterprise Electronorte Medio SA dismissed trade union officer Mr. José Castañeda Espejo, general secretary of the Trujillo Single Trade Union of Light and Power and Allied Workers, on 11 April 2000, despite the fact that he was covered by trade union immunity. The enterprise denied Mr. Castañeda access to the workplace and accused him of unjustified failure to carry out his duties, improper use of the employer's property for his own profit and providing false information to the employer. However, the FTLFP states that Mr. Castañeda demonstrated that he was not guilty of the serious misconduct of which he was accused. According to the FTLFP the enterprise witness gave evidence before the judicial authority in favour of Mr. Castañeda but later changed that testimony in a subsequent hearing.

460. The complaint adds that on 30 November 2000 the judicial authority declared the dismissal null but fears that the court of second instance, the Trujillo Labour Court, whose composition is not independent, will rule against the trade union officer.

B. The Government's reply

461. In its communication dated 31 May 2001, the Government refers to the information provided by the Telefónica del Perú enterprise.

462. The enterprise maintains that its relationship with its trade union organizations is one of respect and ongoing coordination; it also respects the workers' decision to continue carrying out their duties in the enterprise. As regards the lay-offs that occurred since August 2000, the enterprise states that it has been carrying out a number of restructuring processes, which have had a certain impact on its human resources; however, these have been minimized with attractive retirement plans including substantial economic benefits and assistance.

463. The legal basis of the above is contained in section 47 of the consolidated text of Legislative Decree No. 728, the Training and Employment Promotion Act, approved by Presidential Decree No. 002-97-TR, which provides that enterprises and their workers, within the framework of collective bargaining or by individual agreement with the workers, may establish incentive programmes or assistance promoting the establishment of new enterprises by workers who voluntarily choose to terminate their employment relationship.

464. With regard to the alleged rehiring of workers with lower pay and working conditions referred to by the complainant in its allegations, the enterprise states that, after the persons concerned have accepted their benefits, they have the possibility of being hired by the enterprises providing services to Telefónica del Perú, which does not mean that they are rehired by the latter. It also explains that the employment relationship of these persons is with the enterprise providing services on an outsourcing basis and not with Telefónica del Perú.

465. Moreover, the enterprise maintains that the Trade Union of Workers of Telefónica del Perú and the Single Trade Union of Workers of Telefónica del Perú declared an open-ended general strike beginning on 15 November 2000, which was declared inadmissible by the administrative labour authority, in the course of which acts of violence were committed against the enterprise and some officials and fellow workers. Hence the enterprise resorted

to the application of a number of sanctions against those who perpetrated the abovementioned acts.

466. The strike was declared inadmissible by Subdirectorate Order No. 043-2000-DRTPSL-DPSC of 3 November 2000, given that collective bargaining was at the stage of direct negotiation, resulting in the application of section 75 of the Collective Labour Relations Act, Decree No. 25593, which provides that the exercise of the right to strike is conditional upon having exhausted the procedure of direct negotiation between the parties concerning the matter at issue. This decision was confirmed in the same terms by Directorate Order No. 077-2000-DRTPSL of 13 November 2000.

467. Following an inspection to verify the existence of the strike, Subdirectorate Order No. 045-2000-DRTPSL-DPSC of 16 November 2000 declared the general strike held by the abovementioned trade unions illegal under the provisions of section 84(a) of the Collective Labour Relations Act, Legislative Decree No. 25593, which states that a strike shall be declared illegal if it is held despite having been declared inadmissible. Nonetheless, by Directorate Order No. 83-2000-DRTPSL, the administrative labour authority decided to annul the abovementioned inspection record as it was drawn up without meeting the formal requirements laid down by the law; it also declared Subdirectorate Order No. 045-2000-DRTPSL-DPSC null, and ordered a new inspection to verify the existence of the strike.

468. In this respect, the allegation put forward by the CGTP in its complaint to the effect that the administrative labour authority had annulled the order declaring the strike inadmissible was incorrect, given that Directorate Order No. 83-2000-DRTPSL only annulled the decision as to the illegality of the strike.

469. It is important to point out that after the inspection was carried out it was confirmed that the strike called by the two trade unions had in fact taken place and hence, under section 84(a) of the Collective Labour Relations Act, Legislative Decree No. 25593, which provides that a strike shall be declared illegal if it is held despite the fact that it has been declared inadmissible, the strike was declared illegal by Subdirectorate Order No. 049-2000-DRTPSL-DPSC, which was upheld by Directorate Order No. 085-2000-DRTPSL, and the proceedings which gave rise to the abovementioned trade unions' request were accordingly closed. Lastly, the enterprise maintains that, with the signing of the collective agreement for 1999-2003, a tripartite commission was established comprising a representative of the enterprise, one from each trade union and an outside mediator as chairperson, in order to evaluate the employment situation of the workers subjected to sanctions as a result of the acts committed during the strike. The enterprise states that 75 of these workers have been reinstated.

