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Introduction

1. The Committee on Freedom of Association, set up by the Governing Body at its 117th Session (November 1951), met at the International Labour Office, Geneva, on 7, 8, 9 and 15 March 2002, under the chairmanship of Mr. Maurice Ramond.

2. The Committee learned with deep sadness and emotion the untimely death of Professor Max Rood. Chairperson of the Committee on Freedom of Association since 1995, Professor Rood proved to be an outstanding conciliator, who was able to maintain the Committee's cohesion by allowing it to follow one of its fundamental rules, i.e. the adoption of decisions by consensus. His profound belief in ILO ideals, his unfailing courtesy and his innate diplomatic skills earned him wide respect from the members of the Committee and of the Governing Body. Mindful of the serious loss resulting from his passing, the Committee shares the grief of his family and relatives.

3. The members of Chilean, Japanese and Panamanian nationality were not present during the examination of the cases relating to Chile (Case No. 2141), Japan (Case No. 2114) and Panama (Case No. 2134), respectively.

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4. Currently, there are 88 cases before the Committee, in which complaints have been submitted to the governments concerned for observations. At its present meeting, the Committee examined 33 cases on the merits, reaching definitive conclusions in 21 cases and interim conclusions in 12 cases; the remaining cases were adjourned for the reasons set out in the following paragraphs.

New cases

5. The Committee adjourned until its next meeting the examination of the following cases: Nos. 2159 (Colombia), 2162 (Peru), 2163 (Nicaragua), 2164 (Morocco), 2166 (Canada/British Columbia), 2168 (Argentina), 2169 (Pakistan), 2170 (Iceland), 2171 (Sweden), 2172 (Chile), 2173 (Canada/British Columbia), 2174 (Uruguay), 2175 (Morocco), 2176 (Japan), 2177 (Japan) and 2178 (Denmark), since 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

6. The Committee is still awaiting observation or information from the governments concerned in the following cases: Nos. 2090 (Belarus), 2096 (Pakistan), 2105 (Paraguay), 2130 (Argentina), 2131 (Argentina), 2133 (The former Yugoslav Republic of Macedonia), 2140 (Bosnia and Herzegovina), 2144 (Georgia), 2150 (Chile), 2154 (Venezuela) and 2157 (Argentina).

Partial information received from governments

7. In Cases Nos. 1986 (Venezuela), 2068 (Colombia), 2088 (Venezuela), 2097 (Colombia), 2103 (Guatemala), 2111 (Peru) and 2151 (Colombia), the governments have sent partial

information on the allegations made. The Committee requests all these governments to send the remaining information without delay so that it can examine these cases in full knowledge of the facts.

Observations received from governments

8. As regards Cases Nos. 2082 (Morocco), 2087 (Uruguay), 2116 (Indonesia), 2123 (Spain), 2124 (Lebanon), 2128 (Gabon), 2136 (Mexico), 2137 (Uruguay), 2139 (Japan), 2149 (Romania), 2158 (India), 2160 (Venezuela), 2161 (Venezuela), 2164 (Morocco), 2165 (El Salvador) and 2167 (Guatemala), the Committee has received the governments' observations and intends to examine the substance of these cases at its next meeting. In Case No. 2114 (Japan), the Committee asks the Government to send urgently its observations on the latest communication of the complainant so that the Committee may take these into account when it examines the case at its next meeting.

Urgent appeals

9. As regards Cases Nos. 2036 (Paraguay), 2120 (Nepal), 2129 (Chad) and 2143 (Swaziland), 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.

Withdrawal of a complaint

10. In Case No. 2152 (Mexico), the complainant organization, the National Union of Mining, Metal and Allied Workers of the Mexican Republic, announced in a communication of 31 January 2002 that the matter submitted to the Committee has been settled and that it withdraws its complaint. The Committee therefore decides to close this case.

On-the-spot missions

Case No. 2086 (Paraguay)

11. The Committee notes that the Government has accepted the proposal formulated by the complainants to the effect that a direct contacts mission visit the country in order to gather information and prepare a report so that the Committee can examine this case with all the elements at its disposal. The Committee proposes to examine this case at its next meeting in May 2002.

Cases Nos. 1952, 2067, 2160 and 2161 (Venezuela)

12. The Committee has been informed that the Government has accepted that a direct contacts mission visit the country in the context of the discussion on the application of Convention No. 87 at the Committee on the Application of Standards (June 2001 session of the International Labour Conference). In view of the fact that the mandate of this mission

covers mainly legislative aspects, the Committee requests the Government to agree to the extension of the mandate of this mission to all the pending cases. The Committee requests the Government to keep it informed in this respect.

Contacts of the Chairperson of the Committee during the International Labour Conference

13. Taking into account the discussions which took place on several occasions on cases concerning Canada, the Committee requests its Chairperson to hold consultations with the Government delegation of Canada, during the 90th Session of the International Labour Conference in June 2002, to examine the general status of pending cases concerning federal and provincial jurisdictions, and to consider the various possibilities of technical assistance or other measures which, through dialogue, would allow finding ways of solving those difficulties that have been identified.

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

14. The Committee considers it necessary to draw the Governing Body's special attention to Case No. 1787 concerning Colombia because of the extreme seriousness and urgency of the matters dealt with therein.

15. The Committee also points out the particular importance it attaches to Case No. 1865 (Republic of Korea) in which the Government is requested to take measures urgently to remedy the difficulties encountered in this case.

Transmission of cases to the Committee of Experts

16. 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: Canada (Case No. 2145), Chile (Case No. 2141), Ecuador (Case No. 2138), Lithuania (Case No. 2078) and Turkey (Case No. 2126).

* * *

Procedural questions

17. For the first time since 1979, the Committee had an in-depth discussion of its procedure taking into account the historical antecedents. It thus touched upon a number of subjects and methods in the light of past experience, both in respect of its procedure strictly speaking and in respect of its practice. It made a series of proposals keeping in mind the following objectives:

– to improve the effectiveness and transparency of the procedure;

– to speed up as much as possible the examination of complaints;

– to improve the Committee's working methods;

– to strengthen and improve the follow-up action on its recommendations.

18. The Committee agreed that several aspects of the procedure and its practice have proven to be globally satisfactory and do not call for major changes. This is the case, in particular, for the applicable rules concerning: receivability of complaints; most of the communications with the parties; length of the procedure; hearing of parties; and on-the-spot missions. It was, nevertheless, the Committee's opinion that a greater effort should be made in respect of the use of preliminary missions and of follow-up missions.

19. The Committee expressed its desire that certain improvements be made in the presentation of its reports with the aim of facilitating the examination of cases by the Governing Body.

20. The Committee also considered that greater publicity should be given to its conclusions and recommendations, particularly in the cases that are of a particularly grave nature. It requested that the relevant services of the Office follow up upon the wish thus expressed, including with the use of new communication technology.

21. The Committee spent a great deal of time on a series of questions justifying, in its view, new proposals of a procedural nature and putting them into practice in order better to achieve the abovementioned objectives.

22. As concerns the composition of the Committee, it was recalled that the current rules created an imbalance in respect of the Workers' and Employers' groups, the substitute members of which cannot participate, by right, in the work of the Committee, and thus do not receive the various corresponding indemnities. The problem has worsened over recent years due to the increase in the number of complaints and their increasing complexity. It would therefore recommend that the appropriate remedial measures be put in place rapidly by enabling all of the substitute members to participate by right in the work of the Committee. This decision would imply financial consequences (the payment of a per diem to substitute Worker and Employer members) which, in the opinion of the Committee, should be examined by the Programme, Financial and Administrative Committee and by the Governing Body.

23. As concerns the Government members, the Committee considers that, bearing in mind the rule that its members participate in their personal capacity, it would be desirable for the nominations by the governments of their members be made by name, which would help to ensure a relative continuity on the Government bench.

24. In order to ensure some coherence with the rule that nationals of countries concerned by a complaint do not participate in the discussion of these cases, it is proposed that the documents concerning these cases not be communicated to them.

25. According to an existing rule, the Committee may invite its Chairperson to hold consultations with a governmental delegation during the International Labour Conference, to draw their attention on the seriousness of some problems and to discuss the various means that would allow their resolution. It is proposed to extend this possibility to all sessions of the Governing Body.

26. The Committee also examined the ways to securing, through the intermediary of the Government, information from all the parties affected by the allegations in appropriate cases. The Committee agreed to adopt on a trial basis a procedure which would allow seeking, as the case may be, the comments of all the parties affected, so that the Government may transmit to the Committee the most exhaustive reply possible. The

practical application of this new rule of procedure should not result in a delay concerning the recourse to urgent appeals made to governments nor in the examination of cases.

* * *

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

Case No. 1992 (Brazil)

27. The Committee last examined this case, concerning dismissals following a strike and other anti-union acts, at its March 2001 meeting [see 324th Report, paras. 21-23]. On that occasion, the Committee requested the Government to inform it of the final outcome of all the judicial proceedings relating to the 54 workers of the Brazilian Post and Telegraph Enterprise (ECT) who were dismissed after the strike held in September 1997.

28. In a communication dated 10 January 2002, the Government states that another three workers have been reinstated, in addition to the 19 workers who had already been reinstated when the case was last examined.

29. *The Committee notes this information with interest and requests the Government to inform it of the final outcome of the remaining judicial proceedings in question.*

Case No. 1957 (Bulgaria)

30. The Committee has been called on several occasions to examine this case, which deals with eviction of trade union premises and confiscation of trade union property of the National Syndical Federation (GMH). When it last examined the case [323rd Report, paras. 35-38], the Committee noted with regret that the Government merely reiterated the information provided in earlier communications, that no progress had been accomplished and that the authorities maintained a non-conciliatory approach. The Committee reiterated its request that constructive discussions be held as soon as possible to settle the issues, and requested to be kept informed of developments.

31. In its communication of 10 September 2001, the Government limits itself to stating that it has no additional information to provide in this respect.

32. *The Committee recalls that this case, which dates back to March 1998, involves very serious allegations of freedom of association principles, i.e. acts by the authorities which make it extremely difficult, if not impossible, for a trade union to function normally. The Committee deeply regrets the Government's continued lack of cooperation and the absence of constructive dialogue, in spite of its repeated calls to do so. The Committee requests once again the Government to initiate as soon as possible discussions with the complainant organization, in order to settle the issues of trade union premises and confiscation of trade union property of the GMH. The Committee strongly hopes that the Government will be in a position to provide positive information in the very near future, and requests it to keep it informed of any development in these respects.*

Case No. 1951 (Canada/Ontario)

33. The Committee has been called on several occasions to examine this case, which dealt with a piece of legislation (Bill No. 160) that prevented school principals and vice-principals from forming and joining organizations of their own choosing. Other issues raised were

proper consultations with unions on changes brought to existing collective bargaining structures and on the consequences of educational policy on the conditions of employment of workers concerned. When it last examined this case at its November 2001 session, the Committee expressed its regret that the Government merely reiterated its previous arguments, and that its position had not evolved since the filing of the case more than four years ago. The Committee reiterated its request that Bill No. 160 be amended and asked the Government to provide follow-up information on its other recommendations concerning consultations with unions [see 326th Report, paras. 31-33].

34. In its communication of 8 January 2002, the Government states that Canadian courts have consistently upheld its position regarding Bill No. 160. The Government adds that it has recently consulted with a variety of stakeholders, including unions, regarding the formulation of policies and development of legislation affecting the education sector, for instance Bills Nos. 80 and 110. Both prior and during any reform initiative unions and other interested parties may express their views by direct communication with the Government and through the legislative process. The Government carefully considers the inputs it then receives.

35. *The Committee recalls the importance it attaches to the holding of full and frank consultations in situations such as the present one and refers in addition to its comments on this subject in two other cases concerning Ontario elsewhere in this report [Cases Nos. 2119 and 2145]. As regards Bill No. 160, the Committee notes the decision (issued on 20 December 2001 by the country's highest judicial authority, the Supreme Court of Canada) in the Dunmore case, where the Court held that the exclusion of agricultural workers from the Labour Relations Act was unconstitutional. In so doing, the Court relied, inter alia, on the "without distinction whatsoever" provision of Article 2 of Convention No. 87, and on the wording of Article 10 of the same Convention, "any organization of workers" [J. Bastarache, para. 27]. The Court further referred to Case No. 1900 of the Committee, another complaint concerning Ontario [ibid. para. 41]. The Committee requests, once again, the Government to amend its legislation to ensure that school principals and vice-principals of Ontario 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 of developments in this respect*.

Case No. 1975 (Canada/Ontario)

36. The Committee has been called on several occasions to examine this case, which deals with a piece of legislation (Bill No. 22, an Act to prevent unionization with respect to community participation under the Ontario Works Act) which denies the right to organize to workers involved in community participation activities, and another one (Bill No. 31) which makes it more difficult for construction workers to enforce their right to organize. When it last examined the case [324th Report, paras. 27-29], the Committee expressed its deep regret at the Government's staunch refusal to act on its recommendations, and urged it once again to amend its legislation to ensure that workers involved in community participation activities be granted the right to organize. The Committee further noted that the information provided by the Government in connection with Bill No. 31 did not address the concerns previously raised, and urged it once again in the strongest terms, to amend the impugned legislation so that collective bargaining in the construction industry, below provincial level, may be initiated by either workers' or employers' representatives at any stage of the process. The Committee requested to be kept informed of any development in these respects.

37. In its communication of 13 September 2001, the Government limits itself to stating that there are no updates regarding its response regarding Bill No. 22, maintains that this Bill

does not violate freedom of association principles and that, at this time, it has no intention to amend it. The Government is silent on issues relating to Bill No. 31.

38. *The Committee, once again, deeply regrets the Government's repeated lack of cooperation, and the absence of constructive dialogue, on this and other cases currently pending before it. The Committee also refers to the recent decision of the Supreme Court of Canada in the Dunmore case, mentioned above in connection with Case No. 1951, where the Court relied, inter alia, on Articles 2 and 10 of Convention No. 87, and referred to Case No. 1900 of the Committee. The Committee therefore requests, once again, the Government to amend Bill No. 22, to ensure that workers involved in community participation activities be granted the right to organize, and Bill No. 31 to ensure that collective bargaining in the construction industry below provincial level may be initiated by either workers' or employers' representatives at any stage of the process. The Committee requested to be kept informed of any development in these respects*.

Case No. 2083 (Canada/New Brunswick)

39. The Committee examined this case, which concerns the right of casual workers to establish and join organizations of their own choosing, and to bargain collectively, at its March 2001 session where it requested the Government to take measures to ensure that these categories of workers enjoyed these rights [324th Report, paras. 235-256] and at its June 2001 session, where it noted that the Government would meet representatives of the complainant organization and requested to be kept informed of developments [325th Report, para. 21].

40. In a communication dated 4 September 2001, the Government of New Brunswick indicated that a meeting was held on 17 May 2001 between government officials and representatives of the complainant organization and that, as a result of that meeting, the Government is currently surveying the legislation and policy of other Canadian jurisdictions on this issue.

41. *While taking note of this information, the Committee recalls that casual workers should have the right to establish and join organizations of their own choosing, and to bargain collectively, in accordance with freedom of association principles. In view of the time lapsed since the filing of the complaint (April 2000), the Committee hopes that the Government will take the necessary legislative measures in the near future, and requests it to keep it informed of developments in this respect.*

Case No. 2135 (Chile)

42. The Committee last examined this case at its November 2001 meeting [see 326th Report, paras. 245-268]. On that occasion, the Committee observed that the complainants disputed 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 were providing an essential service, but also for those who were involved in areas that were 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. The Committee recalled that water supply services were an essential service where the right to strike might be prohibited with adequate protection to compensate for that limitation [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, paras. 544 and 546]. However, the Committee noted that the Government stated that further investigation was needed as regards the claim presented by the complainants, in which the different sections or duties that were carried out within the company be defined so that only those workers who were directly linked to the provision of the essential service

be deprived of the right to strike and that the investigation should be carried out by the Ministry of Labour and Social Security as soon as possible. The Committee appreciated and encouraged that initiative and hoped that the investigation would be carried out very shortly.

43. In a communication dated 11 January 2002, the Government states that the Labour Services are currently studying how to define the different sections or duties within the Metropolitan Sanitation Company in order to identify the workers who are directly linked to the provision of the essential service, and that it will inform the Committee as soon as the studies are finalized.

44. *The Committee notes the Government's statement with interest and requests the Government to keep it informed of developments in this respect.*

Case No. 2110 (Cyprus)

45. The Committee last examined this case at its June 2001 Session [see 325th Report, paras. 238-268], on which occasion it made the following recommendations:

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

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

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

46. In its communication dated 25 October 2001, the Government states that it never had the intention of altering existing bargaining structures of the public sector's industrial relations system nor did it ever attempt to derogate the public employees' right of collective bargaining. In dealing with this case, which concerns a matter of national interest affecting the health and welfare of the entire population of the island, the Government found itself in an unpleasant situation where the only opponents to the intended reform of the national health-care system were mainly the public sector's trade unions and especially PASYDY. In fact, the Bill for the reform of the health-care sector was submitted to the House of Representatives after extensive consultations and negotiations with the social partners, who were given every opportunity to express their views and put forward their claims on aspects, which were of direct concern to them.

47. As regards the Committee's second recommendation, the Government stresses that before the enactment of any special legislation which might affect the status or the terms and conditions of employment of the government employees, it will take all the appropriate measures to secure meaningful and in good faith consultations with PASYDY within the established procedures.

48. As regards the Committee's third recommendation, the Government states that the law for the introduction of a National Health Scheme in Cyprus was enacted by the House of Representatives on 19 April 2001 and published in the *Official Gazette* on 4 May 2001. Before the enactment of the law and specifically on 9 February 2001, the Tripartite Liaison

Committee was convened and it discussed the aspects of the National Health Scheme that gave rise to the dispute between PASYDY and the Government. Following the meeting of the Tripartite Liaison Committee and further discussions at the Health Committee of the House of Representatives, section 65 of the Bill was amended and a new section 66 was added. The final text of these sections, as enacted by the House of Representatives, reads as follows:

> 65. The operation of this Law shall in no manner prejudice: –
>
> (a) the rights of civil servants employed in the medical services, the public health services, the pharmaceutical and other services of the Ministry of Health, who will be serving on the date on which the General Health System will come into full operation;
>
> (b) the interests of casual employees and of all other categories of permanent employees, employed by the abovementioned services.
>
> 66. (1) The state hospitals shall continue to be owned by the State and the introduction of the General Health System shall not affect their ownership status.
>
> (2) The State shall have the obligation to make every provision necessary, so that the said hospitals shall be modernized in the areas of organization, management, administration and equipment and to utilize the available resources in the most beneficial and effective way possible.

The Government states that the combined effect of the above two sections provides an adequate safeguard of the terms and conditions of employment of the employees of the state health services. Moreover, given (a) that the General Health Scheme is not expected to come into operation before the next four-five years and (b) that any change in the management of the state hospitals, which might affect the terms and conditions of employment of the employees concerned, will be introduced by special legislation, the Government will give PASYDY every opportunity for consultation within the established framework of collective bargaining. At the moment, the Government is studying various alternatives as to the reform of the management of the state hospitals. In due time, this will be discussed exhaustively with PASYDY.

49. *The Committee takes due note of this information.*

Case No. 2051 (Colombia)

50. The Committee last examined this case, concerning the creation of cooperatives to the detriment of trade unions and the dismissal of workers who did not accept new employment in the cooperatives, at its March 2001 meeting [see 324th Report, paras. 360-371]. On that occasion, the Committee urged the Government to ensure that the administrative investigation under way was concluded rapidly and that it covered not only the allegation that employment in the cooperatives was offered to fixed-term workers of Confecciones Colombia SA under threat of dismissal, but also the other allegations that: (1) the cooperatives are a sham since they are managed by the employers and since the workers work in the same place, with the same bosses and with the same machinery as those still with the enterprise; (2) in February 1999 the company ordered a mass dismissal of cooperative workers; and (3) the creation of the associative labour cooperatives in the enterprise has had disastrous consequences for the workers and their trade unions.

51. In its communication dated 4 June 2001, the Trade Union of Textile Industry Workers (SINTRATEXTIL) maintains that the cooperatives of Confecciones Colombia S.A. were established, managed and manipulated by the enterprise with the aim of undermining the trade unions.

52. In a communication dated 4 September 2001, the Government states that the Ministry of Labour and Social Security, through the Office of the Coordinator of Inspection and Surveillance of the Antioquia Territorial Directorate, issued resolution No. 1822 of 1 November 2001 acquitting Confecciones Colombia Everfit-Indulana. It adds that the investigation found that there were four work cooperatives operating in the enterprise (CODESCO, COTEXCON, SERVIEMPRESAS and PARTICIPEMOS), each with a manager and an office on the premises of the enterprise, and that the machinery, owned by the enterprise, was being used by the cooperatives under a loan contract. These cooperatives enjoyed financial, administrative and operational autonomy in the execution of contracts signed with Confecciones Colombia SA. The Government adds that it could not be ascertained whether the members of the cooperatives had been forced or coerced into withdrawing from the enterprise and joining the cooperatives and that it was demonstrated that the enterprise had not unilaterally dismissed any workers within the six-month period. The Government concludes that no appeal has been lodged against the abovementioned resolution.

53. *The Committee takes due note of the information provided by the complainant and by the Government. In this respect, the Committee notes with regret that the investigation carried out by the Ministry did not take account of all the complainants' allegations in accordance with the recommendation made by the Committee. Thus, the Government has not sent any information on the allegation that the cooperatives are a sham, on the mass dismissal of workers of the cooperatives in 1999 and the consequences of these cooperatives for the workers and their organizations. The Committee urges the Government to take steps without delay to ensure that an investigation is carried out covering these allegations, and that it is concluded rapidly, and to inform it of the outcome.*

Cases Nos. 1987 and 2085 (El Salvador)

54. In its previous examination of Case No. 1987, the Committee requested the Government to keep it informed with regard to the reform of the Labour Code (requested by the Committee in its 313th Report) with regard to the following points: the 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 organization (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) [see 326th Report, paras. 76 and 78].

55. In its previous examination of Case No. 2085, the Committee requested the Government to keep it informed of any initiative by FESTSA to obtain legal personality. It also, once again, requested the Government 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 326th Report, para. 81].

56. In a communication dated 7 January 2002, the Government states that the Constitution of the Republic recognizes freedom of association and lists the various rights laid down in the legislation. The Government adds that public employees can meet in associative groups that conform to the civil laws of the country and that do not correspond to the organizational forms and practices of workers' associations but that these groups must conform to the sovereign decisions and requirements of the country as laid down in the reforms to the Constitution of the Republic proclaimed by the Constituent Legislative Assembly in 1983 and to the Labour Code in 1994. These reforms were agreed upon on a tripartite basis at the national forum for consultation, resulting from the peace agreements,

and with technical assistance support from the ILO. The Government indicates that the ILO itself refers to the reforms of the Labour Code of 1994 in a document published by the ILO Regional Office for Latin America and the Caribbean, which states that regarding collective labour relations in El Salvador, the new law represented a very advanced text in relation to the other texts in force in Latin America in the past ten years. The Government plan, Alliance for Labour, envisages a strategic line towards the adaptation of the legal framework to conform to the requirements of the national and international labour market.

57. *The Committee hopes that the adaptation of the legal framework to which the Government refers will take place in the near future and will include all the reforms requested by the Committee. The Committee requests the Government to keep it informed in this respect and points out that some of the points calling for reform, for example the need to guarantee the right of association for public employees, are in fact serious violations of that freedom. Finally, the Committee notes that the Government has not provided information on any steps that the trade union organization FESTSA may have taken to obtain legal personality and requests the Government to keep it informed in this respect.*

Case No. 1978 (Gabon)

58. The Committee last examined this case, which concerns the existence and free functioning of trade union structures of the Gabonese Confederation of Free Trade Unions (CGSL) in the SOCOFI enterprise and the dismissal of trade unionists for exercising their right to strike, at its June 2001 meeting [see 325th Report, paras. 29-33]. At that time, it requested the Government to confirm the existence and free functioning of the CGSL trade union in the SOCOFI enterprise. The Committee had further asked the Government to keep it informed of the decision of the Court of Appeal on the legality of the strike launched by the CGSL at the SOCOFI enterprise in 1997.