470. The Government points out for its part that, while the Telefónica del Perú SAA enterprise has carried out a restructuring process and as a result has implemented incentive programmes, these are in accordance with labour legislation. Moreover, the procedure through which the strike held by the Trade Union of Workers of Telefónica del Perú and the Single Trade Union of Workers of Telefónica del Perú was declared inadmissible and illegal by the administrative labour authority was carried out in strict compliance with the provisions of the Collective Labour Relations Act, Act No. 25593. Lastly, if the Trade Union of Workers of Telefónica del Perú or the Single Trade Union of Workers of Telefónica del Perú finds that Telefónica del Perú SAA is carrying out dismissals that are unjustified or liable to annulment, they may assert their rights by availing themselves of domestic judicial remedies.

471. In its communication dated 16 August 2001, the Government indicates that regarding the dismissal of the trade union officer Mr. José Castañeda Espejo, the ultimate ruling of the judicial authority was not favourable to his reinstatement.

C. The Committee's conclusions

472. *The Committee notes that in this case the complainants have alleged the following: (1) mass lay-offs in the Telefónica del Perú enterprise in the context of a restructuring process, giving rise to an open-ended general strike beginning on 15 November 2000, which was declared illegal, resulting in the dismissal of numerous trade union officers and members and repressive measures by the police and security personnel of the enterprise; (2) the delay, after 12 months, in the process of collective negotiation of the workers' demands, despite initiatives taken by the trade unions to reach mutually acceptable agreements; (3) pressure on workers who had been rehired by the enterprise not to join trade unions; and (4) the dismissal in another enterprise of trade union officer Mr. José Castañeda Espejo.*

473. *The Committee observes that the Government refers to the statements of the Telefónica del Perú enterprise to the effect that: (1) the mass lay-offs were carried out in accordance with the legislation as part of restructuring processes and were accompanied by attractive retirement plans with substantial economic benefits and assistance; (2) some of the persons who accepted the retirement plans were rehired, not by the Telefónica del Perú enterprise but by other enterprises providing services to it on an outsourcing basis; (3) the open-ended general strike called by the trade unions was declared inadmissible, as the stage of direct negotiation had not been exhausted, and illegal, and in the course of the strike acts of violence were committed against the enterprise and some officials and fellow workers; (4) a collective agreement was signed (1999-2003) providing for the establishment of a tripartite commission to evaluate the situation of the workers who had been penalized for acts committed during the strike, and 75 of these workers were reinstated.*

474. *The Committee notes with interest the reinstatement of 75 workers who had been dismissed for acts related to the exercise of the strike, as well as the signing of the new collective agreement (1999-2003). Nonetheless, it deplores the acts of violence, both those reported by the complainant and those mentioned by the enterprise. The Committee requests the Government to inform it whether the collective dispute referred to in this case has been completely settled or whether aspects still remain to be settled, in particular with regard to dismissals connected with the strike. In any event, the Committee observes that in this case the administrative authority, in accordance with the legislation in force, declared the strike inadmissible and illegal, and that this was confirmed by the Government. In this respect, irrespective of the grounds for this declaration, the Committee would like to emphasize – as it has already done in other cases relating to Peru (see, for example, 325th Report, Case No. 2049, paragraph 520) – the importance 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 of decisions and principles of the Freedom of Association Committee****, 1996, para. 522] and requests the Government once again to take immediate steps to ensure that in future the determination of the legality of strikes is carried out by an independent body which has the confidence of the parties involved and not by the administrative authority.*

475. *Concerning the dismissal of the trade union officer Mr. José Castañeda Espejo, the Committee requests the Government to send it a copy of the last ruling of the judicial authority which was not in his favour.*

476. *Lastly, the Committee requests the Government to send its observations on the pressure brought to bear on the workers of Telefónica del Perú SAA who were rehired to prevent them from joining trade unions.*

The Committee's recommendations

477. ***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 inform it whether the collective dispute in the Telefónica del Perú SAA enterprise referred to in this case has been completely settled or whether aspects still remain to be settled, in particular with regard to dismissals connected with the strike.

(b) The Committee requests the Government to take immediate steps to ensure that the determination of the legality of strikes is carried out by an independent body which has the confidence of the parties involved and not by the administrative authority.

(c) Concerning the dismissal of the trade union officer Mr. José Castañeda Espejo, (from the regional electricity utility enterprise Electronarte Medio SA), the Committee requests the Government to send it a copy of the final ruling of the judicial authority.

(d) The Committee requests the Government to send its observations on the alleged pressure brought to bear on the workers of Telefónica del Perú SAA who were rehired to prevent them from joining trade unions.