59. In its communication dated 16 November 2001, the Government sent a copy of the minutes of a meeting that took place in September 2001 at the Directorate-General of Labour between the Director for International Relations, CGSL representatives and the SOCOFI enterprise. The Government states that following this meeting, both partners agreed to the resumption of CGSL trade union structure activities at SOCOFI. However, in view of the current fall in the volume of work at SOCOFI, the CGSL officers decided to suspend their activities until the enterprise experienced an upturn in its operations. Moreover, the Government indicates that the decision on the legality of the strike at the SOCOFI enterprise is still on appeal before the Libreville Labour Court and it will not fail to keep the Committee informed in this regard.

60. *The Committee takes note of this information. With regard to the resumption of CGSL activities at SOCOFI, the Committee welcomes the Government's initiative in summoning the parties concerned to a meeting, which enabled this issue to be resolved. As regards the decision concerning the legality of the strike at the SOCOFI enterprise, the Committee can only deplore the fact that more than four years after the strike was launched, the workers who were dismissed for involvement in the strike are still awaiting the Court's decision. The Committee once again urges the Government to take the necessary measures – if the strike is ruled to have been lawful – to ensure that the workers dismissed for exercising the right to strike are reinstated in their posts without loss of pay or, if this is not possible, that they be compensated. The Committee again asks the Government to notify it of the decision of the Labour Court as soon as the decision is handed down.*

Case No. 1970 (Guatemala)

Murders

61. At its November 2001 meeting, the Committee made the following recommendations on the issues still pending [see 326th Report, paras. 86 and 90]:

- The Committee 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.
- 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.

62. In a communication dated 7 January 2002, the Government sent a detailed statement of the action taken by the police and the Public Prosecutor's Office since June 1999, with regard to the murder of Baldomero de Jesús Ramírez. The Government states that, regarding the murders of José Feliciano Vivas, Carlos Solórzano, José Alfredo Chacón Ramírez and Ismael Mérida, the state of the investigation remains essentially the same as that communicated to the Committee for its November 2001 meeting.

63. *The Committee notes that the Government's statements on the investigations into these murders do not reveal if those responsible have been identified. At its previous meeting, the Committee noted with grave concern that, according to the report of the direct contacts mission, 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. The Committee hopes that the investigations and proceedings currently under way will allow those responsible for the murders to be identified and punished and asks to be kept informed. Finally, the Committee once again requests the complainant to send further information with regard to the murder of Cesáreo Chanchavac.*

Dismissals

64. At its November 2001 meeting, the Committee made the following recommendations [see 326th Report, para. 95]:

> The Committee notes 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.

65. In a communication dated 7 January 2002, the Government states that the information provided to the Committee for its November 2001 meeting has not changed and that it will keep the Committee informed of developments.

66. *The Committee notes this information and emphasizes that as the allegations refer to acts that took place in 1995 and 1997, it is important that the proceedings relating to acts of discrimination should progress rapidly as an excessive delay amounts to a denial of*

justice. The Committee hopes that the rulings relating to the dismissals are handed down and that the negotiation of a collective agreement at the San Carlos Miramar farm make progress in the near future and requests the Government to keep it informed in this respect.

Case No. 1854 (India)

67. The Committee last examined this case at its June 1999 meeting [see 316th Report, paras. 3-65]. On this occasion the Committee had recalled that this case concerned the murder of Ms. Ahilya Devi, a trade unionist who was allegedly organizing rural workers in the State of Bihar on 23 August 1995 and that the Government had indicated that on the basis of the investigation Ms. Devi was murdered on account of her activities related to smuggling which had led to antagonism with other persons also involved in smuggling. The Committee had requested the Government to supply copies in an ILO working language of the judgement to be handed down in relation to this murder that occurred in 1995 at an early date.

68. In communications dated 29 May and 9 November 2001, the Government states that Case No. 170/95 regarding the murder of Ahilya Devi has been pending before the court of Chief Judicial Magistrate Kishanganj of the Government of Bihar. The Government indicates that out of the seven accused, one has been declared dead (Mr. Dinesh Mandal) and two are absconding (Mr. Munna Punjabi and Mr. Shravan Giri). The Government indicates that the Chief Judicial Magistrate issued orders on 1 October 2001, following a petition motioned by the Public Prosecutor, to proceed with the hearing of the case in the District Session Court, Purnea, in respect of the accused parties who were present for trial. Furthermore, the Government indicates that it is waiting for an implementation report by the Home Commissioner of the Government of Bihar, who has been requested to execute an earlier court order regarding the attachment of property and the arrest of the two absconding parties.

69. *The Committee recalls the seriousness of this case of the murder of a trade unionist and expresses its deep concern regarding the excessive delay in court proceedings which amount to a denial of justice. The Committee takes note of this information and requests the Government to keep it informed of the outcome of the criminal proceedings initiated against the accused parties present for trial (Mr. Bhirigunath Gupta, Mr. Rattan Ghosh, Mr. Papan Chaki and Mr. Narsingh Singh), and of developments regarding the arrest of the two absconding parties.*

Case No. 1991 (Japan)

70. The Committee last examined this case concerning allegations of anti-union discrimination arising out of the privatization of the Japanese National Railways (JNR), at its June 2001 meeting [see 325th Report, paras. 40-43]. The Committee had urged all parties concerned to accept the Four Party Agreement, which set out conditions aimed at encouraging negotiations between the Japan Railway companies (JR companies) and the complainants with a view to reaching a satisfactory solution rapidly which would ensure that the workers concerned who were dismissed as a consequence of the privatization were fairly compensated. Noting that KOKURO had finally accepted the Four Party Agreement of 30 May 2000 which offered a real possibility of speedily resolving the issue of non-hiring by the JRs, the Committee had urged all parties concerned to continue serious and meaningful negotiations with a view to reaching a satisfactory solution rapidly which would ensure that the dismissed workers concerned were fairly compensated.

71. In a communication dated 13 September 2001, the KOKURO indicates that little progress has been made in opening the negotiations between the JR companies and the unions despite the fact that KOKURO accepted the framework provided by the Four Party Agreement. The KOKURO explains that it persuaded its members and families to accept it mainly because the Freedom of Association Committee recommended it to do so. The KOKURO expresses its concern that the Four Party Agreement will lose its political value if further delays occur in starting the negotiations. The content of this communication was supported by the International Transport Workers' Federation in a communication of September 2001. In a communication dated 1 February 2002 the KENKORO-TETSUDOHONBU (formerly ZENORO) provides information regarding the non-implementation of the Committee's recommendations.

72. In a communication dated 10 October 2001, the Government explains that it convened the Four Parties' Consultation Committee on 15 March 2001. On that occasion, it was informed that during the national conference of KOKURO's Executive Committee in January 2001, the KOKURO adopted, on the one hand, activity guidelines in which it stated that "the JRs do not bear legal responsibility in the non-hiring cases", and, on the other hand, it claimed that "the Tokyo High Court decisions on this issue were unfair and that it would make every effort to have the Supreme Court hand down a justifiable decision". Moreover, according to the Government, some KOKURO members who are against the Four Party Agreement have formed a new organization and keep organizing activities against the Agreement. In view of the contradicting statements made by KOKURO, the Government explains that the JRs cannot trust KOKURO's statement that "the JRs bear no legal responsibility" as long as KOKURO does not take concrete measures to withdraw the lawsuits immediately. The ruling parties are now asking the KOKURO to consider this point. Finally, the Government states that while all parties concerned, including the KOKURO, are now carrying adjustments among themselves on the basis of the direction of the Agreement, the KOKURO's contradicting stance concerning the JR's legal responsibility explains why much progress has not yet been made on this matter.

73. *The Committee takes note of this information. It regrets that since all parties agreed to the Four Party Agreement in May 2000, no real progress has been made since. The Committee observes that, when it last examined the case in June 2001, the Government had already made a reference to the activity guidelines adopted in January 2001 by KOKURO in which KOKURO had recognized that, the JRs bore no legal responsibility. The Committee agrees that if further delays occur in starting the negotiations, the Four Party Agreement could lose its value. Therefore, the Committee once again urges all parties concerned, including the Government, to start, without any further delays, serious and meaningful negotiations with a view to reaching a satisfactory solution rapidly, which would ensure that the dismissed workers concerned are fairly compensated. The Committee once again requests the Government to keep it informed of any progress in this regard. The Committee further requests the Government to reply to the observations of KENKORO-TETSUDOHONBU contained in a communication dated 1 February 2002.*

Case No. 2078 (Lithuania)

74. The Committee last examined this case at its meeting in November 2001 when it noted with interest that the amendments to the Act on the Settlement of Collective Disputes ensuring participation of workers' and employers' organizations concerned in the determination of minimum services had been prepared and submitted to the social partners for their observations, and that the provisions of this Act had been included in the draft Labour Code which was also being discussed with the social partners [see 326th Report, paras. 99-101].

75. In its communication dated 21 December 2001, the Government indicates that the draft Labour Code, after comprehensive discussions with the social partners, was approved by the Tripartite Board of the Republic of Lithuania as well as by the Government and was submitted to Parliament for adoption. The Labour Code includes provisions concerning the regulation of collective disputes as well as provisions providing for consultation with the parties to a collective dispute for the determination of minimum services during a strike. Once the Labour Code will be in force, the old Law on Regulation of Collective Disputes will no longer be applicable.

76. *The Committee takes note of this information with interest and requests the Government to provide it with a copy of the new Labour Code once it has been adopted by Parliament. The Committee draws this case to the attention of the Committee of Experts on the Application of Conventions and Recommendations.*

Case No. 2109 (Morocco)

77. The Committee last examined this case, which concerns the dismissals of trade unionists following the establishment of a trade union office and acts of anti-union repression, at its November 2001 session [see 326th Report, paras. 107-109]. The Committee had requested the Government to take all necessary measures to ensure that the ruling handed down by the relevant court – if it confirmed the labour inspectorate's decision that there had been a violation of freedom of association at 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 full compensation. The Committee had also requested the Government to keep it informed of developments concerning the behaviour of the Governor of the town of Salé, who had allegedly made statements against trade unions and acted in an anti-union manner, in particular with regard to trade union members of the Fruit of the Loom company in that town.

78. In a communication of 5 February 2002, the Government indicates that the court has not yet ruled on the two records entered by the Labour Inspectorate. As regards the eight workers who filed proceedings to obtain compensation for their unlawful dismissal, the Government states that the court has found in favour of one worker, ruling that he was entitled to a legal compensation of 3,000 dirhams (approximately US$250); another worker who had not sued the company has been reinstated in his post; and the court has yet to hand down its decision concerning the other six workers.

79. Finally, the Ministry of Employment has requested the relevant department to provide it with information regarding the anti-union behaviour of the Governor of the town of Salé.

80. *The Committee takes note of this information. It observes that more than 18 months have elapsed since the dismissal of eight trade union officers, which the Labour Inspectorate declared unlawful. The Committee recalls in this respect that the Government is responsible for preventing all acts of anti-union discrimination, and must ensure that such complaints be examined promptly. Substantive rules that may exist in national legislation are not sufficient if they are not backed up by effective procedures that ensure appropriate protection against such acts. Accordingly, the Committee requests once again the Government to keep it informed of the court ruling concerning the records entered by the Labour Inspectorate, and to provide it with the court decisions handed down in the proceedings filed by the workers to obtain compensation for unlawful dismissal, including the judgement concerning the worker who is said to have received a compensation of 3,000 dirhams. Finally, the Committee requests the Government to keep it informed of measures actually taken concerning the allegations of anti-union behaviour by the Governor of the town of Salé.*

Case No. 2009 (Mauritius)

81. The Committee last examined this case at its March 2001 meeting, on which occasion it had called upon the parties to come promptly to an agreement on all the modalities concerning the granting and use of time-off facilities to teachers' unions [see 324th Report, paras. 63-65].

82. In a communication dated 9 January 2002, the Government indicates that, on 1 June 2001, it decided that a committee chaired by the Ministry of Civil Service Affairs and comprising the Ministry of Education and Scientific Research would meet the relevant trade unions in order to reach an agreement on the issue of time-off facilities to teachers' unions. The Committee met with the Government's teachers' unions on 21 June 2001 and again on 7 January 2002. The teachers' unions expressed their appreciation that industrial relations had improved considerably and the Ministry of Education and Scientific Research had also been providing facilities to their members to attend workshops and seminars organized by the unions. It was also suggested that the Ministry could come to an understanding with the teachers' unions to grant time-off facilities for trade union activities in accordance with the Ministry's circular letter dated 7 June 1989 and that the principles laid down in the circular letter dated 8 May 1992, of the Head of the Civil Service, be respected. The Ministry also agreed to discuss the proposals put forward by the teachers' unions at the ministerial level and report back as soon as possible so that another meeting could be fixed for a satisfactory conclusion of the issue.

83. *The Committee takes note of this information with interest and asks the Government to keep it informed of further developments in this matter.*

Case No. 2106 (Mauritius)

84. The Committee examined this case at its June 2001 meeting [see 325th Report, para. 488] where it made the following recommendations. Noting that tripartite discussions were taking place concerning the pay increase for public servants, the Committee expressed its trust that constructive negotiations, for which the bargaining agent should have full access to information, would be held, taking fully into account the increase decided by the previous Government, and requested the Government to keep it informed of the outcome of these discussions; the Committee also requested to be kept informed of the outcome of judicial proceedings filed against the cancellation of the pay increase. As regards the situation at the Rose Belle Sugar Estate, the Committee recommended that good faith bargaining resume on pending issues, with the bargaining agent being given full information on financial and other data enabling them to assess the situation in full knowledge of the facts, and requested the Government to keep it informed of developments.

85. The Government gave the following information in a communication of 24 August 2001:

– A national tripartite meeting, chaired by the Deputy Prime Minister and the Minister of Finance with the participation of various federations and confederations, including the complainants, took place in early May 2001. The unions were fully briefed on the economic situation of the country and, in spite of a difficult budgetary situation, constructive negotiations led to the granting of a 5 per cent salary compensation (higher than the current inflation rate of 4.4 per cent) to public servants in the lowest income group. The Government attaches the scale of salary increments granted, ranging from 2.62 per cent to 5 per cent.

– The Mauritius Labour Congress has been advised in writing that, should they wish to pursue their claim of Rs300 for public officers, this matter should be taken up with

the Pay Research Bureau (PRB), as part of the ongoing review exercise of the public sector pay and grading structure. The Government points out that the claim for Rs300 was not one for compensation for loss of purchasing power; rather, that amount represented an interim measure pending the report of the Heeralall Committee, which had been appointed to look only in anomalies arising out of the 1998 PRB report. That report has been published and all its recommendations have been fully implemented.

– The Government has further agreed to pay an end-of-year bonus, representing one month's salary, to workers in both the public and private sectors. This bonus will henceforth become permanent under the End of Year Gratuity Act, which has been enacted by the National Assembly. This represents a major improvement in the conditions of service of both private and public sectors, since this payment will now be automatic, as opposed to the previous situation where it was decided annually whether that bonus would be paid.

– The Government also indicates its intention to hold monthly national tripartite meetings with social partners, to discuss labour-related issues and the socio-economic development of the country.

– Regarding the judicial proceedings mentioned in the complaint, the Government indicates that a notice of *"mise en demeure"* was indeed served on 4 October 2000 by the Federation of Civil Service Unions, requiring the Government to pay all officers an increase of Rs300, but that no lawsuit has been filed.

– The financial situation at the Rose Belle Sugar Estate is still precarious. Meetings are being held with neighbouring sugar factories with a view to closing it. Under section 24 of the Cane Planters and Millers Arbitration and Control Board Act, an application for closure must be made to the Minister of Agriculture at the latest by 15 October of any preceding crop year. In these circumstances, the Government does not consider it appropriate to enter into negotiations at this point. Once the situation is cleared, which should not take time in view of the statutory limitations, the negotiations will be carried out, taking into account the conclusions and recommendations of the Committee.

86. In a communication dated 12 October 2001, the FCSU states that there has been no development as regards the Rs300 interim pay increase and that the Government has refused all negotiations on this issue. It adds the following information:

– on 25 June 2001, the FCSU requested a meeting with the Deputy Prime Minister and the Minister of Finance; on 2 July 2001, the latter replied that a tripartite meeting had already taken place in May, where all issues were discussed, and that no further meeting was warranted; on 18 July, the FCSU replied to the Minister that the Rs300 issue was never raised at that meeting, whose only agenda was to discuss a salary compensation to compensate a rise in the Consumer Price Index (for the 2000-01 financial year); it never received any answer to its request for another meeting;

– the FCSU adds that workers' representatives merely make representations to the PRB and are never made aware of the Government's intentions and proposals as an employer; due to its present set up and mode of functioning, the PRB is not an appropriate forum where the parties could negotiate;

– furthermore, the National Tripartite Committee deals with the private sector, and never had anything to do with pay negotiations in the public sector;

– the FCSU concludes that the Government is disregarding a collective agreement, continues to refuse to pay the Rs300 increase and to hold negotiations, despite the Committee's recommendations, all of which is in violation of freedom of association principles.

87. In its communication of 16 November 2001, the Government reiterates some of the information provided in its communication of 21 August 2001, points out that it followed the Committee's recommendations by discussing the issues within the National Tripartite Commission, and provides the following additional information:

– two meetings were held in May 2001, where the unions were fully briefed on the economic situation; another meeting was held on 19 August 2001 under the chairmanship of the Deputy Prime Minister and the Minister of Finance, where all trade union federations were convened, to discuss budget implementation; the unions were given full opportunity to present their views, but the President of the FSCU did not attend the meeting;

– the Pay Research Bureau, set up in 1978 with the specific objective of fixing wages and conditions of employment in the public service, has fulfilled exactly that mandate since its creation. The PRB makes recommendations only after having consulted all parties concerned, mainly trade unions. The PRB conducts salary reviews every five years and has already started procedures for the next review, due in 2003. The Ministry of Finance has informed the Mauritius Labour Congress that it may take up the issue of the Rs300 with the PRB as part of that ongoing exercise;

– the Government is concerned about the negative impact of the 11 September events on the Mauritian economy and must exercise still greater caution in the management of the financial situation; it has decided to set up a National Economic and Social Council, which would include trade unions and other social partners to discuss broad economic and social policies and projects; the Bill providing for the establishment of the Council has been discussed with all partners concerned.

88. *The Committee notes that, notwithstanding the parties' differing appreciation on the nature and extent of the consultations and discussions which were held, a national tripartite meeting took place, which led to salary increases being granted to public servants on a sliding scale in favour of the lowest-paid category of personnel. The Committee further notes that private and public sector workers alike will henceforth get a statutory yearly bonus, which complements the compensation package. Noting that no judicial proceedings have been filed concerning the claim for Rs300, which claim might be taken up with the PRB as part of the ongoing salary review exercise, the Committee requests the Government to keep it informed of the outcome, if any, of these PRB proceedings. Noting that the Government intends to take into account its previous conclusions and recommendations as regards the situation at the Rose Belle Sugar Estate, the Committee requests the Government to keep it informed of developments in this respect*

Case No. 1880 (Peru)

89. At its March and November 2001 meetings, the Committee made the following recommendations on the remaining issues [see 326th Report, para. 132]:

– the Committee requests the Government to carry out an investigation into the dismissal of trade union official, Mr. Barrueta Gomez, and if it is found to be based on anti-union motives, to reinstate him;

– the Committee requests the Government to keep it informed of the final outcome of the proceedings concerning the dismissal of trade union leader Mr. Adrian Grispin.

90. In its communications of 24 January and 7 February 2002, the Government states that it will provide the information concerning Mr. Barrueta Gomez as soon as it will receive it from the judicial authorities. The Government also indicates that, on 23 November 2001, the Supreme Court of Justice ruled that the petition filed by Mr. Adrian Grispin against his dismissal was irreceivable (thus confirming the decisions of the lower courts).

91. *The Committee notes that the Supreme Court of Justice ruled as irreceivable the petition filed by the trade union leader, Mr. Adrian Grispin, to have his dismissal declared null and void. The Committee requests the Government to keep it informed of the final court decision concerning the dismissal of trade union official Mr. Barrueta Gomez.*

Case No. 2049 (Peru)

92. The Committee last examined this case at its meeting in June 2001 [see 325th Report, paras. 510-523]. On that occasion, the Committee requested the Government to initiate an independent inquiry into the alleged acts of violence committed during the strike held in August 1999 against the workers of ENAFER S.A. and their families with a view to clarifying the effects, determining responsibility and punishing those responsible.

93. In communications dated 25 June, 27 August 2001 and 14 January 2002, the Government undertook to inform the Committee of the facts once it had obtained the information requested and it accepted the responsibility to avoid any excess of duty in acquiring this information, such as occurred during the situation in question. The Government also indicates that it has requested further information from ENAFER S.A. In addition the Government wishes that the complainant in this case (the CGTP) would submit a detailed list of the workers who were allegedly victims of the acts described above.

94. *The Committee notes this information, while regretting that more than two years have passed since the alleged acts took place and that the Government still does not have concrete results of the inquiry, and requests that the necessary measures be taken without delay for the inquiry to be carried out and results forthcoming in the very near future.*

Case No. 2059 (Peru)

95. The Committee last examined this case, concerning anti-trade union dismissals and practices, at its meeting in June 2001 [see 325th Report, paras. 74-77]. On that occasion, the Committee requested the Government: (1) to confirm that Mr. Oliveros Martinez had been reinstated; (2) to carry out, as a matter of urgency, an inquiry into the alleged anti-union discrimination and intimidation perpetrated in the Banco Continental (allegations concerning pressure brought to bear on unionized workers to leave their union, the award of promotions or salary increases virtually exclusively to non-unionized workers, etc.); and (3) to guarantee the right of persons hired under training agreements to organize and to ensure that the employment conditions of these workers are covered by the collective agreements in force in the enterprises where they are employed.

96. In communications of 19 September 2001 and 11 January 2002, the Government indicates that (1) the Banco Continental lodged an appeal for annulment of the ruling against it to reinstate Mr. Oliveros Martinez, with remuneration of back wages, on 12 March 2001, and that this has not yet been dealt with by the Division for Constitutional and Labour Law of the High Court; (2) with regard to the allegations of anti-union discrimination, the Government will continue to prevent any anti-union discrimination and intimidation being

perpetrated in the Banco Continental, just as it would prevent this occurring with any other employer, through agreement among the social partners, which is the aim of the National Labour and Promotion Council and by strengthening the supervisory system laid down in the General Law on Labour Inspection and Protection of Workers; and (3) the Banco Continental was asked its criteria for the award of promotions or salary increases to its employees, and to explain the measures it had taken concerning the allegations in this case.

97. *The Committee requests the Government to keep it informed of the outcome of the appeal to annul lodged by the Banco Continental with regard to the ruling on the dismissal of Mr. Oliveros Martinez. The Committee notes that with regard to the allegations of anti-union discrimination and intimidation at the Banco Continental, the Government does not indicate that an inquiry is being carried out but only that it had requested Banco Continental its own version of the facts. The Committee repeats its request that the Government carry out, as a matter of urgency, an inquiry into the alleged anti-union discrimination and intimidation perpetrated in the Banco Continental. With regard to persons hired under training agreements, the Committee notes that the Government does not specifically refer to its previous recommendations and, therefore, repeats its request that the right of these workers to organize be recognized and that they should be covered by the collective agreements in force in the enterprises where they are employed.*

Case No. 1826 (Philippines)

98. The Committee last examined this case, which concerns the exercise of trade union rights in the Danao Export Processing Zone and more particularly a certification election at Cebu Mitsumi Inc., at its November 2001 session [326th Report, paras. 136-139]. On that occasion, the Committee had noted with regret that the certification election, 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". The Committee expressed the firm hope that the mediator-arbiter would rapidly issue a decision compatible with freedom of association principles, and requested the Government and the complainant to keep it informed of developments. The Committee further reiterated 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. Finally, the Committee requested the Government, once again, to provide its observations concerning the suspension of Mr. Ulalan, president of the Cebu Mitsumi Employees' Union (CMEU).

99. In a communication dated 15 January 2002, the Government indicates that the certification dispute was submitted on 5 October 2001 to a mediator-arbiter, who is supposed to resolve the issue before 31 January 2002. The Government does not give any indication on the other issues.