CASE NO. 2094

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

Complaint against the Government of Slovakia presented by the Trade Union Association of Railwaymen

Allegations: Restrictions on the right to strike

478. In communications dated 18 July 2000 and 26 July 2001, the Trade Union Association of Railwaymen submitted a complaint of violations of freedom of association against the Government of Slovakia.

479. The Government sent its observations in communications dated 13 October and 24 November 2000 and 24 May 2001.

480. Slovakia 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

481. In its communication dated 18 July 2000, the Trade Union Association of Railwaymen explained that for the year 2000, they were unable to sign a collective agreement with the Railways Company of the Slovak Republic (ZSR), even after the intervention of a mediator. The dispute between the parties concerned a wage increase for the railway workers for the year 2000. Facing the deadlock, the complainant organization, in conformity with the provisions of Act No. 2/1991, Collection of Laws on Collective Bargaining, informed the management of ZSR of its intention to have recourse to strike action. According to section 17(1) of the said Act, a strike concerning a dispute in the signing of a company's collective agreement can be declared if at least half of the workers involved in the agreement support the strike. In addition, section 17(5) of the Act provides that the trade union must submit to the employer, at least one working day before the beginning of the strike, a list of the names of workers who will be participating in the strike.

482. The complainant organization alleged that once the management of ZSR was informed of its intention to use strike action, it embarked on a broad mass media campaign, using official information channels, in order to intimidate the railway workers. For example, in March 2000, in an address to all ZSR employees, the Director-General of ZSR stated with regard to the possible declaration of a strike that "I regard as my duty to warn all ZSR employees that this situation influences the receiving of credit for paying the wages of ZSR employees for the month of February 2000". Furthermore, in an interview for the daily newspaper *Pravda* on 1 March 2000, the Director-General of ZSR stated that if a strike was going to be declared, and if subsequently wages had to be increased, this would inevitably lead to an increase of workers who would be dismissed due to financial constraints. In addition, in a letter addressed to the Confederation of Trade Unions of the Slovak Republic, one of ZSR's directors declared that in case of dismissals, "I will firstly take the list of employees who have signed for the strike and I will dismiss them".

483. Following this intimidation campaign from the ZSR management, the complainant organization explained that since it could not guarantee the success of the strike action, it agreed to reopen negotiations and finally accepted a wage increase which was half of what it had originally requested. Against this background, the complainant organization alleged that the provisions of Act No. 2/1991, Collection of Laws on Collective Bargaining, actually prevented the workers from truly exercising their right to strike since it was required that more than half of all the employees covered by the collective agreement had to agree before calling the strike and, more importantly, the union had to submit to the employer a list of the names of workers who would be participating in the strike, thus exposing these workers to intimidation, discrimination and even eventual dismissal. Lastly, the complainant organization explained that during the negotiation of the Council of Economic and Social Agreement of 31 March 2000, the proposal of the Confederation of Trade Unions of the Slovak Republic for the amendment of Act No. 2/1991 regarding the obligation to submit a list of names of workers participating in a strike was rejected.

484. In a recent communication dated 26 July 2001, the complainant organization acknowledged that after negotiations, the Government had agreed to amend section 17(1) and (5) of the Act and that, under the amended Act, the decision to call a strike would need the consent of more than half of the workers participating in the strike ballot, and the trade union would not need to submit the list of employees participating in the strike. However, the complainant organization explained that recourse to strike action was still only possible in the context of collective bargaining aiming at the conclusion of a collective agreement. Furthermore, since the lodging of the complaint, a new social conflict arose between the ZSR and the complainant organization over the restructuring of the Railways Company of

the Slovak Republic and, once again, ZSR management had recourse to intimidation to discourage the workers from exercising their right to strike.

B. The Government's reply

485. In its communication of 24 May 2001, the Government indicated that in 1999, in compliance with the observations made by the Committee of Experts on the Application of Conventions and Recommendations, it prepared amendments to Act No. 2/1991, Collection of Laws on Collective Bargaining. The Government negotiated the proposed changes to the Act in consultation with the social partners as well as on the basis of ILO recommendations. The proposed amendments to the Act would be submitted to the Slovak Parliament at the end of May 2001. The relevant amendments were as follows. Section 17(1) provides, amongst other things, that a strike has to be approved by the absolute/clear majority of employees who are participating in the strike ballot. Section 17(8)(c) provides that the trade union shall notify in writing the employer at least three working days before the launching of the strike and shall provide it with a list of names of representatives of the trade union authorized to represent participants in the strike. Section 17(9) provides that a trade union shall provide to an employer, at least two working days before the launching of the strike, information relating to the strike which shall help an employer to introduce work plans to ensure essential activities and essential services during the strike; essential activities and essential services are those the interruption of which shall endanger the life and health of employees or other persons and shall cause damage to machines, equipment and instruments whose nature and purpose do not allow an interruption during the strike.