100. *The Committee recalls that this case, which dates back to March 1995, has been examined on no less than seven 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; 326th Report, paras. 136-139]. In view of the lengthy delays, the Committee strongly hopes that the mediator-arbiter will issue very shortly a decision fully taking into account freedom of association principles; it requests the Government to provide it with a copy of that decision, and to keep it informed of developments. The Committee requests once again the Government to provide information on the suspension of Mr. Ulalan and on steps taken with a view to establishing an appropriate, fair and speedy certification procedure, providing adequate protection against acts of interference by employers in such matters.*

Case No. 1914 (Philippines)

101. When it last examined this case at its November 2001 session [see 326th Report, paras. 140-142], 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: six years since the first order for reinstatement (October 1995) of around 1,500 leaders of the Telefunken Semiconductors Employees' Union (TSEU); and four years since the Supreme Court had issued a decision (December 1997) ordering the immediate reinstatement, without exception, of all the TSEU workers concerned. While noting the decision issued by the Supreme Court on 18 December 2000, the Committee urged once again the Government 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.

102. In its communication of 9 January 2002, the Government states that on 16 January 2001, the Department of Labor and Employment (DOLE) received a copy of a Supreme Court decision dated 18 December 2000, dismissing the petition filed by the Telefunken Semiconductors Employees' Union-FFW and individual union members, Messrs. Danile Madara and Romeo Manayao, and affirming the appealed decision dated 23 December 1999. Aggrieved, the petitioner Union-FFW filed a motion for reconsideration praying that the case be remanded to the DOLE for reception of evidence. On 21 February 2001, the Supreme Court issued another resolution denying with finality the motions filed by petitioners. This prompted the petitioners to file a motion for Leave to Admit the attached second motion for reconsideration. The same was denied by the Supreme Court in a resolution dated 13 August 2001 with a directive that an entry of judgment be issued. On 20 October 2001, the petitioners filed an omnibus motion to vacate the decision with leave of court. As of date, the Department is awaiting the Supreme Court resolution on the omnibus motion or entry of judgment so that it can enforce the decision of the Supreme Court and, ultimately, close the case.

103. *The Committee takes due note of this information. It notes however, with deep concern, that six-and-a-half years have elapsed since the anti-trade union dismissals (which took place in September 1995) and insists once again on the fact that justice delayed is justice denied. The Committee recalls that in December 1997, the Supreme Court had issued a decision ordering the immediate reinstatement, without exception, of all TSEU workers who had been dismissed following strike action in September 1995 and therefore urges once again the Government to take appropriate measures to ensure that all these workers be immediately reinstated in their jobs under the same terms and conditions prevailing before the strike or, if reinstatement is no longer a feasible solution due to the long period since the dismissal, that they be paid full compensation in this regard.*

Case No. 2094 (Slovakia)

104. The Committee examined this case, which concerned amongst other things allegations regarding a legislation which would restrict the right to strike, at its November 2001 session [see 326th Report, paras. 478-493]. On that occasion, it requested 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 of the Act. It also trusted that all the relevant amendments to the said Act would be adopted in the near future.

105. In a communication dated 11 February 2002, the Government indicates that it has taken full account of the principles of freedom of association in drafting the amendments to

Act No. 2/1991, Collection of Laws on Collective Bargaining. In particular, the new section 17(8)(c) reads as follows: "The respective trade union shall notify the employer in writing at least three working days prior to the beginning of the strike with a list of the names of the representatives of the respective trade union authorized to represent the participants in the strike." The Government explains that the purpose of this provision is to identify who will represent the participants in the strike and with whom the negotiations will take place concerning questions related to the strike such as a negotiated minimum service in essential services, etc. The Government insists that this provision does not constitute discrimination against trade union representatives and recalls that protection against all acts of anti-union discrimination against trade union officials is provided by sections 13, 39, 74, 229 and 235 of the Labour Code (copies are enclosed). Finally, the Government indicates that the amendments to Act No. 2/1991 are reflected in Act No. 209/2001, Collection of Laws, which came into force on 1 January 2002 (copy of the new Act is also attached).

106. *The Committee takes due note of this information.*

Case No. 1581 (Thailand)

107. The Committee last examined this case at its June 2001 meeting when it expressed the hope that the State Enterprise Labour Relations Act (SERLA), which had entered into force on 8 April 2002, and the draft Labour Relations Act would grant fully the right to organize and to bargain collectively to state enterprise employees and private sector employees respectively [see 325th Report, paras. 81-84]. The Committee requested the Government to send a translated version of the SERLA which was received on 27 September 2001.

108. *The Committee notes the Government's communication of 6 February 2002 concerning Labour Relations Act No. 3, which came into force on 17 November 2001. The Committee notes with interest that the Labour Relations Act grants state enterprise labour federations the right to join a labour confederation of the private sector. With regard to the SERLA, the Committee further notes with interest that it grants employees of state enterprises the right to form and join trade unions and federations, and bargain collectively. The Committee also notes with interest that the state enterprise employees' associations, which were barred from collective bargaining, are now replaced by trade unions.*

109. *The Committee notes, however, with regret a certain number of restrictions maintained by the SERLA concerning the right to organize. In particular, the Committee expresses its concern over the maintenance of a situation of trade union monopoly in state enterprises and certain measures of interference in trade union affairs. Section 40 of the Act explicitly prescribes a single-trade-union system: "each state enterprise shall have only one trade union", and section 80 provides for an offence, punishable by imprisonment or fine or both, for any person who runs or joins a non-registered trade union. Section 46 of the Act stipulates that, the Registrar shall register the first application for registration that is lodged and fulfils the requirements set out in the Act, on a first-come first-served basis; if there is more than one application with equal representation, the Registrar shall openly arrange a drawing of lots among the applicants and shall register the drawn trade union. The Committee considers that the restriction on the setting up of more than one workers' organization in the enterprise is clearly incompatible with the right of workers to establish and join organizations of their own choosing, which implies in particular, the effective possibility to create – if workers so choose – more than one workers' organization per enterprise. Furthermore, measures taken against workers because they attempt to constitute an organization of workers outside the official trade union organization would be incompatible with the principle that workers should have the right to establish and join organizations of their own choosing without previous authorization [see* ***Digest of***

***decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, paras. 280 and 301]. The Committee requests the Government to take the necessary measures to amend its legislations to ensure that trade union pluralism remains possible and that employees remain free to choose to set up unions outside the already registered organization should they so wish.*

110. *The Committee further observes that under sections 45, 62, 63 and 66, the Registrar has broad discretion to oversee certain internal affairs of the trade union, both when they seek registration and in the exercise of their programmes and activities. Under section 45, the Registrar must be satisfied that the object of an applicant trade union is not against public order or morality, but this concept is not defined under the Act. Such a discretionary power of the Registrar is tantamount to requiring previous authorization of the administrative authorities [see **Digest**, op. cit., para. 260]. The Committee requests the Government to take necessary measures in order to repeal this discretionary power of the Registrar. The Committee notes that section 62 appears to grant overly broad powers to the Registrar concerning access to trade union premises, financial accounts, etc. The Committee recalls in this respect that the control exercised by the public authorities over trade union finances should not normally exceed the obligation to submit periodic reports. The discretionary right of the authorities to carry out inspection and request information at any time entails a danger of interference in the internal administration of trade unions [see **Digest**, op. cit., paras. 442 and 443]. As concerns powers of the Registrar to dissolve a trade union when it appears to him that the activities of the trade union jeopardize national security or economy, or are harmful to the public order or good morality (section 66), the Committee recalls that measures of dissolution by the administrative authority constitute serious infringement of the principles of freedom of association. The dissolution of trade union organizations is a measure which should only occur in extremely serious cases; such dissolutions should only happen following a judicial decision so that the rights of defence are fully guaranteed. The legislation should also provide that the administrative decision does not take effect until the judicial authority has ruled on the appeal made by the trade union organization concerned [see **Digest,** op. cit., paras. 664, 666 and 682].*

111. *The Committee also notes with regret that section 33 of the Act imposes a general prohibition of strikes and that penalties for strike action, even a peaceful strike action, are extremely severe: up to one year of imprisonment or a fine; or both for the participation in a strike action; and up to two years of imprisonment or a fine, or both for its instigation. The Committee recalls that the right to strike is one of the essential legitimate means through which workers and their organizations may promote and defend their economic and social interests. The right to strike may only be restricted or prohibited in the following cases: (1) in the public service only for public servants exercising authority in the name of the State; (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); or (3) in the event of an acute national emergency and for a limited period of time [see **Digest**, op. cit., paras. 474, 475, 526 and 527]. As for the sanctions, the authorities should not resort to imprisonment in connection with the organization of or participation in a peaceful strike; such measures entail serious risks of abuses and are a grave threat to freedom of association [see **Digest**, op. cit., paras. 601 and 602].*

112. *The Committee asks the Government to take the necessary measures to amend the SERLA to bring it fully into conformity with the principles of freedom of association on these and other relevant points and to keep it informed of any developments in this respect. The Committee further hopes that draft amendments to the Labour Relations Act, presently under consideration by the Council of State, will fully ensure the right to organize and to bargain collectively to private sector employees. It requests the Government to send a copy*

of the additional proposed amendments to the Labour Relations Act so that it may examine their conformity with the principles of freedom of association.

Case No. 2018 (Ukraine)

113. The Committee last examined this case at its November 2001 meeting when it requested the Government to reply to the observations submitted by the Confederation of Free Trade Unions of Ukraine in its communications dated 12 July and 23 August 2001 and to the information provided by the Independent Trade Union of Workers of the Ilyichevsk Maritime Commercial Port (the NPRP) in communications dated 7 August and 19 October 2001 [see 326th Report, paras. 158-164].

114. In its communications, the Confederation of Free Trade Unions of Ukraine (to which the complainant is affiliated) took issue with the findings of the commission set up to investigate the complainants allegations in respect of anti-union discrimination at the Ilyichevsk Maritime Commercial Port. The Confederation submitted that the commission, despite the existence of documentary proof to the contrary, found that there had been no contraventions of labour or trade union law by the port management. It further alleged that the commission took into account only the port authorities' views and disregarded the trade union's views on the matter. The complainant organization (the NPRP) submitted further information concerning the violation of its collective bargaining rights. The NPRP, in a communication dated 7 August, alleges in particular that the management and the official trade union unilaterally drafted a new collective agreement, while at the same time, a conference of workers was convened by the order of the Director of the port in order to adopt the new draft. In its communication dated 19 October 2001, the NPRP further alleges that refusal by the Director of the port to conclude an agreement on the payment of trade union dues resulted in the freezing of the trade union bank account. Finally, it alleges that new criminal charges were brought against trade union leaders.

115. In a communication dated 9 November 2001, the Government, responding to the complainant's communication dated 7 August 2001, indicated that the matters raised there were examined by the Main Directorate for Labour and Social Protection of the Odessa regional administration, which carried out an on-site visit. Upon verification, it was found that negotiations on the extension of the current collective agreement for a new term had been opened at management's initiative. The presidents of the five trade unions active in the port were informed in advance of the date of the opening of negotiations. The leaders of the Independent Trade Union did not respond to this proposal by management and did not designate representatives for further participation in the meetings of the port trade unions and in negotiations. The Independent Trade Union was allocated three seats on the joint representative body. After a new collective agreement had been drafted, assemblies were held in the different units of the port to discuss the draft collective agreement. The commission set up to prepare the conference of workers included a representative of the Independent Trade Union, but he did not take part in its work. As concerns the information provided by the Confederation of Free Trade Unions of Ukraine, the Government indicated that due to the absence of evidence confirming the Confederation's allegations, it cannot reply to the communications in question.

116. In communications dated 25 January and 5 February 2002, the Government indicated that in May 2001, the Ilyichevsk transport prosecutor concluded that an agreement between the port administration and the NPRP showed some signs of falsification, and that criminal proceedings in connection with this infringement were initiated against responsible officials of the trade union. The Government also indicated that the administration of the port assures that the question concerning the resumption of trade union dues will be decided after the court's decision on the mentioned criminal proceedings.

117. *The Committee notes the information provided by the Government concerning the allegations of the violation of collective bargaining rights. Noting that these allegations concern the bringing of new criminal cases against the president of the NPRP, the Committee once again recalls 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]. It also wishes to recall that trade unions leaders, like anyone else, should benefit from normal judiciary proceedings and that respect for due process of the law should not preclude the possibility of a fair and rapid trial. The Committee therefore urges the Government, once again, to ensure that the criminal proceedings against the president of the NPRP carried out with diligence and requests to be kept informed of developments.*

Case No. 2014 (Uruguay)

118. The Committee last examined this case, relating to anti-union measures during collective bargaining and disciplinary measures against trade union officials and workers, at its March 2001 meeting [see 324th Report, paras. 912-926]. On this occasion, the Committee requested the Government to ensure that the disciplinary measures against the three trade union officials for holding information meetings at Plant No. 3 in Canelones were immediately revoked, that the trade union officials were allowed reasonable access to the workplace and, in their abovementioned capacity, to effectively carry out their mandate unhindered to further and defend the interests of workers, and that the workers of CONAPROLE were allowed freely to express their opinions, without fear of intimidation or risk of reprisal by their employers.

119. In its communication of 23 August 2001, the Government indicates that the complainant organization did not provide the identities of the trade union officials who had been subjected to disciplinary measures for holding information meetings, that the right to hold information meetings in the enterprise is linked to these taking place during rest periods and that Convention No. 98 refers to participation in union activities, with the consent of the employers, within working hours. With regard to those allegations relating to restrictions on the right to reasonable access to the workplace for trade union officials in the plants, the Labour Inspectorate will be carrying out inquiries. Finally, with regard to intimidation of employees who freely express their opinions, the Government indicates that it is unaware of the veracity of the alleged acts and that it will refrain from pronouncing on the situation until the parties have presented their cases.

120. *The Committee notes this information and requests the Government to keep it informed of the outcome of the inquiry carried out by the Labour Inspectorate into the alleged restrictions on trade union officials in their access to the workplace.*

Case No. 1952 (Venezuela)

121. In its last examination of this case in November 2000, the Committee noted that the Government had not sent any information relating to the matter of the effective payment of the wage arrears of the firefighters (officers and members of SINPROBOM of the Eastern Fire Brigade) corresponding to the period during which they were dismissed and requested the Government to provide information in this respect [see 323rd Report, para. 101]. These persons had been reinstated in their jobs.

122. In its communications dated 16 and 28 August and 26 September 2001, SINPROBOM alleges that the Government attempted to adopt a decree with the scope and force of law on the exercise of the function of firefighters' brigades (a copy of the draft was transmitted

with their communications). This decree aims at eliminating trade union rights by linking this brigade with the defence and security of the nation and provides for the dissolution of firefighters' trade unions within 180 days. Moreover, the complainant alleges that an anti-union campaign has begun with a view towards restricting the rights of the firefighters of the Eastern Fire Brigade, the Fire Brigade of Guacara, San Joaquín and Mariara, and the Municipal Autonomous Fire Brigade Institute of Valencia to join the workers' organization of their own choosing. The complainant further alleges the dismissal of a member of the executive committee of the Fire Brigade Union of Valencia (Emerson Ochoa) brigade in which the employer opposes collective bargaining and in which regular transfers of union officers occur with anti-union motives. The complainant also alleges that the state of Yaracuy maintains a campaign of hostility and disparagement in respect of the Fire Brigade Foundation of this state and, by means of a new law of 22 December 2001, has excluded firefighters from the right to organize and to bargain collectively.

123. In its communication of 15 October 2001, in reply to the Committee's request for information, the Government refers to steps taken for the rehiring of Tomas Arencebia, Juan Bautista Medina, Rubén Gutiérrez, Ignacio Díaz and Plácido Gutiérrez, unjustifiably dismissed from the Eastern Fire Brigade, while they were protected by trade union immunity and should have been untransferrable. The Government also refers to the employer's request to annul the administrative order for reinstatement and payment of loss of wages, as well as the summons given on 14 and 20 August 1997 by the local prefecture, under warning of imprisonment. On these specifics, the Government indicates that the new Venezuelan Constitution provides a new basic labour standard process, with the aim of confirming the reinstatement orders. The Government adds that the Supreme Court rendered a judgement on 2 August 2001 according to which the administrative courts will be responsible for reviewing the abovementioned causes as well as the recourse for judicial protection *(amparo)* in the case of non-compliance with the reinstatement order, all with the aim of ensuring that the administrative decision for reinstatement does not become illusory. The Government indicates that it will give the necessary follow-up to these matters and keep the Committee informed.

124. As concerns the collective rights of the fire-fighting personnel of the Eastern Fire Brigade, the Government indicates that, on 16 and 28 August 2001, SINPROBOM denounced some government conduct which it considered to be in the context of measures of anti-union discrimination (they refer to the mayors' offices which cover the communities of Eastern Caracas: Chacao, Baruta and Sucre), as well as artificial situations in respect of the supposed deficit which hinders a concession on the benefits requested in the draft collective agreement and attacks from the mayors' offices aimed at weakening trade union association. The Government underlines, on the other hand, that the complainant recognizes the good offices of the Minister of Labour and the Public Defender, while the eastern labour inspectorate recognized trade union rights, protection against anti-union discrimination and collective bargaining.

125. The Government considers the complainant's request to the Committee to condemn the State for violation of Convention No. 87 out of context and disproportionate, given that the State itself, through the Minister of Labour, is trying to ensure that the collective rights violated in this case may be fully exercised.

126. Finally, as concerns the draft decrees with force of law, the Government states that, by means of a highly responsible examination of the concrete national reality, a series of measures and drafts have been put in place aimed at raising the concept of citizen security, the living standard of the population and the protection of the national interest, without forgetting collective labour rights and even envisaging their improvement. In this respect, the Government will ensure that these texts are drafted with special attention to these rights. It reiterates its firm intention to count on the Committee's collaboration and

assistance in the aspects concerning freedom of association and their appropriate application.

127. *The Committee deplores the fact that, according to the Government's indication, the officers and members of SINPROBOM have not yet obtained the lost wages corresponding to the period when they were dismissed (since 1997). The Committee notes with concern that the employer has appealed against the reinstatement of the trade union officers and the payment of their wages. The Committee insists that the Government ensure that these wages are paid and that the employment relationship of these officers and members affiliated to SINPROBOM continues. It requests the Government to keep it informed of all court judgements in this respect.*

128. *The Committee notes the Government's statement concerning the draft decrees on the exercise of the function of firefighters' brigades and, more specifically, that it will ensure that the drafts are drawn up in a manner not to restrict freedom of association. The Committee would nevertheless point out with deep concern that the draft transmitted by the complainant provides for the dissolution of the firefighters' trade union and the creation of an association controlled by the employers' representatives. In these circumstances, the Committee recalls its previous recommendation requesting the Government to take the necessary measures to guarantee in law and in practice the right of firefighters to organize and to bargain collectively [see 310th Report, Case No. 1952, para. 608]. The Committee urges the Government to keep it informed of the evolution of the situation.*

129. *The Committee further requests the Government to reply in detail to the following allegations:*

(a) the anti-union campaign to hinder the right of the firefighters of the Eastern Fire Brigade, the Fire Brigade of Guacara, San Joaquín and Mariara, and the Municipal Autonomous Fire Brigade Institute of Valencia to join the workers' organization of their own free choice;

(b) the dismissal of a member of the executive committee of the union of the Fire Brigade of Valencia (Emerson Ochoa) and the regular transfer of trade union leaders for anti-union motives; and

(c) the campaign of harassment and disparagement in respect of the Fire Brigade of Yaracuy and the promulgation of the Act of December 2001 which excludes firefighters from the right to organize and to bargain collectively.

Case No. 1937 (Zimbabwe)

130. The Committee last examined this case at its meeting in November 2001 when it once again recalled the need 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 [see 326th Report, paras. 171-173].

131. In a communication dated 9 January 2002, the Government states that the Labour Amendment Bill is currently before Parliament and that labour and employers had an opportunity to present their positions on its contents in December 2001.

132. *The Committee takes due note of the Government's indication and requests it to transmit a copy of the Bill so that the Committee may examine its conformity with freedom of association principles and its previous recommendation concerning the Labour Relations Act.*

Case No. 2027 (Zimbabwe)

133. The Committee last examined this case at its November 2001 meeting in which it once again requested the Government to: (1) establish a thorough and independent inquiry into the assault on Mr. Morgan Tsvangirai and the arson of the ZCTU offices; (2) provide a copy of the high court judgement concerning the case brought by the ZCTU concerning the temporary ban on industrial action issued in November 1998; and (3) to keep it informed on the state of the Labour Relations Amendment Bill of 1999.

134. In a communication dated 9 January 2002, the Government reiterates that the assault case concerning Mr. Tsvangirai was handled through the ordinary courts of law and the alleged assailant was acquitted. Given the competency of the courts to deal with issues of common assault, it is difficult if not impossible to set up an independent inquiry into this matter. Such a precedent would result in everyone calling for the establishment of an independent inquiry if the outcome from the court proceedings is not in his or her favour. As concerns the arson of the ZCTU offices, the Government states that the investigations are still pending with the police. The Government also states that it is not aware of any court judgement concerning a temporary ban on industrial action in November 1998, but that it will liase with both the ZCTU and the High Court in respect of this matter and keep the Committee informed. Finally, the Government states that the Labour Amendment Bill is currently before the Parliament.

135. *The Committee takes note of this information. It regrets that the Government maintains its previous position concerning the case of assault against Mr. Tsvangirai. As concerns the precedent complained of by the Government if it were to open an independent investigation into this matter, the Committee considers that the acquittal of the alleged assailant is not a question of a favourable or unfavourable outcome, but is rather an indication that the necessary inquiry has not yet been made to uncover the facts in this case. The Committee would therefore once again urge the Government immediately to take the necessary measures to institute an independent investigation into this matter and to keep it informed of the outcome, as well as the outcome of the investigation into the arson of the ZCTU offices. Finally, the Committee requests the Government to keep it informed of any progress made in the amendments to the Labour Relations Act and to keep it informed of any further information it may receive concerning the ZCTU case before the High Court.*

Case No. 2081 (Zimbabwe)

136. The Committee last examined this case at its November 2001 meeting [see 326th Report, paras. 177-179] and on that occasion requested the Government to continue to keep it informed of any measures taken to amend section 120(2) of the Labour Relations Act of 1985.

137. In a communication dated 9 January 2002, the Government indicates that the only process which will result in either the amendment of section 120(2) of the Labour Relations Act or its retention is the debate in Parliament of the Labour Amendment Bill. The Bill is currently before Parliament.

138. *The Committee trusts that section 120(2) of the Labour Relations Act of 1985 will be amended in line with freedom of association principles, including those enunciated in its conclusions during its first examination of this case [see 323rd Report, paras. 567-570]. It requests the Government to keep it informed of the outcome of the Parliamentary debate on the Labour Amendment Bill.*

139. Finally, as regards Cases Nos. 1769 (Russian Federation), 1785 (Poland), 1796 (Peru), 1813 (Peru), 1851 (Djibouti), 1890 (India), 1922 (Djibouti), 1942 (China/Hong Kong Special Administrative Region), 1953 (Argentina), 1963 (Australia), 1973 (Colombia), 1989 (Bulgaria), 1996 (Uganda), 2006 (Pakistan), 2012 (Russian Federation), 2022 (New Zealand), 2031 (China), 2037 (Argentina), 2042 (Djibouti), 2043 (Russian Federation), 2047 (Bulgaria), 2048 (Morocco), 2052 (Haiti), 2053 (Bosnia and Herzegovina), 2056 (Central African Republic), 2058 (Venezuela), 2065 (Argentina), 2067 (Venezuela), 2072 (Haiti), 2075 (Ukraine), 2089 (Costa Rica), 2091 (Romania), 2100 (Honduras) and 2102 (Bahamas), the Committee requests the governments concerned to keep it informed of any developments relating to these cases. It hopes that these governments will quickly provide the information requested. In addition, the Committee has just received information concerning Cases Nos. 1843 (Sudan), 1877 (Morocco), 1925 (Colombia), 1938 (Croatia), 1961 (Cuba), 1965 (Panama), 1972 (Poland), 2076 (Peru) and 2113 (Mauritania), which it will examine at its next meeting.

CASE NO. 2153

INTERIM REPORT

Complaint against the Government of Algeria presented by the National Autonomous Union of Public Administration Staff (SNAPAP)

Allegations: Obstacles to the establishment of a trade union confederation and the exercise of trade union rights; anti-union harassment

140. The complaint in this case is contained in communications from the National Autonomous Union of Public Administration Staff (SNAPAP) dated 17 September and 15 October 2001.

141. The Government sent its observations in a communication dated 16 October 2001.

142. Algeria 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

143. In its communication dated 17 September 2001, the SNAPAP explains that it was established in 1990, that it represents the public administration sector and that its membership numbers over 400,000. It states that after the *coup d'état* in 1992 it did not take a political stand in favour of either the Government or the Islamists. The SNAPAP maintains that this neutral stance attracted reprisals, ranging from arbitrary transfers, suspensions of pay and dismissals to internment, prompting several of its members to go into exile in France and Spain.

144. Specifically, the SNAPAP explains that on 20 September 2000 it applied to establish a confederation entitled "National Autonomous Union of Algerian Workers (SNATA)". Its application was rejected by authorities, on grounds of non-conformity with section 2 of Act No. 90-14 of 2 June 1990, which provides that workers in the same occupation, branch or sector of economic activity have the right to form trade union organizations, and that at

the time it was established the SNAPAP only represented workers in the public administration sector. The SNAPAP explains that a second application to establish a confederation entitled "Algerian Confederation of Autonomous Trade Unions (CASA)" was also rejected by the authorities on the pretext that one of its affiliates was a trade union representing the private sector.

145. The SNAPAP further maintains that the Algerian authorities have always displayed favouritism towards the General Union of Algerian Workers (UGTA), since this organization stemmed from the single party that existed before 1990. The SNAPAP alleges that the employers, in collusion with the trade union, deduct union dues from wages at source, thus infringing workers' freedom to join the organization of their own choosing. In addition, the SNAPAP explains that it was denied permission to participate in the management boards of the social security funds on the pretext that only the most representative trade union is authorized to do so and that the SNAPAP is only representative in the public administration sector.

146. The SNAPAP also maintains that numerous obstacles have been placed in the way of its national general assemblies. Employers constantly refuse to allow it to hold general assemblies outside working hours, and it is denied permission to use the premises after working hours on security grounds.

147. In a subsequent communication dated 15 October 2001, the SNAPAP reports numerous obstacles to the exercise of freedom of association in different sectors, such as the health sector, internal affairs and local communities, the water sector, public works, customs and civil defence. These obstacles consist essentially of prohibiting the establishment of trade union sections in hospitals, of sanctions, suspensions, physical assault, transfers and intimidation of trade union members and officers, prohibition on holding general assemblies and closure of trade union premises (the list of persons subjected to these measures and the sectors and places where these violations occurred are appended to the complaint). Lastly, the SNAPAP states that since it presented its complaint to the ILO, the Government in general and the Ministry of Labour in particular have refused all contact with the trade union and have reneged on promises made to the SNAPAP during the hunger strike recently held by its officers.

B. The Government's reply

148. In its communication dated 16 October 2001, the Government explains that, following the adoption of the 1989 Constitution establishing trade union pluralism, and in accordance with Act No. 90-14 of 2 June 1990 respecting procedures for the exercise of the right to organize, trade unions were established, including the SNAPAP. The Government expresses surprise at the fact that the SNAPAP, which enjoys legal representation and carries out its trade union activities freely without interference by the authorities, puts forward unfounded allegations, especially as it has all the legal remedies available in Algeria and has not yet exhausted them. The Government specifies that, like other trade unions, the SNAPAP enjoys freedom in its activities at the national level to elect its representatives and organize and manage its activities.

149. The Government explains that on 20 September 2000, the SNAPAP applied for the establishment of a confederation of trade unions in the public administration entitled "National Autonomous Union of Algerian Workers (SNATA)". The Government sent a negative reply to this application in February 2001 in view of its non-conformity with section 2 of Act No. 90-14 of 2 June 1990. It was explained to SNAPAP that in order to establish a new trade union confederation it would have to have as affiliates at least two trade union associations operating in different sectors and having different activities. On 31 March 2001, the SNAPAP again applied for approval of a new trade union organization

entitled "Algerian Confederation of Autonomous Trade Unions (CASA)". Again, a negative reply was sent to the SNAPAP on 30 April 2001 in accordance with the provisions of the abovementioned Act. The Government specifies that the request to amend the organization's by-laws through the establishment of new trade union organizations (SNATA, CASA) was handled in accordance with sections 2 and 4 of Act No. 90-14 of 1990.

150. The Government states that the SNAPAP's allegations concerning the presumed threats of prohibition on establishing trade union sections, closures of premises, dismissals, transfers, suspensions of pay and prohibitions on holding general assemblies are unfounded. As regards the holding of general assemblies, it has been explained to the SNAPAP that these are organized freely and without prior authorization by the employer, except where they are to be held at the workplace during working hours.

151. As regards representation on the management boards of the social security organizations, the Government points out that section 39 of Act No. 90-14 of 1990 grants this right to trade union organizations, based on their representativeness at the national level. The same section also lays down the criteria for representativeness. The Government states that under these provisions the SNAPAP cannot claim to be representative at the national level and hence cannot sit on these management boards.

152. Lastly, the Government emphasizes that the Ministry of Labour and Social Security expressed its willingness to pursue dialogue with the SNAPAP. Several meetings have been held between the SNAPAP and the Ministry of Labour, as well as officials in the sector concerned.

C. The Committee's conclusions

153. *The Committee notes that this case concerns numerous allegations of obstacles placed in the way of establishing trade union confederations, favouritism displayed towards a trade union organization, obstacles to holding general assemblies and numerous acts of anti-union harassment.*

154. *As regards the SNAPAP's application to establish confederations (entitled SNATA and CASA), the Committee notes the Government's reply to the effect that these applications were turned down in view of their non-conformity with sections 2 and 4 of Act No. 90-14 of 2 June 1990 respecting procedures for the exercise of the right to organize. In this respect, the Committee considers it appropriate to recall the content of these provisions. Section 2 provides that "workers and employers in the same occupations, trades or sectors of economic activity shall have the right to set up trade unions for the purpose of defending their material and moral interests". Section 4 provides that "associations, federations and confederations of trade unions shall be subject to the same provisions as those applying to trade unions". In the view of the Committee, these provisions do not pose a problem from the standpoint of the principles of freedom of association since they may be applied to first-level organizations and the latter are free to establish interoccupational organizations and affiliate to federations and confederations in the manner deemed most appropriate by the workers or employers concerned, without prior authorization being required.*

155. *However, it seems to be the Government's interpretation of these provisions which poses a problem in this case. In the light of the information available, the Committee observes that the Government, citing various requirements laid down in legislation, in practice prevents workers in the public sector from establishing a confederation. The Committee recalls that the right of workers and employers to establish organizations of their own choosing is one of the fundamental aspects of freedom of association. In particular it implies the right to take the following decisions freely: the choice of structure and composition of*

organizations; the establishment of one or more organizations for an enterprise, occupation or branch of economic activity; and the establishment of federations and confederations. Thus, the principle laid down in Article 2 of Convention No. 87 that workers shall have the right to establish and join organizations of their own choosing implies for the organizations themselves the right to establish and join federations and confederations of their own choosing. Moreover, the Committee has always considered that the preferential rights granted to the most representative organizations should not give them the exclusive right to set up federations and affiliate with them [see ***Digest of decisions and principles of the Freedom of Association Committee,*** *4th edition, 1996, paras. 606 and 619]. Accordingly, the Committee requests the Government to take the necessary measures to ensure that the workers who are members of the SNAPAP may establish and join federations and confederations of their own choosing. It requests the Government to keep it informed in this respect.*

156. *As regards the allegations of favouritism displayed by the Government towards the UGTA trade union, the Committee notes that the Government has not provided specific observations on this subject. The Committee reminds the Government that, by according favourable or unfavourable treatment to a given organization as compared with others, a government may be able to influence the choice of workers as to the organization which they intend to join. In addition, a government which deliberately acts in this manner violates the principle laid down in Convention No. 87 that the public authorities shall refrain from any interference which would restrict the rights provided for in the Convention or impede their lawful exercise. The Committee trusts that the Government will take these principles fully into account in future.*

157. *As regards the allegations that the SNAPAP was denied the right to participate in the management boards of social security funds on the pretext that only the most representative trade union is authorized to sit on them, the Committee notes the Government's statements to the effect that, under section 39 of Act No. 90-14 of 1990, only organizations that are representative at the national level may sit on these boards and that the SNAPAP cannot claim to be representative at the national level. In this respect, the Committee recalls that it has always considered that certain advantages, especially with regard to representation, might be accorded to trade unions by reason of the extent of their representativeness. However, the determination of the most representative trade union should always be based on objective and pre-established criteria so as to avoid any opportunity for partiality or abuse. The Committee notes in this respect that, in this case, the complainant does not seem to challenge the status of the UGTA as the most representative organization.*

158. *As regards the allegations concerning obstacles to the holding of general assemblies, the Committee notes that, according to the Government, the latter explained to the SNAPAP that general assemblies may be organized freely and without prior authorization of the employer, unless they are held at the workplace during working hours. However, according to the SNAPAP, the employers constantly refuse to allow general assemblies even outside working hours for security reasons. In this respect, the Committee reminds the parties concerned that the right of occupational organizations to hold meetings in their premises to discuss occupational questions, without prior authorization and interference by the authorities, is an essential element of freedom of association and the public authorities should refrain from any interference which would restrict this right or impede its exercise, unless public order is disturbed thereby or its maintenance seriously and imminently endangered [see* ***Digest****, op. cit., para. 130].*

159. *Moreover, the Committee notes that the Government rejects outright all the allegations referring to presumed threats of prohibition on establishing trade union sections, closures of premises, dismissals, transfers and suspensions of pay of trade union members.*

However, the Committee observes that, in a recent communication dated 15 October 2001, the SNAPAP once again reports numerous obstacles to freedom of association in different branches of economic activity: prohibition on establishing a trade union section in hospitals; sanctions, suspensions, physical assault, transfers and intimidation of trade union members and officers; and closure of trade union premises. The SNAPAP provides a detailed list of persons subjected to such measures and the branches of economic activity and places where these violations are alleged to have occurred. The Committee accordingly requests the Government to send without delay its observations concerning the specific allegations put forward by the SNAPAP on this subject. Moreover, since the SNAPAP has not provided any detailed information concerning the allegations of dismissals, internment and other arbitrary measures against its members forcing them to take exile, the Committee requests the SNAPAP to provide any additional information it considers useful in this regard.

160. *Lastly, the Committee notes that in its communication of 16 October 2001 the Government deplores the fact that the SNAPAP did not exhaust all of the remedies available in Algeria before appealing to the ILO. In this respect, the Committee reminds the Government that although the use of internal legal procedures, whatever the outcome, is undoubtedly a factor to be taken into consideration, the Committee has always considered that, in view of its responsibilities, its competence to examine allegations is not subject to the exhaustion of national procedures [see* ***Digest,*** *op. cit., Annex 1, para. 33]. Moreover, the Committee expresses its profound concern at the SNAPAP's allegation that, since it presented its complaint to the ILO, the Algerian authorities have refused all contact with it and reneged entirely on the promises previously made to the SNAPAP. The Committee requests the Government to send its observations in this respect without delay.*

The Committee's recommendations

161. ***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 the workers who are members of the SNAPAP may establish and join federations and confederations of their own choosing. It requests the Government to keep it informed in this respect.

(b) The Committee requests the Government to send without delay its observations concerning the specific allegations made by the SNAPAP regarding the prohibition on establishing a trade union section in hospitals, sanctions, suspensions, physical assault, transfers and intimidation of trade union members and officers, and closure of trade union premises. Moreover, as concerns the allegations of dismissals, internment and arbitrary measures against its members forcing them to take exile, the Committee requests the SNAPAP to provide any additional information it considers useful in this regard.

(c) Expressing its profound concern at the SNAPAP's allegation that, since it presented its complaint to the ILO, the Algerian authorities have refused all contact with it and reneged on promises previously made to it, the Committee requests the Government to send its observations in this respect without delay.

CASE NO. 2095

DEFINITIVE REPORT

Complaints against the Government of Argentina presented by
— the General Confederation of Labour (CGT)
— the National Civil Servants' Union (UPCN) and
— the Aviation Technicians' Association of the Argentine Republic (APTA)

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

162. The Committee last examined this case at its November 2001 meeting [see 326th Report, paras. 181-195].

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

A. Previous examination of the case

164. When the Committee examined this case at its November 2001 meeting, there remained pending allegations presented by the Aviation Technicians' Association of the Argentine Republic (APTA) challenging Ministry of Labour Resolution No. 30/2001, promulgated under sections 95 ff. of the Employment Act, No. 24013, ordering the APTA to renegotiate the content of collective agreements governing the employment relationship between its members and the enterprises Aerolíneas Argentinas S.A. and Austral Líneas Aéreas-Cielos del Sur S.A. According to the APTA, it is being obliged to renegotiate an administrative programme to prevent unemployment in the sector, the impact of production restructuring on conditions of work and employment, and vocational retraining and reintegration measures for the workers affected. On that occasion the Committee had noted that the Government had sent its observations in a communication dated 15 October 2001 and proposed to examine these allegations at its next meeting [see 326th Report, para. 195].

B. The Government's reply

165. In its communication dated 15 October 2001, the Government states that Act No. 24013 of 17 December 1991, pursuant to which Resolution ST No. 30/2001 was adopted, allows the Ministry of Labour – at the request of the parties concerned or on its own initiative – to declare production restructuring in enterprises that are affected or are likely to be affected by significant reductions in employment, convening the social partners to collective bargaining in the negotiating committee of the branch collective agreement (section 95 of the Act). Specifically, the Act provides for negotiation on the following issues: administrative programmes to prevent unemployment in the sector; impact of production restructuring on conditions of work and employment; and measures for vocational retraining and reintegration of the workers likely to be affected. This legislation dates back to December 1991, has been applied on a number of occasions and has never been challenged in any way.

166. The Government adds that Aerolíneas Argentinas is a private enterprise in the aviation sector numbering approximately 6,500 employees. It is a well-known fact that airlines

throughout the world are in the midst of a crisis and many of them have drastically cut back their staff. In the case of Aerolíneas Argentinas S.A. certain frequencies and routes have been cut and substantial staff cutbacks are envisaged. In view of the imminence of the crisis invoked by the enterprise, which will prevent it from continuing to operate with present staff levels, and lay-offs having already begun in the sector, the Ministry of Labour carried out all the procedures legally within its power to reverse the lay-offs that had occurred and preserve employment in the enterprise.

167. The Government states that the Ministry of Labour did not suspend or repeal by decree the agreement between the parties, neither did it terminate contracts that had already been negotiated, nor did it cancel collective agreements or oblige the parties to renegotiate them; on the contrary, the procedure challenged by the complainant was aimed at providing a framework for and promoting collective bargaining in situations that were undeniably critical in order to avoid unilateral solutions that would be detrimental to jobs; in no case was the free will of the parties impaired or coerced. If the parties fail to reach an agreement, the points at issue are not settled through compulsory arbitration by the labour authority. This is evidenced by the fact that the framework agreement appended to Resolution ST No. 30/2001 (which sought to ensure stability of at least two years for the workers of the enterprises concerned) has not been signed by two of the seven unions in the branch and therefore did not enter into force, and hence the applicable collective agreements have remained in force and no new agreements or new amendments of existing agreements have been negotiated to date.

168. The Government explains that intervention by the administrative authority in cases such as the present one is aimed solely at creating an enabling environment for bargaining when employment in a given sector is likely to be affected by extraordinary circumstances such as restructuring and crisis situations. The Government further emphasizes that this procedure does not suspend or rescind collective agreements that are in force; on the contrary, the free will of the parties is fully exercised in reaching solutions by consensus that seek to avoid the scourge of unemployment. It is not even a matter of renegotiating existing agreements. The procedure laid down in Act No. 24013 does not go to these extremes, since, as pointed out above, it is aimed at providing a framework for collective bargaining in situations likely to have a serious impact on employment, but neither suspends nor rescinds collective agreements in force. It cannot, by any description, be viewed as infringing freedom of association and/or the right to collective bargaining.

169. Lastly, the Government points out that the SEPI (majority shareholder of the enterprises at the time the complaint was presented) transferred its shares on 11 October 2001 to the Air Comet group, which stated its intention to maintain stability for all employees for at least two years, guarantee the operating capacity of the enterprise and restore the routes and frequencies that had been cut.

C. The Committee's conclusions

170. *The Committee observes that when it examined this case at its November 2001 meeting, there remained pending allegations presented by the Aviation Technicians' Association of the Argentine Republic (APTA) challenging Ministry of Labour Resolution No. 30/2001 adopted under sections 95 ff. of the Employment Act, No. 24013, ordering the APTA to renegotiate the content of collective agreements governing the employment relationship between its members and the enterprises Aerolíneas Argentinas S.A. and Austral Líneas Aéreas-Cielos del Sur S.A. According to the APTA, the association was obliged to renegotiate an administrative programme to prevent unemployment in the sector, the impact of production restructuring on conditions of work and employment, and vocational retraining and reintegration measures for the workers affected.*

171. *The Committee notes that the Government states that: (1) Act No. 24013 allows the Ministry of Labour to declare production restructuring in enterprises that are affected or are likely to be affected by significant reductions in employment, convening the social partners to collective bargaining in the framework of the negotiating committee of the branch collective agreement. Specifically, provision is made for negotiation on administrative programmes to prevent unemployment in the sector; the impact of restructuring on conditions of work and employment; and measures for vocational retraining and reintegration of the workforce likely to be affected; (2) Aerolíneas Argentinas is a private enterprise in the aviation sector numbering approximately 6,500 employees, and it is a well-known fact that airlines throughout the world are in the midst of a crisis. In view of the imminence of the crisis invoked by the enterprise, and lay-offs having already begun in the sector, the Ministry of Labour carried out all the procedures aimed at reversing the lay-offs that had occurred and preserving employment in the enterprise; (3) the Ministry of Labour did not suspend or repeal by decree either agreements between the parties or collective agreements; rather the procedure was aimed at providing a framework for and promoting collective bargaining in situations that were undeniably critical in order to avoid unilateral solutions; the framework agreement appended to Resolution ST No. 30/2001 was not signed by two of the seven unions in the sector and hence did not enter into force; and therefore the applicable collective agreements remained in force and no new agreements have been negotiated to date; and (4) the SEPI, the majority shareholder of the enterprises at the time the complaint was presented, transferred its shares on 11 October 2001 to the Air Comet group, which expressed its intention to maintain stability of all employees for at least two years, guarantee the operating capacity of the enterprise and restore the routes and frequencies that had been cut.*

172. *In these circumstances, the Committee hopes the relations between the complainant and the Air Comet group will be constructive. Moreover, it considers that Act No. 24013 and Resolution ST No. 30/2001 establish consultation machinery to achieve solutions by consensus to crisis situations and do not oblige the parties to renegotiate the terms of collective agreements. Therefore the Committee will not continue its examination of these allegations.*

The Committee's recommendation

173. ***In the light of its foregoing conclusions, the Committee invites the Governing Body to decide that this case does not call for further examination.***

CASE NO. 2127

INTERIM REPORT

Complaints against the Government of the Bahamas presented by
— the Commonwealth of the Bahamas Trade Union Congress (CBTUC)
— the National Congress of Trade Unions (NCTU)
— the Bahamas Air Traffic Controllers' Union (BATCU), and
— the International Confederation of Free Trade Unions (ICFTU)

Allegations: Lack of protection against anti-union discrimination and employer interference, violation of the right of employees to be represented by a union, unfair dismissals and suspensions during a labour dispute

174. The Commonwealth of the Bahamas Trade Union Congress (CBTUC) and the National Congress of Trade Unions (NCTU) presented a complaint of violations of freedom of association against the Government of the Bahamas in a communication dated 7 May 2001, on behalf of the Bahamas Air Traffic Controllers' Union (BATCU). In a communication dated 26 June 2001 the International Confederation of Free Trade Unions (ICFTU) associated itself with the complaint.

175. The Government forwarded its observations in communications from the Ministry of Labour (1 October 2001), and from the Ministry of Transport (14 November 2001, received on 15 January 2002).

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

A. The complainants' allegations

177. The Bahamas Air Traffic Controllers' Union (BATCU) was registered on 12 January 1988 and concluded an official recognition agreement on 31 March 1995; since then, it has been recognized as the bargaining agent for all employees, including air traffic controllers, of the Air Traffic Division of the Department of Civil Aviation (the "Department") whose duties and responsibilities do not entail managerial functions.

178. BATCU and the Department commenced negotiating a collective agreement on 6 May 2000. In a communication dated 20 December 2000 addressed to the Minister of Tourism (the "Minister") BATCU threatened industrial action because negotiations were being stalled, and requested that a date be set for the conclusion of a collective agreement. The communication also addressed certain matters regarding remuneration, determination of the bargaining unit and public holiday leave compensation. In a communication dated the same day, the Minister requested BATCU to withhold industrial action and assured it that the issues raised in its letter would be concluded on or before 15 January 2001.

179. Between 12 January and 20 March 2001, there were a series of consultations and negotiations held between BATCU, the Prime Minister, the Minister of Tourism, the Minister of Public Service, government officials and other senior public officers, the salient points of which are as follows:

– on 12 January 2001, the Government made a proposal under which all monies owing to controllers would be paid, a final offer of 20 per cent salary increase was made, which might be augmented with allowances;

– by February/March 2001, 95 per cent of the proposed agreement had been accepted by the parties, the outstanding issues being salaries and the payment of the responsibility and training allowances;

– on 5 March 2001, with the help of a mediator, the parties signed a "gentlemen's agreement" outlining terms for continued negotiations;

– on 20 March 2001, the parties agreed on the distribution of the 20 per cent salary increase to be paid to the members of the bargaining unit, including operations officers; however, the Minister indicated that the issue of outstanding holiday pay would be referred to the Attorney-General's office, which BATCU considered as a breach of the agreement of 5 March 2001.

180. As a result, on 21 March 2001, BATCU engaged in work-to-rule activity by applying strictly civil aviation regulations regarding flow control, after which the following measures were taken by the Government:

– on 23 March 2001, 27 air traffic controllers were placed on administrative leave, and the vice-president and operations officer of BATCU were suspended;

– on 24 March 2001, four air traffic controllers were suspended;

– on 6 April 2001, the Secretary-General of BATCU, who had just returned from vacation leave, was suspended;

– on 8 April 2001, the treasurer of BATCU, who had also just returned from vacation leave, was suspended;

– on 5 May 2001, the assistant secretary-general of BATCU, who had just returned from maternal leave, was suspended and letters threatening termination were issued to seven union members;

– only two air traffic controllers have been allowed to return to work (on 27 March and 12 April 2001, respectively).

181. On 18 April 2001, the Supreme Court ruled, at BATCU's request, that the Government's actions were unlawful and that the air traffic controllers should be allowed to return to work. On 19 April 2001, the Director of Civil Aviation wrote a letter to BATCU, inviting suspended controllers to report to work that same day. However, when they did, they were issued new letters removing them from duty pending investigation in the flight delays at Nassau airport and "granting" them three months' leave with pay and benefits, effective 23 March 2001. On 23 April 2001, the Government appealed the Supreme Court's ruling to the Court of Appeal, which overturned the decision, concluding that the Government's actions were not unlawful or unreasonable.

182. The complainants allege that the Government acted in violation of ILO Conventions Nos. 87 and 98, in that it violated the right of employees to be represented by a union and engaged in acts of anti-union discrimination, unlawfully denying them the right to work. The complainants also allege a lack of protection against acts of anti-union discrimination and employer interference, and raise serious concerns regarding the Government's refusal to respect national legislation and international aviation safety standards. The complainants

emphasize the urgency of the situation, as the workers put on administrative leave are denied access to their place of work and, as a result, will lose their certification.

183. The complainants submit other allegations concerning various issues, unrelated to the air traffic dispute, which have arisen in the hotel, tourism and casino business sectors, that they consider as evidence of a systematic union-busting attitude by the Government, which has allegedly escalated in the last five years. They submit that organized labour in the Bahamas is under significant strain; this lockout of an entire legally recognized union is the latest incidence in a series of infractions and violations that the trade union movement has recently experienced at the hands of their employer, the Government of the Bahamas.

B. The Government's replies

184. In its communication of 1 October 2001, the Ministry of Labour states that the Government never prevented BATCU members from enjoying the protection of their union, nor exercised discrimination in respect of their employment and their right to work.

185. During the bargaining process, BATCU engaged in various forms of industrial action (work-to-rule, go-slow, sick-out) which contributed to the slow progress of their negotiations. These actions heavily affected flights in and out of the airport, causing grave inconvenience to the travelling public and severe economic losses to domestic and international airlines. On several occasions, the airport was at a standstill for periods varying from two to four hours, and the flow-control invariably ranged from 45 to 90 minutes. The ensuing extensive delays in flight arrivals and departures led to management's decision to cancel the security passes of all employees participating in the industrial action. The Department of Civil Aviation did not violate any regulations; rather it sought to protect the domestic and international travelling public and the economy of the Bahamas from being held hostage by 30 individuals. BATCU was engaged in intimidating the public and seeking to coerce the Government by setting unreasonable and non-negotiable demands, including the payment of overtime hours and holiday pay for 27 years.