486. The Government then explained the purpose of each of these amendments. In the case of section 17(1), it stated that the amendment was in line with the view expressed by the Committee of Experts in its 1994 General Survey as the vote to declare the strike would only take account of the votes of workers who participated in the strike ballot. Furthermore, the required quorum and majority were fixed at a reasonable level since the requirements were for an absolute/clear majority – more than half majority. This formulation was a compromise accepted by the social partners after discussions held in February and March 2001.

487. As for the amendments contained in section 17(8) and (9), the Government explained that by removing the requirement for the trade union to provide a list of names of the workers participating in the strike, the objective was to eliminate the possibility of anti-union discrimination against strikers, which was one of the main concerns of the various unions. The proposed text of section 17(8) and (9) reflected once again a compromise reached during experts' discussions in the framework of social partnership, as well as an attempt to be in line with the views expressed by the ILO Committee of Experts, and in conformity with ILO Conventions.

488. Concerning the allegations of intimidation and violation of trade union rights within the ZSR, the Government explained that the Ministry of Labour, Social Affairs and Family, with the participation of social partners (namely, the Confederation of Trade Unions of the Slovak Republic and the Federation of Employers' Unions) conducted a supervision on the observance of trade union rights within the ZSR. This supervision took place in accordance with the relevant provisions of the Labour Code and was conducted from 18 December 2000 to 25 January 2001. The allegations of intimidation and threat of dismissal of workers, claiming to have been made by the management of ZSR, were not proved on the selected premises of the ZSR where the supervision took place.

C. The Committee's conclusions

489. *The Committee notes that this case relates to allegations concerning a legislation which would restrict the right to strike as well as allegations of intimidation and trade union rights violations within the Railways Company of the Slovak Republic (ZSR).*

490. *With regard to the legislative aspect of the case, namely certain provisions of Act No. 2/1991, Collection of Laws on Collective Bargaining, the Committee observes that the Committee of Experts on the Application of Conventions and Recommendations formulated observations on this legislation in 1999. The Committee notes that following these observations, the Government proposed amendments to the Act, in particular with regard to section 17(1), which originally provided that the vote for a strike needed the support of more than half of the workers covered by the collective agreement, and 17(5), which required the trade union to provide the employer with a list of the names of the striking workers. The Committee notes that, according to the Government, the amendments to section 17 reflected a compromise reached after consultations and negotiations with the social partners. While the complainant organization declared that its proposal to amend the Act was rejected in March 2000, which led to the lodging of the complaint in July 2000, the Committee notes that, according to the Government, such consultations did take place in early 2001, which resulted in the compromise on the current draft amendments which had to be submitted to the Slovak Parliament at the end of May 2001. This was later acknowledged by the complainant organization in a recent communication in July 2001. The Committee notes that, according to the new section 17(1), a strike must be approved by the absolute/clear majority of workers participating in the strike ballot, which is in conformity with the principles of freedom of association.*

491. *With regard to section 17(5), while taking good note of the Government's willingness to put its legislation into full conformity with Conventions Nos. 87 and 98, the Committee observes that section 17(8)(c), as amended, requests trade unions to provide the employer with a list of the names of representatives of the respective trade union authorized to represent participants in the strike. While acknowledging that this provision is an improvement compared to the previous one, which required a list of all participants in the strike, the Committee nevertheless considers that the practical implementation of the provision could lead to discrimination and reprisals against the trade union representatives figuring on the list. The Committee recalls that the protection against all acts of anti-union discrimination is particularly desirable in the case of trade union officials in order for them to be able to perform their trade union duties in full independence. In addition, the Committee must insist on the fact that the occupational and economic interests which workers defend through the exercise of the right to strike do not only concern better working conditions or collective claims of an occupational nature, but also the seeking of solutions to economic and social policy questions and problems facing the undertaking which are of direct concern to the workers [see **Digest of decisions and principles of the Committee on Freedom of Association**, 4th edition, 1996, paras. 479 and 724]. Therefore, the Committee requests the Government to take full account of these principles in the drafting of the amendments of section 17 in order to put its legislation into full conformity with the principles of freedom of association. The Committee trusts that all the relevant amendments to Act No. 2/1991, Collection of Laws on Collective Bargaining, will be adopted in the near future and requests the Government to keep it informed in this regard. It draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to the legislative aspects of the case.*

492. *Concerning the allegations of intimidation and trade union rights violation within the ZSR, the Committee takes note of the Government's statement according to which an inquiry took place between December 2000 and January 2001 on selected premises of the ZSR. The results of this inquiry, which was conducted in collaboration with the social partners,*

led to the conclusion that these allegations had not been proven. Nevertheless, in view of the public statements made by the management of the ZSR, some of which appeared in the Slovak media and, in view of the new allegations of intimidation in the context of the restructuring of the ZSR, the Committee must recall that no one should be penalized for carrying out or attempting to carry out a legitimate strike. In addition, while the respect for the principles of freedom of association requires that the public authorities exercise great restraint in relation to intervention in the internal affairs of trade unions, it is even more important that employers exercise restraint in this regard and ensure that no person is prejudiced in his or her employment by reason of trade union membership or legitimate trade union activities. The Committee trusts that the Government will take full account of these principles in the future.