186. There were no violations of the Industrial Relations Act. The trade union failed to follow its own established procedure, as established in its recognition agreement with the Civil Aviation Department (clause VIII, paragraphs 1 and 2) and chose instead to refer the dispute to the Supreme Court, rather than registering it for conciliation at the Labour Department. The air traffic controllers were placed on administrative leave *with pay* (the so-called "garden leave") to allow investigations into the irregularities by controllers, which impeded the flow of air traffic. The controllers who were placed on administrative leave were not carrying out their duties; rather they were engaging in actions that threatened the safety and economic well-being of the country.

187. As regards the judicial process, the Government points out that it did not violate the ruling of the Supreme Court, which had decided that three months' suspension was excessive and might lead to de-certification of the controllers, but did not order their reinstatement. The Court of Appeal ruled for its part that the Government had acted reasonably and with proper regard for the law. That decision has been appealed to the Privy Council, where it is pending.

188. In its communication of 14 November 2001, the Ministry of Transport, Aviation and Local Government essentially repeats the information provided by the Ministry of Labour on the chronology of events. It adds some information concerning the actions taken against employees after the investigation was completed:

(a) six officers were interdicted and placed on half pay;

(b) three officers and five controllers, who were not amongst those placed on leave, failed to return to work in the face of direct instructions to do so, and have been subjected to disciplinary action for insubordination;

(c) seven controllers have been reassigned to man the Aeronautical Information Service;

(d) three controllers have been reassigned to the sections in charge of training and licensing of aircrafts; and

(e) three controllers have been administratively redeployed within the Ministry.

It has been recommended that the annual increments of all controllers involved in the disruptions be withheld for one year. All other non-interdicted officers will be back on active duty once medical requirements are met.

189. Regarding the security situation, certified management personnel, assisted by a cadre of newly trained certified controllers, were assigned to perform these duties and air traffic returned to normal. At no time did the Government's actions cause threats of danger or an unsafe environment to the travelling public.

C. The Committee's conclusions

190. *The Committee notes that this complaint concerns actions taken by the Department of Civil Aviation of the Bahamas against trade union officials and members in the context of a bitter and protracted labour dispute involving air traffic controllers. The sequence of events was as follows:*

(a) in May 2000, the air traffic controllers engaged in negotiations with their employer, the Government, for all practical purposes;

(b) a series of exchanges of communications and bargaining sessions took place between May 2000 and March 2001, during which requests were made and counterproposals tabled;

(c) whilst substantial points of agreement could be found, some irreconcilable differences remained, which prompted BATCU members, in March 2001, to engage in various forms of industrial action, short of strike in the traditional sense of the term;

(d) most of the workers concerned were then placed on three months' administrative leave with pay, or locked out, during investigations by the employer; the Government cited mainly, as a basis for such actions, the inconveniences to the public and the economic losses to domestic and international airlines but also cited safety considerations; according to the evidence available at the time of filing of the complaint, only two of the controllers were allowed to return to work, on 27 March and 12 April 2001 respectively;

(e) BATCU filed judicial proceedings against this leave imposed by the employer; the Supreme Court upheld the request, having found that the Government's actions were excessive. That decision was overturned by the Court of Appeal, which concluded that the Government's actions were neither unlawful nor unreasonable. The case is now pending on appeal before the Privy Council

191. *The Committee recalls that air traffic control may be considered an essential service, where the right to strike can be restricted or prohibited [**Digest of decisions and principles of the Freedom of Association Committee**, 1996, para. 544]. That principle*

applies to all strikes, whatever their form – go-slow, work-to-rule, sick-out, etc. – as these may be just as dangerous as a regular strike for the life, personal safety or health of the whole or part of the population.

192. *The Committee also recalls the corresponding and equally important principle that workers deprived of this right should enjoy adequate protection to compensate them for the limitation placed on their freedom of action with respect to disputes affecting such services. Restrictions on the right to strike should therefore be accompanied by adequate, impartial and speedy conciliation and arbitration proceedings in which the parties can take part at every stage and in which the awards, once made, are fully and promptly implemented [**Digest**, op. cit., paras. 546-7]. Based on the evidence available, it does not appear that there exist such impartial procedures in Bahamas legislation to compensate air traffic controllers for the restrictions on the right to strike. The Committee therefore requests the Government rapidly to put into place adequate procedures to that effect and to keep it informed of developments in that respect.*

193. *As regards the judicial proceedings under way, the Committee notes that one of the main issues, if not the central one, in both the Supreme Court and the Court of Appeal, had to do with the length of administrative leave imposed on the controllers since they were liable to lose their licence, as a result of what amounted to a compulsory suspension of professional activity, under the very strict air navigation regulations. They could in that sense be subject to double jeopardy, firstly by being placed on administrative leave (even with pay), secondly, by losing their certification and consequently being unable to resume working as air traffic controllers without going through the process of re-certification.*

194. *Related to the above is the issue of sanctions imposed upon the air traffic controllers involved. Neither the complaint, nor the Government's communication of 1 October 2001 (emanating from the Ministry of Labour), gave precise and final information on this subject. The second Government's communication (from the Ministry of Transport, Aviation and Local Government), received on 15 January 2002, does provide some information in this respect, but there subsists contradictions and some confusion on the exact nature of the sanctions ultimately imposed on those concerned, for instance: the Government's first communication mentions that some controllers were placed on garden leave with pay, while the second one says that six officers were "interdicted" (whatever that means, and what consequences this may have for the professional future of those concerned) and placed on half pay; the second communication mentions disciplinary actions, without further details (did these disciplinary actions entail dismissals, suspensions?). Are all these administrative and disciplinary measures permanent? Might the final decision of the Privy Council lead to reversal or modification of these measures? The Committee therefore requests the Government and the complainants to provide updated information on the exact nature of sanctions ultimately imposed upon the workers involved. The Committee also requests the Government to keep it informed of the judgement of the Privy Council in this matter, including its impact in practice for the workers concerned, and to provide a copy of that judgement.*

195. *As regards the actual bargaining process in this case, the Committee recalls that, whilst the question as to whether parties adopt an amenable or uncompromising attitude towards each other is a matter for negotiation between them, both employers and trade unions should bargain in good faith making every effort to reach an agreement [**Digest**, op. cit., para. 817]. The Committee notes that the agreement of 5 March 2001 seemed to be a positive step in that direction, which it can only encourage as a basis for resumed negotiations.*

196. *The Committee cannot find any substance in the allegation of violations of the rights of employees to be represented by a union, as the evidence demonstrates that BATCU is*

legally recognized and certified, does bargain on behalf of its members and, inter alia, represents them into judicial proceedings. Likewise, the Committee is not competent to make pronouncements on safety issues, including the differences between "certified" and "qualified" air traffic controllers. Finally, the Committee requests the complainants to provide further information on the allegations concerning the trade union situation in the hotel, tourism and related businesses.

The Committee's recommendations

197. ***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 appropriate measures with a view to putting rapidly into place adequate, impartial and speedy conciliation and arbitration proceedings to compensate air traffic controllers for the restrictions on the right to strike, and to keep it informed of developments in that respect.

(b) The Committee requests the Government and the complainants to provide updated information on the exact nature of the sanctions ultimately imposed upon the air traffic controllers involved.

(c) The Committee requests the complainants to provide further information on the trade union situation in the hotel, tourism and related businesses.

(d) The Committee requests the Government to keep it informed of the judgement of the Privy Council in this matter and provide a copy of same.

CASE NO. 2156

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

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

Allegations: Murder of a trade union official

198. The complaint is contained in a communication dated 4 October 2001 from the International Confederation of Free Trade Unions (ICFTU). The Government replied in communications dated 13 November and 27 December 2001.

199. Brazil has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), but it has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Workers' Representatives Convention, 1971 (No. 135).

A. The complainant's allegation

200. In its communication dated 4 October 2001, the ICFTU reported the murder of Carlos Alberto Santos Oliveira, known as "Gato", who was President of the Sergipe Citriculture Workers' Trade Union. The murder occurred on 22 September 2001 at 9.15 in the evening

when five gunmen shot the victim eight times at close range. Carlos Alberto Santos Oliveira was well know at the international level for his work for the rights of rural workers and the abolition of child labour. The complainant assumes that it was for this very reason that he was murdered as he frequently condemned the use of child labour on the orange plantations.

B. The Government's reply

201. In communications dated 13 November and 27 December 2001, the Government stated that the Special Operations Centre (COPE), in collaboration with the Federal Police, is investigating the circumstances of the murder of Carlos Alberto "Gato" Santos Oliveira and that there is already evidence showing that this occurred as a result of the trade union and political activities of the victim. The Government also states that the following have been accused and detained: Nelson José Nilton dos Santos, Finance Secretary of the city of Tomar do Geru; Valmir dos Santos Souza, Chief of the Military Police and Personal Safety of the Prefect of Tomar do Geru; and Gildeon F. da Silva, Prefect of Tomar do Geru. Elizeu Santos, Prefect of Cristinapolis may also be added to this list (the State Court is reviewing the relevant judicial orders for imprisonment). The Government indicates that, although at this time it is unable to reveal any more with regard to the investigations, in order to ensure that these are successful and that the two witnesses to the case are protected, the ILO will be informed of developments and the outcome of the legal proceedings as soon as is expedient.

C. The Committee's conclusions

202. *The Committee notes with concern and deeply deplores the murder of Carlos Alberto Santos Oliveira, President of the Sergipe Citriculture Workers' Trade Union on 22 September 2001. The Committee notes that both the complainant and the Government believe that this took place as a means of halting the important trade union and political work of the victim. The Committee also notes the Government's statement that the Special Operations Centre (COPE) is investigating the circumstances of this murder in collaboration with the Federal Police and that the authorities will prosecute the suspects. The Committee also notes that once the duty of silence surrounding the legal proceedings is lifted, the Government will inform the Committee of developments and indicate where responsibilities lie. The Committee recalls that "the killing, disappearance or serious injury of trade union leaders and trade unionists requires the institution of independent judicial inquiries in order to shed full light, at the earliest date, on the facts and the circumstances in which such actions occurred and in this way, to the extent possible, determine where responsibilities lie, punish the guilty parties and prevent the repetition of similar events" [see* ***Digest of decisions and principles of the Freedom of Association Committee,*** *4th edition, para. 51]. The Committee urges the Government to ensure that the investigations initiated in order to clarify the facts and determine those responsible are concluded rapidly so that anyone having participated in this murder, including the perpetrators, are punished as required by law. The Committee requests the Government to keep it informed of developments in the legal proceedings.*

The Committee's recommendation

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

Deeply deploring the murder of the trade union leader, Carlos Alberto Santos, the Committee urges the Government to ensure that the investigations to clarify

the facts and determine those responsible are concluded rapidly so that anyone having participated in this murder, including the perpetrators, are punished as required by law. The Committee requests the Government to keep it informed of developments in the legal proceedings.

CASE NO. 1995

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

Complaint against the Government of Cameroon presented by the Confederation of Independent Trade Unions of Cameroon (CSIC)

Allegations: Dismissal of a staff delegate

204. The complaint in the present case is set out in a communication from the Confederation of Independent Trade Unions of Cameroon (CSIC) dated 30 October 1998.

205. Since the Government did not reply, the Committee, following an urgent appeal, examined the substance of the case at its meeting in March 2000, when it presented an interim report to the Governing Body. [See 320th Report, paras. 363-373, approved by the Governing Body at its 277th Session in March 2000.] The Government sent partial observations on 29 January 2001. Since then, the Committee has been obliged to postpone its examination of the case on two occasions. At its meeting in November 2001 [see 326th Report, para. 8], the Committee issued an urgent appeal to the Government, indicating that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body, it could present a report on the substance of the case at its next meeting even if the information or observations requested had not been received in due time. To date the Government has sent no new observations.

206. Cameroon 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

207. At its meeting in March 2000, the Governing Body approved the following interim recommendations of the Committee:

(a) The Committee regrets that the Government did not reply to any of the complainant's allegations and expresses the hope that it will be more cooperative in future.

(b) Recalling that the Government has a responsibility to prevent any acts of anti-union discrimination and that it must ensure that any complaints of discriminatory practices of this kind are examined through a prompt and impartial procedure, the Committee urges the Government to take all the necessary measures to ensure that Mr. Olongo receives full compensation if it appeared that his reinstatement in the Cameroon National Electricity Company (SONEL) was not feasible. The Committee requests the Government to keep it informed promptly of any measures taken in this respect.

B. The Government's reply

208. In its communication dated 29 January 2001, the Government explains that justice in Cameroon is a matter for the judiciary, whose independence is guaranteed by the Constitution, and the Government is therefore justified in not intervening in this affair. However, in view of the time that has passed since the Supreme Court Order of 3 February 1993 without the Supreme Court ruling on the appeal, the Minister of Employment, Labour and Social Security has asked the Minister of Justice to take steps to obtain a definitive ruling on the matter from the Supreme Court.

C. The Committee's conclusions

209. *The Committee once again regrets that, despite the time that has elapsed since the complaint was first presented in October 1998, the Government has, and only on one occasion, provided partial information, although it has been invited on several occasions, including by means of two urgent appeals, to present its own observations and comments on the case. The Committee once again expresses the strong hope that the Government will be more cooperative in future.*

210. *The Committee recalls that the case concerned allegations of the dismissal of Mr. Olongo, a staff delegate employed by the Cameroon National Electricity Company (SONEL), dating from 1988. The Committee notes that, since the complaint was first presented, the original complainant, the Cameroon Workers' Trade Union Confederation (CSTC), has split up as a result of internal disputes, one of the entities resulting from that split being the Confederation of Independent Trade Unions of Cameroon (CSIC), which has taken up the complaint; this has no bearing on the examination of the substance of the case.*

211. *The Committee noted previously that, following Mr. Olongo's dismissal, the Yaoundé Court of Appeal on 17 November 1992 had ordered his reinstatement in his elected and contractual functions within SONEL, but that the Supreme Court ordered on 3 February 1993 that the ruling in question be suspended. In this respect, the Committee expressed its deep concern at the fact that, eight years after the Court of Appeal ruling, the highest court in the land had yet to give its ruling on the substance of the case. The Committee reminded the Government that it had a responsibility to prevent all acts of anti-union discrimination and ensure that any complaints of discriminatory practices of this kind are examined through procedures that are prompt and impartial and considered as such by the parties concerned; and, furthermore, that justice delayed is justice denied [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, paras. 105 and 738]. In addition, the Committee requested on several occasions in the past that measures be taken to ensure that trade unionists who so wish are reinstated in their functions if they have been dismissed because of their legitimate trade union activities and that appropriate legal sanctions be applied to the enterprises responsible. In this particular case, in view of the time that has elapsed since the dismissal, the Committee urged the Government to take all the necessary measures to ensure that Mr. Olongo received full compensation if it appeared that his reinstatement within the company SONEL was not feasible.*

212. *The Committee also notes that, according to the Government, the Minister of Employment, Labour and Social Security applied to the Minister of Justice in January 2001 with a view to obtaining a final ruling on the case. However, the Committee notes that this does not appear to have been followed up, and Mr. Olongo is still awaiting some form of compensation 14 years after his dismissal. The Committee therefore once again urges the Government to take all the necessary measures to ensure that Mr. Olongo, formerly a staff delegate at SONEL dismissed in 1988, receives full compensation, since it would appear that, in view of the 14 years that have elapsed since then, reinstatement at SONEL may not*

be the appropriate solution in this case. The Committee requests the Government to keep it informed in this respect.

The Committee's recommendations

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

(a) The Committee once again regrets that, despite the time that has elapsed since the complaint was first presented in October 1998, the Government has, and only on one occasion, provided partial information, although it has been invited on several occasions, including by means of two urgent appeals, to present its own observations and comments on the case. The Committee once again expresses the strong hope that the Government will be more cooperative in future.

(b) The Committee once again urges the Government to take all the necessary measures to ensure that Mr. Olongo, formerly a staff delegate at SONEL dismissed in 1988, receives full compensation, since it would appear that, in view of the 14 years that have elapsed since then, his reinstatement at SONEL may not be the appropriate solution in this case. The Committee requests the Government to keep it informed in this respect.

CASE NO. 2119

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

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

Allegations: Interference with collective bargaining

214. The Ontario Secondary School Teachers' Federation (OSSTF) and the Canadian Labour Congress (CLC) presented a complaint of violations of freedom of association against the Government of Canada (Ontario) in a communication dated 1 March 2001.

215. In a communication dated 14 September 2001, the federal Government transmitted the reply of the Government of the Province of Ontario.

216. Canada has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). It has not ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Labour Relations (Public Service) Convention, 1978 (No. 151), or the Collective Bargaining Convention, 1981 (No. 154).

A. The complainants' allegations

217. The complainant Ontario Secondary School Teachers' Federation (OSSTF) is an affiliated member of the complainant Canadian Labour Congress. OSSTF was founded in 1919 and

is the recognized collective bargaining agent for approximately 50,000 members comprised of public secondary teachers, occasional teachers, teaching assistants, psychologists, secretaries, speech-language pathologists, social workers, plant support personnel, attendance counsellors and many other employees in the education sector across the Province of Ontario. OSSTF is the statutory bargaining agent for each of the secondary-school teachers' units at all English-language school boards in the province, and is affiliated to the Ontario Federation of Teachers (OTF).

The issues

218. The complaint concerns legislation governing collective bargaining in the education sector in Ontario, namely *An Act to amend the Education Act to increase education quality, to improve the accountability of school boards to students, parents and taxpayers and to enhance students' school experience* (Bill 74, the Education Accountability Act, EAA). The complainants submit that the proportions of the EAA dealing with "co-instructional activities" of teachers in the Province of Ontario will significantly diminish the collective bargaining rights of elementary and secondary-school teachers, and dramatically alter the terms and conditions of their employment. In particular, the legislation restricts the scope of collective bargaining by making mandatory extra-curricular activities that were previously voluntary for teachers, and by specifically removing such duties from collective bargaining. The complainants assert that the impugned provisions of the EAA violate Conventions Nos. 87, 98, 151 and 154, and that recourse to such legislation by the Government undermines the freedom of association of teachers and their confidence in the fairness of the labour relations scheme in Ontario.

Background of the collective bargaining scheme for Ontario teachers

219. Prior to 1975, no general or specialized legislation regulated collective bargaining between teachers and school boards in Ontario; however, OSSTF informally acted as representative of all secondary school teachers in Ontario, including principals and vice-principals from 1925 onwards. Teachers in Ontario obtained the right to collective bargaining in 1975 with the passage of the School Boards and Teachers' Collective Negotiations Act (SBTCNA). In 1997, Bill 160 – the Education Quality Improvement Act (EQIA) repealed the SBTCNA in its entirety, and replaced it with a legislative scheme governing teachers' collective bargaining through the interaction of two separate statutes: Part X.1 of the Education Act and the Labour Relations Act, 1995. The Labour Relations Act applies to teachers except as modified by Part X.1 of the Education Act. Significant aspects of the Labour Relations Act are not applicable to teachers' collective bargaining and are governed instead by special provisions of Part X.1 of the Education Act: the selection of bargaining agents and the design of bargaining units.

220. Under the EQIA and its companion legislation (the Fewer School Boards Act), teachers in secondary and elementary schools are employed by District School Boards (DSBs). The trustees of DSBs are elected by citizens of the community for which they are responsible. DSBs had initially been granted taxing powers like the former local school boards, but subsequently had these powers deemed "inoperative". While DSBs do not have financial independence from the provincial government, and therefore no real ability to exercise local management and financial control, the DSBs remain the nominal employer of secondary- and elementary-school teachers. From 1975 to 1997, legislated limits on collective bargaining for teachers in Ontario were uncommon. During this period, teachers had the right to negotiate any terms or conditions of employment with school boards. Indeed, that was required by the SBTCNA.

The Education Accountability Act

221. On 10 May 2000, the Government introduced Bill 74, the EAA, which received Royal Assent on 23 June 2000 (sections 2, 3, 17, 18 and 19, which are the operative provisions with respect to co-curricular activities, were to come into effect at a later date to be determined by proclamation). The EAA will significantly affect the collective bargaining rights of elementary and secondary-school teachers and dramatically alter the terms and conditions of their employment in three significant ways: by forcing secondary-school teachers to perform extra-instructional time; by making previously voluntary activities mandatory; and by removing the right to bargain collectively any issues concerning co-curricular duties.

222. As regards the first matter (obligation to perform extra-instructional time) the complainants take issue with the following provisions of the EAA:

– section 6(2): The current standard of 1,250 minutes of instruction time is amended so that every Board must ensure that its classroom teachers provide instruction on average of at least 6.67 eligible courses in a day school programme during the school year;

– section 6(9): Cabinet has the power to micro-manage through regulations, both general and specific, what will be considered eligible courses for the purposes of meeting the 6.67 requirement. Cabinet has extensive regulation-making power to define what will constitute a credit or credit-equivalent course, to set rules about how to count credit and credit-equivalent courses for the purpose of meeting the 6.67 threshold, and to determine when a teacher is considered to be assigned to provide instruction in an eligible course. Cabinet may set maximum average numbers for which specified types of eligible courses may be counted, and formulate special rules for how to count these courses, including the power to exclude otherwise eligible courses from the calculation. These special rules for counting eligible courses may take into consideration pupil attendance levels, class size, and patterns of teacher assignments;

– section 6(6): The operation of current agreement provisions regarding instructional time is curtailed by this section, as the allocation by the principal to individual teachers may be made despite any applicable restriction or condition in a collective agreement;

– section 7: The Minister has authority to micro-manage compliance with this section by requiring reports from the Boards. Where the Minister has concerns about the plan, he or she can direct it to be altered and implemented as directed by the Minister. The Minister may direct an investigation in the affairs of a Board if the Minister has concerns that the Board may have done something or omitted to do something in contravention of the Act. The Minister may take control and charge of the Board where it has made an order finding that there has been a failure to comply with a direction and where the Lieutenant Governor in Council considers it necessary and advisable.

223. As regards the second matter (making previously voluntary activities mandatory), the complainants take exception with the following provisions of the EAA:

– section 1(1): The EAA amends the Education Act to include, among other things, the new concept of “co-instructional activities”, broadly defined by the Act as activities other than providing instruction that: (a) support the operation of school; (b) enrich pupils’ school-related experience, whether within or beyond the instructional

programme; or (c) advance pupils' education and education-related goals. Further, these activities are defined as including, but not limited to, activities having to do with school-related sports, arts and cultural activities;

– section 17(2): It is the duty of a secondary-school teacher and a secondary-school temporary teacher to participate in co-instructional activities, in such manner and at such times as the principal directs;

– section 3(3): During the school year, co-instructional duties may be assigned to teachers any time during the day, seven days a week, with no specified maximum number of hours of work. The assignment of duties may take place on school premises or elsewhere;

– section 3(2): The school Board must plan co-instructional activities pursuant to the Minister's guidelines;

– section 3(6): The Minister may require Boards to submit a plan in respect of co-curricular activities of the school year. The Minister may give such directions regarding the form, content and deadline for submission of a plan or report and Boards shall comply with such directions. Where the Minister has concerns that a plan may not comply with the requirements, the Minister may direct the Board to alter the plan;

– section 18: It is the duty of a principal to develop and implement a school plan providing for co-instructional activities and to assign duties relating to co-instructional activities;

– section 3(5): It is the exclusive function of the employer to determine how co-instructional activities will be provided by secondary-school teachers and no matter related to the provision of co-instructional activities shall be the subject of collective bargaining nor come within the jurisdiction of an arbitrator or a board of arbitration;

– section 7: The Minister may direct an investigation of the affairs of a Board if the Minister has concerns that the Board may have done something or omitted to do something in contravention of the Act. The Minister may take control and charge of the Board where it has made an order finding that there has been a failure to comply with a direction and the Lieutenant Governor in Council considers it necessary and advisable;

– section 20: Any withdrawal or slowdown of this extra-curricular activity will be considered a strike within the definition of the Labour Relations Act.