The Committee's recommendations

493. ***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 full account of the principles of freedom of association in the drafting of the amendments of Act No. 2/1991, Collection of Laws on Collective Bargaining, and in particular with regard to section 17. It trusts that all the relevant amendments to the said Act will be adopted in the near future and requests the Government to keep it informed in this regard.

(b) 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. 2067

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

Complaint against the Government of Venezuela presented by — the International Confederation of Free Trade Unions (ICFTU) — the Venezuelan Workers' Confederation (CTV) and — the Latin American Central of Workers (CLAT)

Allegations: Anti-union legislation, suspension of collective bargaining following a decision by the authorities, hostility on the part of the authorities towards a trade union confederation

494. The Committee examined this case at its June 2001 meeting and presented an interim report to the Governing Body [see 325th Report, paras. 576-589, approved by the Governing Body at its 281st Session (June 2001)].

495. The Government sent its observations in communications dated 21 June 2001.

496. 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

497. At its June 2001 meeting, the Committee made the following recommendations on the allegations that remained pending:

– 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;

– 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).

498. In its communications dated 4 and 25 April 2001, the CTV had sent statements made by the President of the Republic following a strike in the petroleum sector which they considered to be hostile to the Confederation and to clearly display favouritism with regard to the Bolivarian Workers' Force (a partial transcription is given below):

> "They threatened to bring the petroleum enterprise to a standstill and I sent them the message: go ahead! I'll tell you how it happened. Manuit, the gang of four of the *Acción democrática* sent a message to the Government saying if we didn't give them this, that and the other they would paralyse the petroleum industry. So I told them: go ahead! I give you my permission. Of course we immediately started preparing our contingency plans and talking to petroleum workers everywhere. They called the strike and fell flat on their faces. They came up against the workers' conscience. They have failed yet again, they are dead, there is nothing they can do anymore … the Venezuelan petroleum workers do not believe in you anymore. We have new leaders now. You might as well face it. You ought to back down quietly as others have done but if you want to carry on fighting you will be beaten again, every time you stick your necks out you are going to get it, you union bosses and bandits of the *Acción democrática* gang of four. Come on out and see what happens to you, you will be defeated again and again and soon there will be trade union elections. I call on the Venezuelan working class to elect real workers' leaders who are committed not only to the working class but to the revolution, the Bolivarian revolution, the working class should be aware not only of its own interests but those of the country in general …" "I call on the workers to join the Bolivarian Workers' Force, that is the way to fight for their interests and move ahead with the revolution." "They are heading for defeat (the CTV) because they are doomed to suffer their most crushing defeat at our hands and we will continue to defeat them. Workers of Venezuela, unite. Bolivarian Workers' Force, attack! To the trade union elections, take your new place in a revolutionary trade union movement committed, I repeat, to the working class and the revolution, to the country. Take up the Bolivarian struggle, defend the revolution and do not let yourselves be manipulated by all these union bosses whom we are gradually displacing. Good luck Nicolás, the Bolivarian Teachers' Force is also gaining ground and growing everywhere. They held their assembly a few days ago and we beat the teacher's union bosses who were also threatening to paralyse the education system by more than a minimum percentage; Venezuelan education did not stop and is not stopping now, the Bolivarian education process is moving ahead; no one can stop the Bolivarian schools. So it should be emphasized today that we are pushing ahead with the revolution; the past week has been a very positive one, a week of victories showing the country and the world that the revolution is consolidating itself; we defeated the petroleum union bosses sector and new trade unions and new leaders are emerging in the petroleum sector. We defeated the call made by the teachers' union bosses and a Bolivarian Teachers' Force is arising."

499. The CTV had also alleged that new provisions had been adopted that implied state interference in trade union affairs. Specifically, the CTV objects to the Special Statute for the renewal of the trade union leadership issued by the National Electoral Council (CNE) and published in the *Official Gazette* on 20 April 2001. The CTV alleges that the Statute in question empowers the CNE to organize, authorize and suspend trade union elections. According to the CTV this is an abuse of power aimed at stripping trade union organizations of the ability to organize their own elections; pursuant to this Statute, it will be up to the CNE to grant prior authorization for any trade union election process. Lastly, the CTV adds that the Statute in question contains a large number of provisions that violate the principle of trade union autonomy and freedom of association. Moreover, the CTV objects to resolution No. 01-00-012 of 1 April 2001 of the Comptroller-General's Office of the Bolivarian Republic of Venezuela, which requires trade union officials to declare their assets to the Comptroller's Office within 30 days following their election. The CTV alleges that this provision distorts the nature of the statutory obligation to declare their assets to the membership and the internal supervisory bodies of trade union organizations.

500. In its communication dated 22 May 2001, the ICFTU alleges that the SIDOR-Consorcio Amazonia enterprise refused to negotiate a new collective agreement with the Single Trade Union of Iron and Steel and Allied Workers of the State of Bolívar (SUTISS). The ICFTU states that in accordance with the terms of the current collective agreement, the draft new agreement had been deposited 90 days before its expiry with the Zona de Hierro labour inspectorate. According to the ICFTU, the enterprise's refusal to negotiate a new collective agreement aims at disregarding fundamental gains achieved by the workers and continuing the process of making labour more precarious, initiated with the privatization of SIDOR.

B. The Government's reply

501. In its communication dated 21 June 2001, concerning the allegation regarding interference by the Comptroller-General's Office of the Republic, the Government states that there is no provision stipulating intervention by the Comptroller-General's Office in the administration of trade union funds. This body only intervenes in the administration of a trade union at the request of its members and when the supervisory body of the confederation or federation does not reply or take a decision on a request made by its members, within 60 days of the date of the request, to investigate the accounts of the administration concerned (a long-standing provision contained in the Organic Labour Act of November 1990, section 442, second paragraph). The Government states that it must be noted that the Comptroller-General's Office of the Republic is a functionally autonomous body which even supervises the administration of the Government, since the Comptroller is elected by the National Assembly on the basis of a shortlist presented by civil society, which guarantees its independence. Specifically, as regards the disputed resolution No. 01-00-012 of 10 April 2001 of the Comptroller-General's Office of the Republic, published in *Official Gazette* No 37,179 of 17 April 2001, which stipulates that trade union officials shall individually present this body with a sworn declaration of assets before and after taking up their office, there is a whole range of procedures for filing appeals and challenges available to anyone who feels their rights have been infringed, which in this case have not been exhausted by the complainants.

502. As regards trade union elections, the Government states that it has to ensure that they are conducted in accordance with the constitutional provision enshrined in Article 3 of Convention No. 87 concerning universal, direct and secret suffrage, and that the spirit of the Convention is accordingly embodied in article 95 of the Constitution. According to the Government, the means to achieve the aim of Convention No. 87 have now been strengthened by the presence of the Electoral Power that is functionally entirely independent and largely comprised of members of civil society and of the law faculties of the country's universities. The Government states that the National Electoral Council

(CNE) has the main objective of guaranteeing respect for the voters' will and for their right to participate directly in trade union affairs through free elections in which equality of treatment without any discrimination whatsoever is guaranteed, in a climate of impartiality, transparency and reliability of the electoral committees; this aspect corresponds precisely to the provisions laid down in article 293 of the national Constitution.

503. The Government points out that progress has been achieved in the re-legitimization process backed by all of the trade union movements in the country, with the presence of the CNE, in that the trade unions have contributed their database and the CNE has been able to compare it with its own data from the permanent electoral register. In the new Constitution, the Constituent Power, expressing the will of the entire people of Venezuela, sanctioned what is termed the Electoral Power, which enjoys organic independence and functional autonomy, whose fundamental objective is to guarantee impartiality, ethics, transparency and efficiency in electoral processes (article 294 of the Constitution). The exercise of this power takes place through its executive body, the CNE, which, in the current process of trade union re-legitimization, is nothing other than the technical facilitator of the autonomous electoral power, aimed at guaranteeing the transparency and impartiality of the process, in accordance with the constitutional mandate set forth in the Eighth Transitional Provision.

504. The Government adds that in order to carry out its constitutional mandate, the CNE has drafted a transitional Special Statute providing for the renewal of the trade union leadership, following consultations with the trade unions involved in the process, without disregarding the rights of these organizations, which freely formulate their by-laws and internal regulations, in accordance with the provisions of the Constitution. Moreover, section 61 of the Statute in question refers specifically to the temporary nature of this Statute, "which will remain in effect until a ruling is handed down on the appeals lodged by the persons concerned in connection with the corresponding elections". The Government emphasizes that this Statute embodies the amendments proposed to the CNE by the trade unions in the process of dialogue.