224. Prior to the passing of the EAA, teachers' participation in a wide variety of extra-curricular activities was not regulated by the Government, nor has it historically been the subject of explicit language in collective agreements. Instead, teachers from across Ontario have volunteered hundreds of thousands of hours of their own time to organize extra-curricular activities for their students. They organize and supervise the basketball teams, camera clubs, choirs, field trips, and overseas educational excursions that enrich students' lives. The wide range of non-instructional activities in which teachers have historically engaged, extending from staff meetings to coaching the athletic teams, has largely depended upon a teachers' sense of professionalism and shared expectations in the form of unwritten understandings. While not every teacher in Ontario takes on additional duties at all times over the course of his or her career, the overwhelming majority of teachers are involved in extra-curricular activities. Some teachers, however, may have compelling reasons for limiting the additional duties they can take on at any given point in their career: they may have young children at home, care for an ageing family member, or commute long

distances to work. These activities had been organized so far on a school-by-school basis – and it has worked. Teachers who have voluntarily devoted extensive time to extra-curricular activities have not received, and have not sought, additional remuneration, notwithstanding the significant additional workload which they have had to assume as a result of provincial cutbacks. The EAA provisions reviewed above would force teachers to assume mandatory co-curricular duties assigned by the principal and which may be enforced by a third party, or by the Minister.

225. As regards the third issue (removal of the right to bargain collectively on co-curricular duties) the complainants submit that this right would be specifically removed by the legislation. Section 18 of the EAA clearly states that teachers cannot negotiate clauses in their collective agreements to protect them from arbitrary and unreasonable assignment of extra-curricular activities and that the assignment of these activities cannot be dealt with through arbitration. The EAA places complete control over all of the non-teaching aspects of a teacher's working life in the hands of the Government and the DSBs, and grants no protection to teachers to ensure that such powers are not abused. For example, there are no restrictions on the number of co-instructional hours which teachers must work, or on the conditions under which such work is performed, nor is there any provision for additional remuneration for the performance of such work. The EAA provides no assurance that the personal circumstances of teachers, that compel them to limit additional duties on top of their instructional duties, will be respected.

226. Finally, any concerted or common refusal by teachers to perform assigned co-instructional duties will now constitute a strike within the definition of the Labour Relations Act and would be illegal during the lifetime of any collective agreement. The Ontario Labour Relations Act, like other labour relations statutes across Canada, makes strike activity illegal unless taken within the limited time frames established under statute, namely after the expiration of a collective agreement and after the conclusion of statutorily mandated conciliation/mediation. The Act makes it unlawful for any person bound by collective agreement from engaging in strike activity or for a trade union or its officers to call, authorize, threaten to call or authorize, or otherwise counsel, procure, support or encourage an unlawful strike.

227. The complainants assert that the EAA violates Conventions Nos. 87, 98, 151 and 154 in that it gives the Government exclusive control over co-instructional activities; restricts the right to strike; nullifies any negotiated clauses on voluntary activities; was not preceded with meaningful consultations; and has a punitive nature.

228. As regards the first issue, the complainants allege that the EAA vests the Ministry of Education, DSBs and principals with the exclusive authority to control working conditions of teachers as they relate to extra-curricular activities. This unilateral governmental control over the performance of co-instructional activities, and the exclusion of these activities as bargainable issues, violates the right to collective bargaining. Under the EAA, activities that teachers have voluntarily performed in the past are now mandatory. Section 17 provides that it is a duty of secondary-school teachers to participate in co-instructional activities in such a manner and at such times as the principal directs. The EAA places no restrictions on the working conditions under which teachers are required to perform these activities such as time, location, or duration. Section 3(5) of the EAA excludes matters related to the provision of co-instructional activities from the scope of collective bargaining and arbitration. School boards are mandated to develop plans regarding the provision of co-instructional activities for each school year in accordance with the guidelines established by the Minister of Education. The Minister retains broad powers to monitor and direct the content of these plans. Principals are required to develop co-instructional plans and assign activities to teachers within the framework developed by the school board and the Minister. The Government's unilateral control over co-instructional

activities thus fails to encourage and promote the full development and utilization of machinery for voluntary negotiations between employers' and workers' organizations with a view to regulating terms and conditions of employment by means of collective agreements mandated under Article 4 of Convention No. 98, and Article 7 of Convention No. 151.

229. The complainants submit that since co-instructional activities and instructional time are being made integral aspects of the employment terms and conditions of teachers, they should be subject to free and voluntary bargaining.

230. As regards restrictions to right to strike, section 20 of the EAA amends the definition of "strike" to include any collective cessation or refusal to perform co-instructional activities. The complainants submit that to exclude collective bargaining with respect to co-instructional activities and, at the same time, to define any withdrawal of what is essentially voluntary activity as an illegal strike, is draconian and contrary to principles of freedom of association. Teachers are prevented from taking advantage of the Labour Relations Act protections with respect to negotiating co-instructional activities, but are subject to full punitive force of the Act with respect to those same activities. Such a measure employs the Labour Relations Act as a weapon against teachers. The Committee has recognized that the right to strike is one of the legitimate and essential means through which workers and their organizations may defend their social and economic interests. It has stated that, while unfortunate consequences may flow from a strike in the education sector, they do not justify a serious limitation of the right to strike, unless they become so serious as to endanger life, personal safety or health of the whole or part of the population. The Committee has also recognized that teachers should enjoy the right to negotiate freely their working conditions and to have recourse to strike action as a legitimate means of defending their economic and social interests.

231. As regards the nullification of any negotiated clauses regarding voluntary activities, section 18 of the EAA confers principals with the authority to develop plans and to assign co-instructional activities, irrespective of whether such assignments comply with restrictions that may be contained in collective agreements. The Committee has stated that a legal provision which allows the employer to modify unilaterally the content of signed collective agreements, or to require that they be renegotiated, is contrary to the principles of collective bargaining. It has also held that the suspension or derogation by decree – without the agreement of the parties – of collective agreements freely entered into by the parties violates the principle of free and voluntary collective bargaining established in Article 4 of Convention No. 98. In this case, the EAA has the power to effectively nullify any existing or negotiated provisions in collective agreements regulating the performance of co-instructional activities and thus infringes the principle of free and voluntary collective bargaining.

232. The complainants also submit that the EAA was quickly passed through the Ontario legislature without any meaningful consultation with teachers' unions, teachers, students or parents.

233. As regards the punitive aspect of the EAA, the complainants submit that those portions of the EAA dealing with "co-curricular activities" have not been enacted to address any lack of willingness on the part of teachers across Ontario to participate in extra-curricular activities. In fact, the Minister of Education has recognized on numerous occasions that the majority of teachers participate in extra-curricular activities (*Ontario Hansard*: 18 December 2000, 17 October 2000, 26 September 2000). The complainants allege that the Government has introduced the legislation as a punitive response to an isolated situation in Durham Region, where secondary-school teachers had withdrawn their extra-curricular activities in response to a labour-management dispute regarding

instructional time (coincidentally, Durham Region falls within the electoral riding represented by the Minister of Education and the Attorney-General). Secondary-school teachers in Durham declined to perform voluntary extra-curricular activities because they were carrying a heavier teaching load than any other high school in the province. Every other school board in the province that was faced with a higher secondary-school workload under Bill 160 managed to work out agreements with teachers because those school boards realized workloads had to be lighter. It was only in the Durham Region that school boards failed to negotiate a lighter workload. The complainants allege that the Government is making voluntary extra-curricular activities compulsory for all teachers in Ontario, as a punitive response to the withdrawal of such activities in Durham and, second, to preclude any further withdrawals of voluntary services by teachers elsewhere. Such use of the legislation by the Government undermines the freedom of association of teachers and undermines confidence in the fairness of the labour relations scheme in Ontario. The complainants point out that the punitive element of the EAA described above was also present in the Government's introduction of certain amendments to Bill 160 in the face of protest action by teachers, previously addressed by the Committee in Case No. 1951.

234. More generally, the complainants submit that the EAA is simply the latest example in a long series of government interference in free collective bargaining [Case No. 1900: exclusion of agricultural and domestic workers and certain professionals (Bill 7); Case No. 1943: interference with independence of interest arbitrators, (Bill 26, Bill 136, Bill 48); Case No. 1975: exclusion of employees under the welfare system (Bill 22)] and in the education sector in particular [Case No. 1951: exclusion of certain matters form collective bargaining (Bill 160); Case No. 2025: back-to-work legislation after lawful strike, and lack of prior consultation (Back-to-School Act, 1988)].

235. The complainants submit that, despite past decisions of the Committee, the Government has consistently failed to:

- recognize that the right to bargain freely with employers regarding conditions of work constitutes 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 they represent;

- encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements;

- observe the principle of non-discrimination in trade union matters as required by Article 2 of Convention No. 87, whereby freedom of association should be guaranteed without discrimination of any kind based on occupation or otherwise;

- recognize the right to strike by workers and their organizations as a legitimate means of defending their economic and social interests;

- consult fully with trade unions and employers' organizations to determine how to strive to promote confidence in the labour relations system of Ontario.

236. The complainants submit that the conclusions and recommendations of the Committee have, by and large, fallen on deaf ears and that the Government of Ontario clearly has flouted its obligation to observe the Conventions and principles of freedom of association as articulated by the Committee over the past five years. Thus, given:

- the long record of the current Government in interfering with freedom of association and the right to collective bargaining in Ontario;

- that the Government has clearly and consistently ignored its obligations to observe ILO Conventions and principles irrespective of decisions by the Committee on Freedom of Association requesting it to take alternative measures;

- the consistently serious nature of the interferences involved; and

- the undermining of confidence in the scheme of labour relations in Ontario,

the complainants request that the Committee dispatch a mission to Ontario to inquire into the systematic manner in which labour rights have been undermined by the present Government.

B. The Government's reply

237. In its communication of 14 September 2001, the Government states that the focus of its education reform agenda is aimed at ensuring that Ontario's students have access to the best-quality education. Consistent with this focus, the purpose of the EAA was to:

(i) ensure that school boards actually meet the instructional time standard for teaching time in secondary schools – four hours and ten minutes per day, or just under 21 hours per week;

(ii) lower the average class sizes at both the elementary and secondary levels;

(iii) ensure that school boards meet the province-wide quality standards in such areas as class sizes, curriculum and provision of special education;

(iv) ensure that school boards meet the objectives of student-focused funding by dedicating more resources to the classroom.

238. The EAA also included provisions dealing with co-instructional activities. Co-instructional activities are activities that support the operation of schools, enrich pupils' school-related experience, whether within or beyond the instructional programme, or advance pupils' education and education-related goals. This would include participation in school-related sports, arts and cultural activities, parent-teacher and pupil-teacher interviews, letters of support for pupils, staff meetings and school functions. Under the co-instructional provisions of the EAA, the school board and principal would have been required to develop and implement a plan to provide co-instructional activities and to assign teachers to perform those activities. Teachers' duties would have included participation in the provision of co-instructional activities. The Government points out, however, that the operative co-instructional provisions were not proclaimed in force with the rest of EAA.

239. The Government submits that school boards are a special kind of employer in that they have a duty to operate schools for approximately 2 million pupils in Ontario who have a statutory right to attend school. The operation of schools as a workplace must be consistent with the delivery of quality education programmes to pupils. The EAA does not limit the right of employees to associate recognized by the Education Act, R.S.O. 1990, c. E.2, as amended.

240. With respect to the scope of bargaining in the education sector, the Freedom of Association Committee has accepted that a distinction may be drawn between matters that are essentially or primarily concerned with management and operation of business, which can be regarded as outside the scope of bargaining, and matters relating to conditions of employment, which should be subject to collective bargaining [Case No. 1951, 316th Report, para. 222]. The Committee has further acknowledged that issues that can be

considered closely linked to educational policy, such as class size and instruction time, may be excluded from the scope of collective bargaining notwithstanding that they may also have a bearing on conditions of employment [ibid; para. 223].

241. The provision of co-instructional activities in schools raise aspects of broad educational policy. As indicated above, co-instructional activities support the operation of schools, enrich pupils' school-related experience, whether within or beyond the instructional programme, and advance pupils' education and education-related goals. The findings of numerous studies indicate that co-instructional activities such as sports, music and cultural activities, are an important part of students' education. Similarly, activities such as staff meetings, graduation ceremonies, pupil-teacher and parent-teacher meetings are important to the operation of schools and to the education of students.

242. While the Government maintains that the provision of co-instructional activities is a matter of broad educational policy and, as such, may be excluded from the scope of collective bargaining, it is important to recognize that it has not chosen to do so. The co-instructional provisions of the EAA that form the basis of the complaint were never proclaimed in force. Furthermore, the Stability and Excellence in Education Act (SEEA), which came into force on 29 June 2001, repealed those "operative" provisions of the EAA that form the basis of the complaint. In particular, the following subsections of the Education Act, as enacted by the EAA, were repealed by the SEEA: ss. 170(2.1), (2.2), (2.3) and (2.4) (as enacted by section 3 of the EAA); ss. 264(1.2) and (1.3) (as enacted by section 17 of the EAA); and ss. 265(2), (3) and (4) (as enacted by section 18 of the EAA). As such, the complainants' allegations that the EAA restricts the scope of collective bargaining and diminishes collective bargaining rights in this regard are unfounded.

243. With respect to instructional time, as the complainants acknowledge, the Committee has recognized that instruction time may be considered to be an aspect of educational policy and, as such, may be outside the process of collective bargaining [Case Nos. 1951, para. 223]. Notwithstanding that instruction time may be considered a matter of broad educational policy, the Government points out that, contrary to the complainants' allegation, the EAA does not force secondary-school teachers to perform "extra" instructional time. Rather, the EAA maintains the established standard for teaching time in secondary schools. However, in order to address differing interpretations of the standard and to ensure that the same standard is applied throughout the province, the EAA modified the way instruction time is measured. Rather than expressed in the form of minutes of instruction time, teaching time is now measured as an average of eligible courses in the day-school programme during the school year. This is calculated as an average of eligible courses assigned to the classroom teachers employed by the school board and is based on assignments over the entire school year. The number of days that teachers work did not increase. The EAA simply ensures that a specified amount of time is actually spent instructing students. Furthermore, with the passage of the SEEA, the definition of what may be included as instructional time has been broadened. Within the parameters set out in the legislation, boards and teachers' unions can still negotiate teacher workloads.

244. The EAA respects the right of teachers to engage in a strike. While the EAA amends the definition of strike for the purposes of the education sector, this amendment does not limit the exercise of this right. The amended definition merely clarifies what type of activity constitutes a strike. For the purposes of the education sector, a "strike" includes any collective action or activity that is designed to restrict, limit or interfere with the operation of one or more school programmes, including programmes involving co-instructional activities. However, it is imperative to note that teachers remain entitled to engage in a legal strike as a means of defending their economic and social interests.

245. The Government states that the parties remain free to negotiate conditions of employment including the delivery of co-instructional activities, since section 18 of the EAA – which would have required principals to develop and implement school plans for the delivery of co-instructional activities and to assign duties relating to those activities – was never proclaimed in force and has since been repealed by the Government. Accordingly, there is simply no basis for the allegation that the EAA nullifies or modifies any provisions of a collective agreement regarding the provision and delivery of co-instructional activities. Furthermore, on a broader scale, school boards continue to be able to negotiate about salary, benefits, leaves of absence, pupil-teacher ratios, class size (within prescribed limits), positions of additional responsibility (e.g. department heads), grievances, paid leave for union activities, "just cause" protection for discipline and dismissal, seniority, surplus recall, etc.

246. As regards consultation, the Government submits that the EAA forms part of its overall education reform initiative undertaken to improve the quality of education for pupils in Ontario. Throughout this reform initiative, both prior to and following introduction of the EAA, education stakeholders and the general public were able to express their views about the reforms both by direct communication with the Government and through the legislative process, which is public and democratic in Ontario. During the legislative process, a Standing Committee of the Legislature, consisting of members of all the political parties, held hearings to receive public input. Teachers' unions made submissions at these hearings. In addition, teachers' union officials held meetings with senior representatives of the government of Ontario to discuss different aspects of the proposed changes, including the issue of co-instructional activities. The government listened and responded to the input it received. The government confirmed that it would not proclaim into law the sections of the EAA that dealt with co-instructional activities. Furthermore, as indicated, the critical provisions relating to co-instructional provisions have since been repealed by the SEEA. Prior to the introduction of the SEEA, a series of consultation meetings were held with representatives of teachers' unions and that Act reflected those consultations.

247. Contrary to the assertion of the complainants, the motivation for the EAA was not to punish. Rather, the EAA was passed to ensure that school boards meet provincial quality standards in education so as to ensure that Ontario's students have access to the best-quality education.

248. Regarding the issue of repeated interference, the Government states that it is committed to balanced, stable and productive labour relations in an environment that ensures that Ontario's students have access to the best-quality education. It is simply not accurate to portray the EAA as "the latest in a series of government interferences into free collective bargaining ...". It does not prevent teachers from associating, engaging in collective bargaining or striking.

249. By way of summary, the Government states that the complaint is unfounded since: the EAA respects the freedom of teachers to associate; the provision and delivery of co-instructional activities are matters of broad educational policy; in any event, the "operative provisions" of the EAA that form the basis of the complaint were never proclaimed in force and have since been repealed; the EAA respects the right to strike; the EAA was passed in order to ensure that Ontario's students have access to the best quality education; and teachers' unions have had the opportunity to express their views and make submissions on education reform and the Government has taken this input into account and has acted accordingly.

C. The Committee's conclusions

250. *The Committee notes that this case concerns alleged violations of freedom of association as a consequence of the adoption of the Education Accountability Act (EAA), which amended labour relations in the education sector in the Province of Ontario. The complainants submit that the EAA excludes from collective bargaining certain matters that had previously been subject to negotiation; that it restricts the scope of collective bargaining regarding instructional time and co-instructional activities, as well as the right to strike; and that the parties concerned were not adequately consulted before the adoption of the EAA.*

Scope of collective bargaining – Instruction time

251. *The Committee notes that, according to section 6(2) of the EAA "Every board shall ensure that, in the aggregate, classroom teachers in secondary schools are assigned to provide instruction to pupils in an average of at least 6.67 eligible courses in a day-school program during the school year" ("eligible" courses are defined as a credits-course or a credits-equivalent course). Furthermore, section 6(9) empowers the Lieutenant Governor in Council to make regulations on detailed aspects of courses, programmes and credit-equivalent courses. The Committee notes the complainant's contention that the Act significantly affects the collective bargaining rights of teachers by forcing them to perform extra-instructional time, and by amending the current standard of 1,250 minutes of instruction time. The Committee also notes that sections 6(4) and 6(5) of the EAA provide that the principal must allocate instruction time among teachers, and that under section 6(6) the allocation of instruction time may be made despite any applicable conditions or restrictions in a collective agreement. The complainants contend that as a result of the legislative restrictions, provisions of existing collective agreements could be rendered meaningless. The complainants also take issue with section 7 of the EAA, which empowers the Minister of Education to direct an investigation into the affairs of a school board if he is concerned that the board may have done something, or omitted to do something, in contravention of the Act. Furthermore, the Minister may take control and charge of the board where he concludes that it has failed to comply with a direction.*

252. *The Committee notes the Government's view that the exclusion of instruction time from collective bargaining is justified because the Committee has acknowledged that instruction time may be considered to be an aspect of educational policy and, as such, may be outside the process of collective bargaining. Furthermore, according to the Government, the Act does not force secondary-school teachers to perform extra-instructional time, as it maintains the established standard for teaching time in secondary schools and simply modifies the way instruction time is measured.*

253. *The Committee recalls that the right to bargain freely with employers with respect to conditions of work constitutes an essential element of freedom of association, and that 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 they represent [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 782]. The Committee has also previously emphasized the importance of promoting collective bargaining in the education sector [**Digest**, op. cit., para. 804; 310th Report, Case No. 1928 (Canada/Manitoba), para. 175]. In this respect, the Committee has acknowledged that a distinction may be made between matters that essentially concern the management and operation of business, for example the determination of the broad lines of educational policy, which may be excluded from collective bargaining, and matters relating to conditions of employment, which should be subject to collective bargaining. Although the Committee has acknowledged that the amount of instruction time may have aspects of broad policy, it has stressed that Governments must ensure that the unions*

concerned are fully consulted when such broad policy is being formulated. The Committee has also emphasized that in all cases, free collective bargaining should be allowed to take place on the consequences of educational policy decisions on conditions of employment [316th Report, Case No. 1951 (Canada/Ontario), para. 223].

254. *The Committee notes that, in the present case, the allocation of instruction time by the principal to individual teachers results from the Government's policy decision to fix the amount of instruction time. The Committee considers that subjects such as the allocation of instruction time have an important consequence on the conditions of employment of teachers and should not be regarded as falling outside the scope of collective bargaining. The Committee therefore requests the Government to amend its legislation so that free collective bargaining may take place on the consequences of educational policy decisions on the conditions of employment of teachers, and in particular on the allocation of instruction time by the principal to individual teachers. The Committee requests the Government to keep it informed of developments in this regard.*

255. *The Committee further notes the contradiction between the complainant's allegation that the EAA increases the current standard instruction time, and the Government's contention that the established standard for teaching time is maintained. Taking into account the fact that this aspect of employment conditions was previously dealt with through collective bargaining, the Committee requests the complainant and the Government to provide more detailed information regarding modifications made to the established standard teaching time by virtue of the EAA.*

Scope of collective bargaining – Co-instructional activities

256. *The Committee notes the complainant's allegation that the EAA restricts the scope of collective bargaining by making mandatory extra-curricular activities that were previously voluntary for teachers and by specifically removing such duties from collective bargaining. The Committee also notes the Government's position that provision and delivery of co-instructional activities are matters of broad educational policy and, as such, may be excluded from the scope of collective bargaining. While recalling as a general proposition that matters that deal primarily with questions relating to conditions of employment cannot be excluded from collective bargaining [325th Report, Case No. 1951 (Canada/Ontario), para. 206], the Committee notes that the provisions of the EAA dealing with co-instructional activities never entered into force and were repealed through the adoption of the Stability and Excellence in Education Act (SEEA).*

Right to strike

257. *Regarding the complainant's contention that the EAA restricts the right to strike of school teachers, the Committee notes that the Act clarifies what type of activity constitutes a strike, without however limiting the exercise of this right. Section 20 of the EAA amends the definition of "strike" to include any collective action or activity that is designed to restrict, limit, or interfere with the operation of school programmes involving co-instructional activities. The Committee also notes that teachers remain entitled to engage in a legal strike as a means of defending their economic and social interests.*

Prior consultation

258. *The Committee notes that according to the complainant, the EAA was passed through Ontario legislature quickly and without meaningful consultations with teachers' unions, teachers or parents. The Committee also notes that according to the Government, a*

standing committee of the Legislature held hearings prior to and following the introduction of the EAA, to receive public input, where teachers' unions made submissions. Furthermore, the Government states that teachers' unions officials held meetings with senior government representatives to discuss the proposed changes, including the issue of co-instructional activities, and on these occasions the Government confirmed that it would not proclaim into law the sections of the EAA that dealt with co-instructional activities. While noting that there were in this case some consultations, as evidenced by the fact that some provisions of the EAA objected to by the complainant never came into force, the Committee recalls the importance that should be attached to full and detailed consultations before the introduction of legislation affecting collective bargaining or conditions of employment.

The Committee's recommendations

259. ***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 amend its legislation so that free collective bargaining may take place as regards the consequences of educational policy decisions on the conditions of employment of teachers, in particular on the allocation of instruction time by the principal to individual teachers, and to keep it informed of developments in this regard.

(b) The Committee requests the complainant and the Government to provide more detailed information regarding modifications made to the established standard teaching time by virtue of the EAA.

CASE NO. 2145

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

Complaint against the Government of Canada concerning the Province of Ontario presented by
— Education International (EI)
— the Canadian Teachers' Federation (CTF)
— the Ontario Teachers' Federation (OTF) and
— the Elementary Teachers' Federation of Ontario (ETFO)

Allegations: Interference in collective bargaining; violations of the right to strike; limitations of arbitration process

260. Education International (EI) presented a complaint of violations of freedom of association against the Government of Canada (Ontario) in a communication dated 3 July 2001 on behalf of the Canadian Teachers' Federation (CTF), the Ontario Teachers' Federation (OTF) and the Elementary Teachers' Federation of Ontario (ETFO).

261. In a communication dated 27 September 2001, the Federal Government transmitted the reply of the Government of the Province of Ontario.

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

A. The complainants' allegations

263. The Elementary Teachers' Federation of Ontario (the "Federation") represents approximately 65,000 workers, including teachers and education support workers employed in Ontario public elementary schools. In particular, the Federation represents approximately 2,100 elementary school teachers employed by the Hamilton-Wentworth District School Board (the "School Board"), a public school board established under the provisions of the Education Act.