505. As regards the Government's response in the media to the recent strike in the petroleum industry on 27 and 28 March 2001, the Government deplores the fact that the Federation of Oil, Chemical and Allied Workers of Venezuela (FEDEPETROL) called a strike in the country's key industry without having fulfilled the statutory requirements in order to ensure that the stoppage would be accompanied by the safeguards laid down by law. On the contrary, they bypassed all the legal procedures (submission of a list of demands, conciliation proceedings, determination of minimum services, among others) and called an ill-timed strike which entailed severe losses for the country. Therefore, given that this strike was illegal and highly detrimental to the entire population, it was predictable that the Government would deplore the attitude of the Federation backed by the CTV, especially since the same Federation had concluded with PDVSA Petroleo y Gas S.A. the best collective agreement ever signed in the history of the Venezuelan petroleum industry's 18 collective agreements and 53 years of negotiations with these social partners.

506. As regards the Bills for the democratization of the trade union movement and for the protection of trade union guarantees and freedoms and trade union unification, the Government states that these have been forwarded to the trade union movement itself in its different confederations, which will decide in due course whether these Bills should be pushed forward and enacted into law, and will also decide as they see fit on the unity or diversity of the trade union movement.

507. In a communication from the Government received during the Committee's meeting, the Government indicates that SIDOR and SUTISS, with the mediation of the Minister of Labour, reached an agreement, following which the pending issues were resolved unanimously.

C. The Committee's conclusions

508. *The Committee observes that when it examined this case at its June 2001 meeting it had demanded that the Government take measures to: (1) 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; and (2) 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 also requested the Government to provide its observations concerning: (i) the allegations submitted by the CTV objecting to the Special Statute for the renewal of the trade union leadership issued by the National Electoral Council (CNE) and a resolution of the Comptroller-General's Office requiring trade union officials to submit a sworn declaration of their assets and criticizing the hostile statements made by the President of the Republic against the CTV following a strike in the petroleum sector; and (ii) the allegations presented by the ICFTU concerning the refusal of the SIDOR-Consorcio Amazonia enterprise to negotiate a collective agreement.*

509. *As regards the Committee's recommendation to withdraw the Bill for the protection of trade union guarantees and freedoms and the Bill for the democratic rights of workers, the Committee notes that the Government states that the Bills in question have been forwarded to the trade union movement of Venezuela in its different confederations and that they will decide in due course on the advisability of adopting them and on the unity of the trade union movement. In this respect, the Committee recalls that it has already pointed out that the Bills in question contain restrictions to trade union rights and that they have also been the subject of observations by the Committee of Experts on the Application of Conventions and recommendations. In these circumstances, the Committee strongly urges the Government to ensure that the Bills in question are withdrawn.*

510. *As regards the Committee's recommendation on the need to repeal or 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 deeply deplores the fact that the Government has not communicated information on measures taken to this effect. In this respect, the Committee once again urges the Government to take the necessary steps without delay to follow up on its recommendation.*

511. *As regards the allegations objecting to the Special Statute on the renewal of the trade union leadership issued by the National Electoral Council (CNE), the Committee notes that the Government states that: (1) the Constituent Power had provided in the new Constitution for what is termed the Electoral Power, aimed at guaranteeing impartiality, ethics, transparency and efficiency in electoral processes, and that the exercise of this power takes place through an executive body, the CNE; (2) the main objective of the CNE is to guarantee respect for the voters' will and for their right to participate directly in trade union affairs through free elections in which equality of treatment without any discrimination whatsoever is guaranteed, in a climate of impartiality, transparency and reliability of the electoral committees; and (3) the CNE drafted the Statute in question following consultations with the trade unions and after taking into account their proposed amendments, and that it is temporary in nature.*

512. *In this respect, the Committee regrets to note that although in March 2001 it urged the Government to put an end to the functions of the National Electoral Council (CNE) in respect of trade union elections, the CNE decided to enact the Special Statute for the renewal of the trade union leadership. Moreover, the Committee deeply deplores the fact that the CNE has felt obliged to enact the abovementioned Statute as a result of the outcome of the referendum carried out on 3 December 2000 which resulted in the removal of elected trade union officials, despite the fact that this referendum had been criticized by the Committee of Experts on the Application of Conventions and recommendations at its November-December 2000 meeting and that the Committee had urged the Government at its March 2001 meeting to invalidate the results of the referendum. Moreover, the Committee observes that the Statute to which the CTV objects regulates in an excessively detailed manner the electoral process of trade unions and also provides for the establishment of an electoral register in the National Electoral Council with an updated list of the members of the trade unions, and that this information could be placed at the disposal of anyone interested. The Committee recalls that "the regulation of procedures and methods for the election of trade union officials is primarily to be governed by the trade union's rules themselves. The fundamental idea of Article 3 of Convention No. 87 is that workers and employers may decide for themselves the rules which should govern the administration of their organizations and the elections which are held therein" [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 354] and that the establishment of a register containing data on trade union members does not respect rights of personality (including privacy rights) and such a register may be used to compile blacklists of workers. In these circumstances, the Committee once again strongly urges the Government to put an end to the functions of the CNE that are established in the National Constitution and to repeal the Special Statute on the renewal of trade union leadership. The Committee requests the Government to keep it informed of any steps taken in this regard. Moreover, if this Statute has been applied from the date of its promulgation to that of the examination of this case, the Committee urges the Government to take steps to ensure that the trade unions which so wish may hold new elections governed by the provisions of their by-laws and without any interference whatsoever by the authorities or by bodies that have nothing to do with workers' organizations.*

513. *As regards resolution No. 01-00-012 of the Comptroller-General's Office of the Republic criticized by the CTV for requiring trade union officials to submit to the Office a sworn declaration of assets within 30 days of taking office and within 30 days of the date on which their term of office ends, the Committee notes that the Government states that: (1) the Comptroller-General's Office of the Republic is a body that is functionally autonomous and even supervises the administration of the Government; (2) the resolution at issue does not require intervention by the Comptroller's Office in matters relating to the administration of trade union funds; and (3) as regards the resolution, there is a wide range of appeal procedures available to persons whose rights have been infringed, which have not been used by the complainant. In this respect, the Committee notes with concern that this resolution is discriminatory in nature, in that it is only applied to trade union officials. In these circumstances, the Committee urges the Government to ensure that resolution No. 01-00-012 of the Comptroller-General's Office of the Republic is repealed.*

514. *As regards the allegation concerning the hostile statements made by the President of the Republic against the CTV and displaying favouritism towards the Bolivarian Workers' Force following a strike in the petroleum sector, the Committee notes that the Government states that it was logical for the Government to deplore the attitude of the Federation of Oil, Chemical and Allied Workers of Venezuela (FEDEPETROL), supported by the CTV, in calling a strike in the country's key industry without going through all the legal procedures (submission of a list of demands, conciliation proceedings, minimum services, etc.) and entailing severe losses for the country. In this respect, although it can understand*

the concerns expressed by the Government, the Committee cannot accept threatening statements by the authorities of the country. Moreover, the Committee observes with concern that this is not the first occasion on which the government authorities have made such statements against the CTV (see 324th Report, paragraph 994). In these circumstances, the Committee deeply deplores the statements made to the media by the authorities in connection with the strike held by petroleum sector workers and once again urges the authorities to refrain from making threatening statements against the CTV or any other trade union affiliated to this Confederation.

515. *As regards the allegations concerning the refusal by the SIDOR-Consorcio Amazonia enterprise to negotiate a collective agreement, despite the fact that the trade union met the requirement laid down in the current collective agreement to deposit a draft new collective agreement with the Zona de Hierro labour inspectorate 90 days before the expiry of its term, the Committee notes the Government's statement that the parties have reached an agreement.*

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

The Committee's recommendations

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

(a) The Committee urges the Government to ensure that the Bill for the protection of trade union guarantees and freedoms and the Bill for the democratic rights of workers are withdrawn.

(b) The Committee once again strongly urges the Government to take steps without delay to repeal or amend the trade union standards and decrees adopted since the arrival of the new Government that are in violation of Conventions Nos. 87 and 98.

(c) The Committee once again strongly urges the Government to put an end to the functions of the National Electoral Council as it is established in the National Constitution and to repeal the Special Statute on the renewal of trade union leadership. The Committee requests the Government to keep it informed of any steps taken in this regard. Moreover, if this Statute has been applied from the date of its promulgation to that of the examination of this case, the Committee urges the Government to take steps to ensure that the trade unions which so wish may hold new elections governed by the provisions of their by-laws and without any interference whatsoever by the authorities or by bodies that have nothing to do with workers' organizations.

(d) The Committee strongly urges the Government to ensure that resolution No. 01-00-012 of the Comptroller-General's Office of the Republic, which requires trade union officials to submit a sworn declaration of assets at the beginning and end of their term of office, is repealed.

(e) The Committee deeply deplores the statements made to the media by the authorities in connection with the strike held by petroleum sector workers and once again urges them to refrain from making threatening statements against the CTV or any other trade union affiliated to this Confederation.

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

Geneva, 9 November 2001.

Max Rood,
Chairperson.

Points for decision: Paragraph 195;
Paragraph 209;
Paragraph 244;
Paragraph 268;
Paragraph 287;
Paragraph 301;
Paragraph 320;
Paragraph 362;
Paragraph 375;
Paragraph 418;
Paragraph 431;
Paragraph 450;
Paragraph 477;
Paragraph 493;
Paragraph 517.