264. This complaint concerns measures taken by the Government of Ontario to end a labour dispute over the employment terms and conditions of teachers employed by the School Board. In October 2000, the teachers were locked out by the school board. In November 2000, the Government of Ontario passed the Back to School Act (Hamilton-Wentworth District School Board), 2000 ("Bill 145"), which ended the lockout, required teachers to return to work, prohibited strike activity under pain of prosecution and imposed compulsory arbitration to settle the terms of the collective agreement. Bill 145 required, inter alia, that the arbitration board be governed by funding regulations established by the Government of Ontario and placed other restrictions and governmental criteria on the operation of the arbitration board which interfered with its independence and impartiality and undermined the parties' confidence in its operation.

265. The complainants allege that Bill 145 contravenes ILO Convention No. 87 concerning freedom of association and protection of the right to organize (1948), which Canada has ratified in that: (a) it interferes with the right of teachers to bargain collectively; (b) it interferes with the right of teachers to engage in lawful strikes under applicable legislation; and (c) it impairs the independence and impartiality of interest arbitrators and the integrity of the arbitration process. For the same reasons, Bill 145 also contravenes ILO Convention No. 98 concerning the right to organize and collective bargaining (1949), Convention No. 151 concerning labour relations (public service) (1978), and Convention No. 154 concerning the promotion of collective bargaining (1981).

Background of the dispute

266. In normal circumstances, collective bargaining for teachers in Ontario is governed by the Education Act, which provides for notice to negotiate and imposes an obligation to bargain in good faith. The parties are entitled to resolve their disputes by collective bargaining, and have a statutory right to strike or lockout where such strike or lockout is otherwise timely and where the strike has been approved by a strike vote conducted among members of the bargaining unit.

267. The Federation and the School Board were bound by a collective agreement which expired on 31 August 2000. In March 2000, the Federation served notice to bargain on the School Board and negotiations commenced on 23 March 2000. However, the parties were unable to reach a collective agreement and, on or about 23 June 2000, a request was made for the appointment of a Conciliation Officer. A "No-Board Report" was requested on 4 October 2000 and issued on 9 October 2000. The Federation conducted a strike vote on 17 October 2000, which resulted in 96.5 per cent support for strike action commencing after 27 October, when the Federation was in a lawful position to strike.

268. The Federation determined to undertake a one-day shutdown on 30 October 2000, to be followed by a series of rotating strikes which were geographically based and which would take place from 31 October to 3 November. Further strike action would be determined at the conclusion of that week. However, after the Federation had publicized its plans, the School Board announced on 26 October, that it would not permit rotating strikes and would instead lockout all members of the bargaining unit effective 31 October 2000. The lockout continued from 31 October to 22 November, the day after Bill 145 received Royal Assent.

269. On 17 November 2000, the School Board requested that a final-offer vote be conducted pursuant to the provisions of section 42 of the Labour Relations Act, On 24 November 2000, 98.2 per cent of those who cast a ballot rejected the School Board's final offer.

270. On 20 November 2000, the Education Relations Commission (the "Commission") issued a jeopardy advisement as required under the Education Act. However, the advisement did not find that the school year of students was in jeopardy at that time, but rather predicted that, should the labour dispute continue, the students' educational year would be in jeopardy at some uncertain date in the future. While the Commission recommended the introduction of back-to-work legislation which provided for compulsory arbitration, it did not recommend that the jurisdiction of the arbitration board under that legislation be limited in anyway. Prior to issuing its report, the Commission did not advise the Federation of its intention to make the jeopardy advisement and recommendations and did not provide the Federation with an opportunity to make any submissions as to whether such an advisement should be issued.

271. The Government introduced Bill 145 on 20 November 2000, which received third reading and Royal Assent on 21 November 2000. The Government did not consult with the Federation prior to introducing the legislation and blocked all attempts to have the legislation subject to Committee hearings where public submissions could be received. As a result, there was no meaningful consultation with the Federation either prior to the introduction of the legislation or during its enactment. On 20 April 2001, an award was issued by the arbitrator appointed under Bill 145.

The provisions of Bill 145

272. Under section 3 of Bill 145, the lockout was terminated as soon as the Bill was proclaimed in force, the Federation and the bargaining unit members were required to terminate any strike and bargaining unit members were required to report to work and perform their duties. Under sections 5 and 6 of the Bill, bargaining unit members are precluded from exercising their right to strike under the Education Act and persons are prohibited from calling or authorizing a strike by any members of the bargaining unit. No official or agent of the Federation can counsel, procure, support or encourage a strike by members of the bargaining unit. Any strike or lockout can take place only after the parties execute a new collective agreement and then only in accordance with the Education Act. As a result, strikes are precluded not only in respect of entering into the new collective agreement but also until the expiry of the collective agreement imposed by arbitration.

273. Any contravention of the provisions related to strikes or lockouts constitutes an offence and subjects individuals to a fine of up to $2,000 for each day of contravention. The Federation is subject to a fine of $25,000 per day for such contravention. In addition, even though a strike or counselling of a strike would be otherwise be lawful under the Education Act, Bill 145 deems strikes to be unlawful under the Labour Relations Act, thereby giving the Ontario Labour Relations Board jurisdiction to order the end of a strike or lockout, to require damages to be paid in respect of a strike and to permit prosecutions under the Labour Relations Act in respect of a strike (sections 4 to 8).

274. Sections 10 to 12 of Bill 145 provide that, if the School Board's offer is rejected and if the parties do not reach a collective agreement within seven days after the Bill is proclaimed in force, the terms of the new collective agreement shall be determined by mediation-arbitration. Bill 145 further provides that, in determining the provisions of the collective agreement, the board of arbitration would have to comply with the following requirements:

(a) the arbitrator's award must be consistent with the Education Act and regulations, including the funding regulations, and must be able to be implemented without causing the School Board to incur a deficit (section 18(1));

(b) the arbitrator would be prevented from making any award which would interfere with the scheduling of pupils' instruction, the length of instructional programmes provided to pupils on school days and the length of pupils' instructional period (section 18(2)); and

(c) if the arbitrator were to award any increase in compensation, he or she must justify the award in a written statement which explained how the School Board could meet the costs of the award without incurring a deficit (sections 18(3) and (4)).

275. In addition, section 19 of the Bill provides that, if the arbitrator awards a collective agreement for a period longer than one year, the agreement can be reopened at the instance of either party in the event new funding regulations are promulgated under the Education Act for one or more fiscal years. A new board of arbitration may then be constituted to deal solely with the issue of wages and benefits for "the relevant period". It is not clear how these provisions are intended to operate, but it can be observed that the Government has given itself a great deal of power to revise, or interfere with, the effect of any arbitrated award simply passing by new funding regulations which alter the existing legislative grants and thus trigger a further arbitration.

Violations of ILO Conventions

276. The complainant submit that Bill 145 infringes the essential components of freedom of association under Convention No. 87, including the right of workers to organize their activities and to formulate their programmes, the primacy of collective bargaining as a means of resolving disputes and the prohibition on the state from interfering with the right to strike, by: (a) prohibiting teachers employed by the School Board from engaging in a lawful strike as otherwise permitted under the terms of the Education Act; and (b) subjecting individuals and trade unions to prosecution and fines for counselling or engaging in strike activity which would otherwise be lawful under Ontario law.

277. In enacting the back-to-work legislation, the Government failed to make out a disruption in essential services. Even assuming such considerations could otherwise amount to the disruption of essential services, the Government acted prior to any finding that the educational year of students was in any jeopardy and solely on the basis of a prediction that jeopardy would occur at some point in the future if the labour dispute continued with no reasonable prospect for a negotiated settlement.

278. Further, the Government did not abide by the principle of consultation of affected parties in that it entirely failed to give the Federation any opportunity to make submissions to the Education Relations Commission prior to the Commission's issuance of its jeopardy advisement and failed to consult the Federation with respect to the enactment of Bill 145.

279. The complainants also submit that the legislative imposition of fiscal limitations on the jurisdiction of the board of arbitration, as well as the other restrictions on the arbitrator's powers and jurisdiction, interferes with the independence of the board of arbitration,

undermines confidence in the arbitration process, imposes wage restraints through the arbitration process, and infringes the right of teachers to bargain freely with their employer with respect to terms and conditions of employment. Moreover, the Government's interference with the arbitration process undermines the ability of the arbitration process to be an effective means of compensating the affected teachers for the unjustified loss of the right to strike. As a result of the imposition of these criteria on the interest arbitrators constituted under Bill 145 violates fundamental principles of freedom of association. Interest arbitrators in Canada, as well as international bodies, have recognized that the independence of the arbitration process is fatally compromised by legislative provisions, such as those contained in Bill 145, which impose mandatory financial constraints that dictate or effectively determine the result of an arbitration. Indeed, historically, arbitrators have consistently rejected government-imposed financial limitations precisely because of the adverse effect such limitations have upon arbitral independence and impartiality.

280. One of the most important principles governing interest arbitration, in light of the withdrawal of workers' right to strike to which the procedure applies, is that it should attempt as closely as possible to replicate the results of free collective bargaining. Pursuant to that goal, the traditional criterion used by arbitrators to determine wages in public sector collective agreements in Ontario, as in other Canadian jurisdictions, has been comparable with: employee performing similar work for the same employer; employees performing similar work for other employers in the public sector; and employees performing similar work for employers in the private sector. This "comparability" criterion ensures that wages for employees governed by interest arbitration in the public sector follow freely negotiated collective agreements in those sectors where the parties have the right to strike or lockout. While the employer's ability to pay (or affordability) may have legitimacy in private sector bargaining, it has been consistently and repeatedly rejected as an irrelevant criterion in the public sector by arbitrators in Ontario, and across Canada, over a period of several decades.

281. The paramount importance of independent boards of arbitration in a context where compulsory arbitration has replaced the right to strike or lockout has also been recognized in international law. Both the ILO Committee of Experts and the Freedom of Association Committee have consistently ruled that, where restrictions are imposed on the right to strike in essential services, the interest arbitration process must be impartial so as to safeguard the interests of workers who have been denied the right to strike. Moreover, these bodies have held that it is not only essential that tribunals entrusted with interest arbitration functions be strictly impartial, but also that they should appear to be impartial both to the employers and the workers concerned. In this respect, the ILO has also recognized that the government's interest in managing the economy often carries with it an interest in seeking to influence collective bargaining settlements in the public sector. Thus, there is widespread acknowledgment, both in Canadian law and international law, that state-imposed criteria which dictate that an arbitrator must arrive at a pre-determined result significantly compromise the independence and integrity of the arbitral process, and the confidence of the parties to that process, and converts the arbitrator from an independent decision-maker who may be required at most to "have regard" to certain criteria, into an arm of government for the purpose of imposing governmental policy. Since governments have a stake in the outcome of the arbitration process, the establishment of binding governmental criteria builds into the legislation a bias in favour of one of the parties affected by the outcome. This bias is heightened where, as here, such criteria can be based upon funding determinations made exclusively by cabinet on an ad hoc basis. Consequently, the provisions of Bill 145, and in particular sections 15(6), 18 and 19, are not consistent with international requirements of independence and impartiality.

282. The complainants submit that Bill 145 undermines the ability of an arbitration board to replicate the conditions of free collective bargaining, contrary to Convention No. 98. In

addition, the effort to impose wage constraints through the arbitration process contravenes Convention No. 98 requirement that conditions be established to promote voluntary negotiations with a view to regulating the terms and conditions of employment by means of collective bargaining. The Government's intervention in the negotiation and arbitration process and its attempt unilaterally to terminate collective bargaining and impose a pre-determined wage increase do not give priority to collective bargaining. The Government's recourse to compulsion alters the essentially voluntary nature of collective bargaining and undermines the autonomy of the parties.

283. The Government's interference with the collective bargaining and arbitration process and its attempt unilaterally to impose terms and conditions of employment also contravene Convention No. 151. In this regard, Bill 145 fails to promote the full development and utilization of machinery for negotiating terms and conditions of employment between the School Board and the Federation. Further, Bill 145 undermines both the teachers' statutorily recognized right to strike and the arbitration process as an independent and impartial means for settling disputes established in such a manner as to ensure the confidence of the parties.

284. Finally, the complainants submit that the method adopted by the Government of Ontario for dealing with disputes over the terms and conditions of employment of teachers employed by the School Board does not promote collective bargaining as mandated by Convention No. 154.

285. The complainants submit that, in outlawing strikes in respect of its dispute with the School Board, the Government has violated the fundamental principles underlying freedom of association and the right of employees to engage in strikes in protection of their interests.

286. Further, the complainants submit that, in seeking to unilaterally determine the terms and conditions of employment by requiring the board of arbitration established under Bill 145 to be governed by governmental funding regulations, and providing for the award to be reopened and subject to further arbitration based on the introduction of additional funding regulations in the future, the Government has: (a) interfered with the impartiality and independence of the board of arbitration; (b) undermined the parties' confidence in the arbitration process; (c) vitiated the adequacy of the arbitration process as a replacement for the ability to strike; and (d) undermined the process of free collective bargaining.

287. Finally, the complainants submit that by introducing back-to-work legislation in a precipitous manner and without adequate consultation, and by constraining the powers and jurisdiction of the board of arbitration, the Government has undermined the right of public sector workers to bargain collectively and failed to promote collective bargaining.

288. In support of their allegations and submissions, the complainants quote numerous sections of the relevant Conventions as well as references from the ***Digest of decisions and principles of the Freedom of Association Committee,*** ILO, 1996. They submit that the Government of Ontario must review its legislation to ensure compliance with ILO Conventions.

289. Since this complaint is the most recent in a series of complaints concerning infringements of the collective bargaining process, the Committee on Freedom of Association should recommend that an ILO mission be sent to Canada to review the process of collective bargaining in the education sector, since it has already dealt with complaints against the governments of the Provinces of Quebec, Ontario, Yukon, Prince Edward Island, Nova Scotia and Manitoba.

B. The Government's reply

290. In its communication of 27 September 2001, the Government submits that the complainants ignore the circumstances that required the introduction of the Back to School Act, mischaracterizes the nature of the legislation, and that the Act does not violate Conventions Nos. 87, 98, 151 and 154. The Government provides the following background and summary of the Acts:

- The collective agreement between the Hamilton-Wentworth District School Board (the "School Board") and the Elementary Teachers' Federation of Ontario (the "Federation") expired on 31 August 2000.
- Conciliation and mediation provided by the Government were unsuccessful and the negotiations between the parties had reached an impasse.
- The Federation engaged in a strike on 30 October 2000 and the School Board, citing safety concerns, locked the teachers out on 31 October 2000.
- On 17 November 2000, the School Board requested a "final-offer vote" on the last offer it had presented to the Federation.
- On 20 November 2000, the Education Relations Commission ("ERC") provided a "jeopardy advice" to the Lieutenant Governor in Council.
- The Back to School Act was introduced on 20 November 2000 and received Royal Assent and became law on 21 November 2000.

291. The key features of the Act were as follows:

- The School Board was required to resume normal operation of the schools and the teachers were required to report to work and perform their duties.
- Further lockouts and strikes were prohibited only in connection with the current round of negotiations.
- Failure to comply with the Act was punishable by fine.
- In an effort to provide a further opportunity for the parties to reach their own agreement, the "final-offer vote" process was permitted to continue.
- In addition, the parties were provided with an additional seven days to reach an agreement on their own or to mutually agree to the appointment of a mediator-arbitrator, to settle their outstanding differences.
- If the parties were unable to reach an agreement and failed to agree to the appointment of a mediator-arbitrator, the Minister of Labour would appoint one.
- Any award issued by a mediator-arbitrator had to be consistent with the Education Act and capable of being implemented in a manner that would not cause the School Board to incur a deficit.

292. The Government's policy is that negotiations by the parties is the most desirable means of resolving labour disputes. In the ordinary course, the Government acts to support the collective bargaining process as a neutral facilitator through its arms-length conciliation and mediation services. Only as a last resort, in circumstances where vital public interests are at stake, will the Government intervene directly by way of legislation. In the fall of

2000, the absence of teachers from their classrooms in the Hamilton-Wentworth district interrupted the education of students. The conditions that justify back-to-work legislation in this context were clearly present:

- The parties had made extensive use of the conciliation and mediation services offered by the Government without success or even a sign of imminent breakthrough.
- Negotiations between the parties were at an impasse.
- No further negotiations between the parties were scheduled.
- There appeared to be no reasonable likelihood of a negotiated settlement.
- Children have a statutory right to attend school in the province of Ontario.
- Students had been out of school for three weeks and their education was being seriously and adversely affected by the labour disruption.
- The ERC had issued a "jeopardy advice" pursuant to the Education Act.

With respect to the final point, the Government points out the nature and functions of the ERC, which is an expert, arms-length body, responsible for monitoring the effect of labour disruptions in the education sector. More specifically, the ERC is responsible for advising the Government when, in the opinion of the Commission, the continuation of a strike, lockout or closing of a school would jeopardize the completion of courses of affected pupils. The Government did not act until after it had received advice from the ERC concerning the effects of the labour disruption.

293. Having regard to all the circumstances, the interests of students, parents and the broader community demanded that the Government act decisively, regardless of how generally reluctant it is to intervene in labour relations matters. For the Government not to act to protect the public interest in these circumstances would have been an abdication of its responsibility. Decisions to remove legislatively the right to strike and lockout for a limited period of time must be made on a case-by-case basis within a flexible and contextual framework that permits the Government to be responsive to the public interest.

294. It is the policy of the Government of Ontario to permit and indeed encourage the collective bargaining process to run its course. As a general rule, parties are responsible for negotiating their own collective agreement and are provided with every opportunity to do so. The Ministry of Labour's conciliation and mediation services were made available to the School Board and the Federation, as is ordinarily the case. The Government did not intervene in the labour dispute immediately with the introduction of legislation. Rather, the Government exercised restraint and allowed the labour disruption to influence bargaining positions in the hope that the parties would freely negotiate their own agreement. However, after almost three months without a collective agreement and three weeks of labour disruption, during which time students in Hamilton-Wentworth were denied their statutory right to attend school, the Government decided, having regard to all the circumstances, that the interests of Ontario's students in resuming their education had to prevail over the right to strike and lockout.

295. The Government submits that the complainant's allegation that the Government "failed to give the Federation any opportunity to make submissions to the Education Relations Commission" ignores the arms-length nature of the ERC. The ERC independently monitors the effects of labour disruptions in the education sector and provides advice to the Government. With respect to consultations more generally, prior to the introduction of education reforms in Ontario, education stakeholders and the general public are able to

express their views about reforms both by direct communications with the Government and through the legislative process.

296. As regards the allegations relating to the fiscal restrictions imposed upon the mediator-arbitrator, the Government submits that these are matters of educational policy. The Committee on Freedom of Association has accepted that a distinction may be drawn between matters that are essentially or primarily concerned with management and operation of business, which can be regarded as outside the scope of bargaining, and matters relating to conditions of employment, which should be subject to collective bargaining. The Committee has further acknowledged that issues that can be considered closely linked to educational policy may be excluded from the scope of collective bargaining. School boards in Ontario provide a vital public service. They have a duty to operate schools for approximately 2 million pupils in Ontario who have a statutory right to an education. The operation of schools as a workplace must be consistent with the broader public policy framework in which quality education is paramount. It is, therefore, reasonable to require that arbitrators fashion their awards in a manner that is consistent with the Education Act and which recognize the unique duties of school boards that demand responsible fiscal management.

297. The complainants' allegation that the imposition of restrictions on the arbitration undermines the ability of the arbitration process to be an effective means of compensating the affected teachers for the loss of the right to strike and the suggestion that the "state imposed criteria ... dictate that arbitrator must arrive at a predetermined result ..." are inaccurate characterizations of the provisions of the Back to School Act. The primary purpose of the fiscal restrictions included in the Back to School Act is to ensure that any arbitrated agreement, just like any negotiated agreement, complies with the Education Act (including the funding formula regulation) which applies to all schools boards in the province of Ontario. It is also important to consider the nature of the funding formula established by regulation under the Education Act. The formula is drafted so as to comply with Canadian constitutional standards respecting religious denominational School rights and minority language education rights. Furthermore, the Education Act requires that the regulations governing education funding must operate in a "fair and non-discriminatory manner" in this regard.

298. The Government concludes that, when considered in context, the Back to School Act did not violate ILO Conventions Nos. 87, 98, 151 or 154.

C. The Committee's conclusions

299. *The Committee notes that the allegations in this case arise from the adoption of the Back to School Act (Bill 145) in November 2000, requiring Ontario elementary teachers to return to work after three weeks of a lawful strike and lockout, since the parties had been unable to conclude a new collective agreement. The main provisions of Bill 145 are as follows:*

(a) section 3 required the School Board to resume normal operation, and the teachers to report to work and perform their duties;

(b) sections 5 and 6 prohibited any further strike or lockout;

(c) sections 10 to 12 permitted the "final-offer vote" process to continue, to give the parties a further opportunity to reach their own agreement and, if the School Board's offer was rejected and the parties did not reach an agreement within seven days of the proclamation of the Bill, the terms of the new collective agreement would be determined by mediation-arbitration;

(d) section 18 imposes constraints on the mediator-arbitrator, both financial ones and others concerning the instruction of pupils.

300. *The Committee cannot but note at the outset the striking parallel between the present complaint and Case No. 2025 [320th Report, paras. 374-414]. Both cases involve practically the same parties; the complainants' allegations are almost identical; the Government's observations and arguments are essentially the same; and both cases raise similar issues: (a) violation of the right to strike; (b) imposition of an arbitration process which fails to meet the requirements of independence and impartiality, and improperly restricts the scope of the arbitrator's jurisdiction; and (c) lack of consultation prior to the adoption of the Act. Whilst emphasizing the seriousness of these violations, the Committee considers that little purpose would be served by reiterating at length its comments and recommendations, most of which can be applied here* mutatis mutandis, *and will limit itself to recalling well-established freedom of association principles.*

Right to strike

301. *The complainants allege that the Government violated their statutory right to engage in strikes to further their interests; they point out that the strike was timely and had been approved by a vote of the bargaining unit members. The Government replies that it did not intervene in the labour dispute immediately but instead exercised restraint and allowed it to influence bargaining positions in the hope that the parties would freely negotiate their own agreement; it maintains that the legislation was justified in order to protect the public interest, in particular the interests of students in resuming their education, which had to prevail over the right to strike and lockout.*

302. *Noting that the complainants had fulfilled all the legal requirements to exercise their right to take industrial action, the Committee recalls that the right to strike is one of the legitimate and essential means through which workers and their organizations may defend their economic and social interests [**Digest of decisions and principles of the Freedom of Association Committee,** 4th edition, 1996, paras. 474-475] subject to certain limited exceptions, and that the education sector does not fall within these exceptions [**Digest,** op. cit., para. 545].*

303. *While the Committee recognizes that unfortunate consequences may flow from a strike in a non-essential service, these do not justify a serious limitation of the right to strike unless they become so serious as to endanger the life, personal safety or health of the whole or part of the population [**Digest,** op. cit., para. 541]. Also, in examining a previous complaint involving the education sector, the Committee stated that the possible long-term consequences of strikes in the teaching sector did not justify their prohibition [Case No. 1448, 262nd Report, para. 117]. In the present case, while appreciating that the continuation of the dispute might have affected students, the Committee is not convinced that there existed, in the circumstances and at this stage of the dispute, a situation which warranted the legislative action taken by the Government. The Committee deeply deplores that the Government should have decided, twice in two years (the Back to School Act complained of in Case No. 2025 was adopted in September 1998) to adopt such an ad hoc legislation which creates a situation where education workers theoretically have a legal right which, in practice however, is taken away from them when they exercise it. The Committee considers that repeated recourse to such legislative restrictions can only in the long term destabilize the labour relations climate, if the legislator frequently intervenes to suspend or terminate the exercise of rights granted to workers and their unions by the general legislation. The Committee therefore requests once again the Government to take measures to ensure that teachers in Ontario are entitled to exercise the right to strike and, in future, to avoid having recourse to back-to-work legislation. The Committee requests the Government to keep it informed of developments in this respect.*

Compulsory arbitration

304. *The complainants allege that the Government has interfered with the independence and impartiality of the arbitration process and undermined the process of free collective bargaining by limiting the scope of the arbitrator's jurisdiction, in particular, by imposing mandatory financial constraints that dictate or effectively determine the result of arbitration. The Government states that the fiscal restrictions imposed upon the arbitrator are matters of educational policy, which can be regarded as outside the scope of collective bargaining.*

305. *As regards the compulsory nature of the arbitration process, the Committee recalls that bodies appointed for the settlement of such disputes should be independent, that recourse to these bodies should be on a voluntary basis [**Digest,** op. cit., para. 858] and that recourse to compulsory arbitration in cases where the parties do not reach agreement through collective bargaining is permissible only in essential services in the strict sense of the term [**Digest,** op. cit., para. 860].*

306. *Regarding the restrictions imposed upon the mediator-arbitrator, the Committee considers that, while financial considerations may be taken into account in cases such as the present one, thus recognizing that the special characteristics of the public service justify some flexibility in applying the principle of autonomy of the parties to collective bargaining, Bill 145 imposes in practice on arbitrators a financial straightjacket which goes beyond what is acceptable under the principles of freedom of association. The Committee recalls that in mediation and arbitration proceedings, it is essential that all the members of bodies entrusted with such functions should not only be strictly impartial but, if the confidence of both sides is to be gained and maintained, they should also appear to be impartial both to the employers and workers concerned [**Digest**, op. cit., para. 549]. The Committee therefore urges once again the Government to ensure in future that recourse to arbitration for the settlement of disputes be voluntary and that arbitration, once freely chosen by the parties to settle their disputes, be truly independent and in line with freedom of association principles. The Committee requests to be kept informed of developments in this respect.*

Lack of consultation

307. *The complainants also allege that the Government has undermined the process of free collective bargaining by introducing back-to-work legislation in a precipitous manner and without adequate consultation. The Government states that education stakeholders and the general public are able to express their views about education reforms both by direct communications with the Government and through the legislative process.*

308. *The Committee recalls in this respect the importance that it attaches to the holding of full and frank consultations on any question affecting trade union rights [**Digest,** op. cit., para. 927], and that such consultation is essential and particularly valuable during the preparation and formulation of legislation [**Digest,** op. cit., para. 929]. The Committee requests the Government to ensure that in future, full consultations in good faith are undertaken in such circumstances so that the parties have all the information necessary to make informed decisions.*

Final considerations

309. *The Committee notes the complainant's request that an ILO mission be sent to Canada to review the process of collective bargaining in the education sector, as this case is the most recent in a series of complaints concerning infringements of the collective bargaining process in various provinces.*

310. *The Committee notes with increasing concern that the violations of freedom of association in the present case constitute an almost exact repetition of those at issue in a very recent case, a mere two years after it. Furthermore, as already pointed out by the Committee [Case No. 2025, 320th Report, paras. 412-413] these involve a long series of legislative reforms in Ontario, where the Committee has pointed in each case to incompatibilities with freedom of association principles [Case No. 1900, 308th Report; Case No. 1943, 310th Report; Case No. 1951, 311th and 316th Reports; Case No. 1975, 316th Report]. The Committee stresses the seriousness of the situation and points out that repeated recourse to statutory restrictions on freedom of association and collective bargaining can only, in the long term, have a detrimental and destabilizing effect on labour relations, as it deprives workers of a fundamental right and means of defending and promoting their economic and social interests. The Committee suggests once again the Government to have recourse to the technical assistance of the Office.*

The Committee's recommendations

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

(a) The Committee urges once again the Government to take measures to ensure that teachers in Ontario are entitled to exercise the right to strike, and to avoid having recourse to back-to-work legislation. The Committee requests the Government to keep it informed in this respect.

(b) The Committee urges once again the Government to ensure that recourse to arbitration for the settlement of disputes concerning teachers in Ontario be voluntary and that such arbitration, once freely chosen by the parties be truly independent and in line with freedom of association principles. The Committee requests the Government to keep it informed in this respect.

(c) The Committee requests the Government to ensure in future that full and good faith consultations are undertaken on any question affecting trade union rights, particularly as these involve legislation thereon, so that the parties have all the information necessary to make informed decisions.

(d) The Committee suggests once again to the Government to have recourse to the technical assistance of the Office.

(e) The Committee draws the legislative aspects of this case concerning Convention No. 87 to the attention of the Committee of Experts on the Application of Conventions and Recommendations.

CASE NO. 2141

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

Complaint against the Government of Chile presented by the Trade Union International of Workers of the Energy, Metal, Chemistry, Oil and Related Industries (UIS-TEMQPIA)

Allegations: Hiring of workers to replace strikers, homicide and serious injury of workers during a strike

312. The complaint is contained in a communication from the Trade Union International of Workers of the Energy, Metal, Chemistry, Oil and Related Industries (UIS-TEMQPIA) dated 18 June 2001.

313. The Government sent its observations in a communication dated 6 September 2001.

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

A. The complainant's allegations

315. In its communication dated 18 June 2001, the Trade Union International of Workers of the Energy, Metal, Chemistry, Oil and Related Industries (UIS-TEMQPIA) alleges that, by using a provision of the Labour Code, the Bianchi Bicycle Factory S.A. (FABISA) hired workers to replace trade union members who were carrying out a strike beginning on 30 April 2001 in order to obtain a wage increase.

316. The complainant adds that on 3 May 2001, after three days of a legal strike, when the trade union members were peacefully demonstrating at the entrance gate of the company, executives of the enterprise ordered a driver belonging to an outside transport company to drive through a strike picket that was blocking the access of the vehicle, which was transporting executives and strike-breakers. The complainant states that, disobeying police orders to park the bus so that the workers could enter on foot, the driver drove into the strikers. As a result, Mr. Luis Lagos was killed and Mr. Donaldo Zamora seriously injured.

B. The Government's reply

317. In its communication dated 6 September 2001, the Government states that the FABISA enterprise and the trade union had concluded a collective agreement that was due to expire in May 2001; on 19 March 2001 the trade union initiated collective bargaining by presenting a draft collective agreement, involving 90 unionized workers and 22 members who up to that time had not been unionized. The enterprise responded within the time limit, rejecting the workers' proposals. On 26 April the workers voted in favour of rejecting the employer's final offer and approved a strike by 90 per cent of quorum. The strike began on 30 April at 8.00 a.m., and as soon as it had begun the employer hired workers to replace the strikers. The replacement of workers was carried out in accordance with the legislation in force (sections 380 and 381 of the Labour Code), and therefore there can be no legal objection to the employer's conduct.

318. The Government adds that the workers involved gathered in a public demonstration at the entrance gate of the enterprise and that tensions arose between the parties. For this reason, on 2 May the employer sought the good offices of the North Santiago Municipal Labour Inspectorate, which did not take effect immediately as the trade union leaders could not be located. On the fourth day of the strike, 3 May, at about 7.40 a.m., when a group of demonstrators were attempting to prevent replacement workers brought in by bus from entering the enterprise, the worker Luis Lagos was killed and another worker, Donaldo Zamora, was injured when they were run over by the vehicle driven by Francisco Curilén Suárez. The Government states that these acts are the subject of proceedings filed under No. 1086-3 with the 18th Criminal Court of Santiago, the plaintiffs being the Confederation of Metal Workers (CONTRAMET), the trade union of workers of the FABISA enterprise, and the families of the deceased and injured workers. Proceedings have been filed against the driver of the bus for homicide and are now at the investigation stage with certain formalities still pending, and the court is examining the responsibility of the chief administrative officer of the FABISA enterprise, who was in the bus that ran over the victims, but there is still not enough evidence to indict him.

319. The Government states that in view of the public impact of the death of the worker, Luis Lagos, on the following day the activity of the enterprise was suspended. The talks between the parties were broken off and only resumed, following intervention by the Regional Labour Directorate, during the week after the tragedy that cost the worker's life; the enterprise continued operating with replacement workers and the strikers resumed their demonstrations around the factory and in public areas, this time denouncing the enterprise's responsibility for the worker's death.

320. Lastly, the Government states that: (1) on 14 June 2001, the workers concerned decided to stop the legal strike and went back to work on the following day, on the terms laid down by the employer in its initial reply, which was also its final offer; (2) the week after the process was finalized, some 18 workers were dismissed (the trade union leaders filed a complaint against this with the Regional Labour Directorate, which prompted the convening of a tripartite meeting at which a number of agreements were reached, including a review of the situation of the dismissed workers; examination of the proposal that remuneration be based on productivity; an improvement in the labour relations climate, seeking the advice of a consultant; and consideration of the possibility of voluntary retirement of the workers with satisfactory compensation); (3) according to recent conversations with trade union leaders, these agreements were being carried out, but five more dismissals of workers involved in the collective bargaining process had been confirmed; and (4) it was observed that the management of the enterprise and the trade union leaders have made efforts to restore relations, but a climate of resentment and mistrust still persists among the workers and has not yet been overcome.

C. The Committee's conclusions

321. *The Committee notes that in this case the complainant alleges that the FABISA. enterprise hired workers to replace members of a trade union who were engaged in a strike and that homicide was committed and serious injuries inflicted on strikers attempting to block access to the factory of a bus carrying executives and workers hired to replace the strikers.*

322. *As regards the allegation concerning the replacement of strikers under the provisions of the Labour Code, the Committee notes that after the enterprise had rejected a draft collective agreement, the workers called a strike and, since the beginning of the strike, the employer hired workers to fill the strikers' posts and that the replacements were in accordance with the legislation in force. The Committee notes that the recent legislative reform maintains the possibility of replacing strikers. Section 380 of the Labour Code provides that:*

If a strike takes place in an enterprise or an institution in which the interruption of the work could cause real and irreparable damages to its equipment or damage the health of users of a health or social assistance establishment or which provides essential services, the trade union or negotiating agent has to submit a list of indispensable workers in order to accomplish the work the interruption of which could cause such damage. The union or negotiating agent must submit to the employer, following the employer's written request, the list of workers who will be part of the emergency team, within 24 hours of the written request. In case of non-compliance, the employer can ask the Labour Inspection to intervene in this regard. The previous provision applies in the case of a refusal from the workers to provide the said list, or when there is a disagreement concerning who should be on the list. The request to the Labour Inspection must be submitted by the employer within five days following the refusal of the workers or in case of disagreement on the content of the list, and the decision must be applied within 48 hours following the employers request. The decision of the Labour Inspection can be appealed to the Labour Court within five days of the said decision or once the abovementioned delay has expired.

Article 381 of the Labour Code provides:

It is forbidden to replace strikers under the last offer provides at least, in the manner and delays provided for in article 372(3): (a) the same provisions as those of the contract, the collective agreement or arbitral award (adjusted to take into account the cost-of-living index, as set by the National Institute of Statistics or by the competent organization); (b) an annual minimum increment of the consumer price index for the length of the contract, except as regards the last 12 months; (c) a replacement indemnity with a value equal to four motivation premiums for each replacement worker. The total amount of this indemnity will be paid, in equal parts, to striking workers, within five days from the end of the strike. In this case, the employer may, from the first day of the strike, hire the workers it deems necessary to fulfil the duties of strikers. Moreover, the workers may, in this case, choose to go back to their post on the 15th day after the beginning of the strike. Should the employer not complete an offer in line with the conditions provided for in subparagraph 1 and in the circumstances therein indicated, it may hire the workers it deems necessary from the 15th day of the strike, provided it gives the indemnity mentioned in subparagraph 1(c). However, the employers may hire the workers it deems necessary to fulfil the duties of strikers, from the 15th day of the strike. Where no collective agreement is in force, the offer mentioned in subparagraph 1 is considered as made if the employer offers at least a minimum annual increment, indexed on the consumer price index for the length of the contract, except as regards the last 12 months. Under this article, the employer may present more than one offer, provided that at least one of these proposals fulfils the conditions provided for in said provision and, as the case may be, provide for the indemnity mentioned in subparagraph 1(c). If the workers decide to reintegrate these parts individually under this article, they do so at least under the conditions mentioned in the employer's last offer. Once the employer has exercised the rights mentioned in this article, it may not withdraw the offers mentioned therein.

In this respect, the Committee recalls that "the hiring of workers to break a strike in a sector which cannot be regarded as an essential sector in the strict sense of the term, and hence one in which strikes might be forbidden, constitutes a serious violation of freedom of association" [see ***Digest of decisions and principles of the Freedom of Association Committee,*** *4th edition, 1996, para. 570]. The Committee also observes that the Committee of Experts on the Application of Conventions and Recommendations has made observations to the same effect on this issue with respect to Chile. Regretting that the FABISA enterprise – which manufactures bicycles – has hired workers to replace strikers, the Committee requests the Government to take the necessary steps to amend sections 380 and 381 of the Labour Code which allow the replacement of workers engaged in a strike in services that are not essential in the strict sense of the term (i.e. services whose interruption may endanger the life, personal safety or health of the whole or part of the population).*

323. *As regards the allegation concerning the death of Mr. Luis Lagos and the serious injuries sustained by Mr. Donaldo Zamora when they attempted, together with other workers, to*

block the access to the factory of a vehicle transporting executives and other workers, the Committee notes that the Government states that a judicial inquiry is being carried out in which proceedings have been filed against the driver of the bus for homicide and that the responsibility of the chief administrative officer of the enterprise who was riding in the bus is being examined. In this respect, deeply deploring the death of and serious injuries sustained by the strikers in question, the Committee expresses the hope that the judicial proceedings will determine those responsible and be concluded rapidly and that in the event it is determined that a crime has been committed, the guilty persons will be sanctioned. The Committee requests the Government to keep it informed in this respect.

324. *Lastly, the Committee observes that the Government states that after the end of the strike a number of workers were dismissed in two stages (18 at first, followed by five more) and that although the management of the enterprise and the trade union leaders have made efforts to restore relations, a climate of resentment and mistrust persists among the workers and has not been overcome. In this respect, the Committee also notes that the Government states that after the initial 18 dismissals following the strike, it was agreed that their situation would be reviewed, but that five more workers were subsequently dismissed. The Committee recalls that "respect for the principles of freedom of association requires that workers should not be dismissed or refused re-employment on account of their having participated in a strike or other industrial action. It is irrelevant for these purposes whether the dismissal occurs during or after the strike" [see* ***Digest****, op. cit., para. 593]. Regretting these dismissals, the Committee requests the Government to endeavour to ensure that the agreement to review the situation of the workers initially dismissed is respected, that the situation of those subsequently dismissed is also reviewed, and that if it is found that they were dismissed for exercising their legitimate trade union activities effective measures are taken to reinstate them. The Committee requests the Government to keep it informed of any steps taken in this respect.*

325. *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

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

(a) The Committee requests the Government to take the necessary steps to amend sections 380 and 381 of the Labour Code allowing the replacement of workers engaged in a strike in services that are not essential in the strict sense of the term (i.e. services whose interruption may endanger the life, personal safety or health of the whole or part of the population).

(b) Deeply deploring the death of Mr. Luis Lagos and the serious injuries sustained by Mr. Donaldo Zamora during the strike held in the FABISA enterprise, the Committee expresses the hope that the judicial proceedings initiated in this respect will determine those responsible and be concluded rapidly and that, in the event that it is determined that a crime has been committed, the guilty persons will be sanctioned. The Committee requests the Government to keep it informed in the respect.

(c) The Committee requests the Government to endeavour to ensure that the agreement to review the situation of the workers who participated in the strike held in the FABISA enterprise between 26 April and 14 June 2001 is

respected, that the situation of the workers dismissed after the agreement was reached is reviewed, and if it is found that they were dismissed for exercising their legitimate trade union activities, to take effective measures to ensure that they are reinstated. The Committee requests the Government to keep it informed of any steps taken in this respect.

(d) 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. 1787

INTERIM REPORT

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

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

327. The Committee last examined this case at its March 2001 meeting [see 324th Report, paras. 257-289]. The International Confederation of Free Trade Unions (ICFTU) sent new allegations in communications dated 25 January, 17 February, 20, 26 and 27 March, 4, 11 and 18 April, 15, 22 and 23 May, 28 June, 15 and 24 October, 15 November, 6 and 18 December 2001 and 21 January and 6 February 2002. The Single Confederation of Workers of Colombia (CUT), the Confederation of Workers of Colombia (CTC), the General Confederation of Democratic Workers (CGTD) and the Confederation of Pensioners of Colombia (CPC) sent new allegations in a communication dated 13 June 2001. The World Federation of Trade Unions (WFTU) sent new allegations in communications dated 28 and 29 March, 6, 14 and 31 July, 16 August, 29 and 31 October, 2, 20 and 28 November and 5 December 2001 and 9 and 17 January 2002. The Trade Union Association of Civil Servants of the Ministry of Defence, Armed Forces, National Police and Related Bodies (ASODEFENSA) sent new allegations in communications dated 23 February and 1 August 2001. The World Confederation of Labour (WCL) presented a complaint in a communication dated 9 February 2001. The Latin-American Central of Workers (CLAT) sent new allegations in a communication dated January 2002. The Government sent its observations in a communication dated 23 November 2001.

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

A. Previous examination of the case

329. At its March 2001 meeting, the Committee made the following recommendations on the allegations that were still pending which, for the most part, referred to acts of violence against trade union members and various acts directed against trade unions, including acts of anti-union discrimination [see 324th Report, para. 289]:

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

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

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

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

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

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

Annex

Murders, attempted murders, physical aggression, disappearances and detentions

Murders

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

(107) Aldemar Roa Córdoba; (108) Jhon Jairo Duarte; (109) Próspero Lagares; (110) Edison Bueno (111) Diómedes Playonero Ortiz; (112) Julio César Bethancurt; (113) Islem de Jesús Quintero; (114) César Wilson Cortes; (115) Rómulo Gamboa; (116) Oscar Darió Zapata; (117) James Pérez Chima; (118) Milton Cañas; (119) Humberto Guerrero Porras; (120) Jimmy Acevedo; (121) Aníbal Bemberte; (122) Carmen Demilia-Rivas; (123) Guillermo Adolfo Parra López; (124) Mauricio Vargas Pabón; (125) Danilo Mestre Montero; (126) Leominel Campo Nuñez; (127) Franklin Moreno Torres; (128) Darío de Jesús Agudelo Bolosquez; (129) Melva Muñoz López; (130) Justiniano García; (131) Iván Franco Hoyos; (132) Esneda Monsalve; (133) Juan Castulo Jiménez Gutiérrez; (134) Jesús Ramiro Zapata Hoyos; (135) Nelson Arturo Romero Romero.

Attempted murders

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

Physical aggression

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

Disappearances

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

Detentions

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

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

Annex

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

Murders

(1) Margarita María Pulgarín Trujillo (3 April 2000); (2) Alejandro Alvarez Igaza (7 April 2000); (3) Alberto Alvarez Macea (8 April 2000); (4) Germán Valderrama, member of the Workers' Union of Caquetá, in Florencia-Caquetá (15 January 2000); (5) Mareluis Esther Solano Romero, César administrative district (12 February 2000); (6) Luis Arcadio Ríos Muñoz, San Carlos Antioquia (2 April 2000); (7) Jesús María Cuella, member of the Teachers' Association of Caquetá (AICA-FECODE), Florencia, Caquetá (13 April 2000); (8) Gerardo Raigoza, member of SER-FECODE, Pereira, Risaralda (19 April 2000); (9) Omar Darío Rodríguez Zuleta, member of the Food Workers' Union SINALTRAINAL-Bugalagrande Section (21 May 2000); (10) Abel María Sánchez Salazar, member of the Caquetá Teachers' Trade Union, Florencia (2 June 2000); (11) Gildardo Uribe, official of SINTRAOFAN-Vegachi, executive subcommittee, municipality of Vegzalú, Antioquia (12 June 2000); (12) Edgar Marino Pereira Galvis, official of the CUT-META executive subcommittee, in the COFREM housing development (25 June 2000); (13) Luis Rodrigo Restrepo Gómez, president of the executive subcommittee of the Antioquia Teachers' Institute Association, in the municipality of Ciudad Bolívar (2 August 2000); (14) Carmen Emilio

Sánchez Coronel, official delegate of the North Santander Teachers' Trade Union; (15) Luis Rodrigo Restrepo Gómez, president of the executive subcommittee of the Teaching staff of Ciudad Bolívar (2 August 2000); (16) Arelis Castillo Colorado, in the municipality of Caucasia (28 July 2000); (17) Fabio Santos Gaviria, member of APUN (25 February 2000); (18) Anival Zuluaga, member of SINTRALANDERS (28 February 2000); (19) Juan José Neira, member of the Manizalez Teachers' Association (9 March 2000); (20) Iván Franco, member of SINTRAELECOL (19 March 2000); (21) Alexander Mauricio Marín Salazar, member of ADEM (12 April 2000); (22) José Antonio Yandu, member of the Ventero Ambulan Association (10 April 2000); (23) Gonzalo Serna, member of the Ventero Ambulan Association (10 April 2000); (24) Bayron de Jesús Velásquez Durango, member of the Ventero Ambulan Association (10 April 2000); (25) Gloria Nubia Uran Lezcano, member of ADIDA (2 May 2000); (26) Carmen Emilia Rivas, member of ANTHOC (17 May 2000); (27) Javier Carbono Maldonado, member of SINTRAELECOL (July 2000); (28) Javier Suárez, member of NACC (5 January 2000); (29) Jesús Antonio Posada Marín, member of ADIDA (11 May 2000); (30) Gustavo Enrique Gómez Gómez, member of ADIDA (9 May 2000); (31) Pedro Amado Manjarres, member of ASODEGUUA; (29 May 2000); (32) José Arístides Velásquez Hernández, member of SINTRAMUNICIPIO (12 June 2000); (33) Jaime Enrique Barrera, member of ADIDA (11 June 2000); (34) Jorge Andrés Ríos Zapata, member of ADIDA (5 January 2000); (35) Francisco Espadín Medina, member of SINTRANAGRO (7 September 2000); (36) Miguel Algene Barreto Racine, member of ADES (2 August 2000); (37) Cruz Orlando Benítez Hernández, member of ADIDA (7 August 2000); (38) Francy Uran Molina, member of ADIDA (27 August 2000); (39) Aristarco Arzalluz Zúñiga, member of SINTRAINAGRO (30 August 2000); (40) Alejandro Vélez Jaramillo, member of ASONAL JUDICIAL (30 August 2000); (41) Bernardo Olachica Rojas Gil, member of SES (2 September 2000); (42) Vicente Romana, member of ADIDA (5 August 2000); (43) Lázaro Gil Alvarez, member of ADIDA (29 September 2000); (44) Argemiro Albor Torregroza, member of the Galapa Farmers' Trade Union (5 September 2000); (45) Efraín Becerra, member of SINTRAUNICOL (11 September 2000); (46) Hugo Guarin Cortes, member of SINTRAUNICOL (11 September 2000); (47) Luis Alfonso Páez Molina, member of SINTRAINAGRO (12 August 2000); (48) Sergio Uribe Zuluaga, member of ADIDA (25 August 2000); (49) Bernardo Vergara Vergara, member of ADIDA (9 October 2000); (50) Candelario Zambrano, member of SINTRAINAGRO P.W. (15 September 2000); (51) Jairo Herrera, member of SINTRAINAGRO P.W. (15 September 2000); (52) Héctor Acuña, member of UNIMOTOR (16 June 2000); (53) Julián de J. Durán, member of SINTRAISS (January 2000); (54) Eliecer Corredor, member of SINTRAISS (January 2000); (55) Miguel Angel Mercado, member of SINTRAISS (January 2000); (56) Diego Fernando Gómez, member of SINTRAISS (13 July 2000); (57) Elizabeth Cañas, member of SINTRAISS (January 2000); (58) Alejandro Tarazona, member of SINTRAAD (26 September 2000); (59) Víctor Alfonso Vélez Sánchez, member of EDUMAG (28 March 2000); (60) Alfredo Castro Haydar, member of the University Teachers' Association, Atlan (10 May 2000); (61) Edgar Cifuentes, member of ADE (4 November 2000); (62) Juan Bautista Banquet, member of SINTRAINAGRO (17 October 2000); (63) Edison Ariel, member of SINTRAINAGRO (17 October 2000); (64) Omar de Jesús Noguera, member of SINTRAEMCALI (26 September 2000); (65) Jesús Orlando García, member of the Mun Bugala trade union (2 March 2000); (66) Víctor Alfonso Vélez Sánchez, member of the Córdoba Teachers' Trade Union Association (January 2000); (67) Darío de Jesús Borja, member of ADIDA (1 April 2000); (68) Esneda de las Mercedes Holguín, member of ADIDA (27 April 2000); (69) Bacillides Quiroga, member of SINTRAMUNICIPIO BUGA (2 August 2000); (70) Rubén Darío Guerrero Cuentas, member of SINTRADIAN (20 August 2000); (71) Henry Ordóñez, member of the Meta Teachers' Trade Union Association (20 August 2000); (72) Leonardo Betancourt Méndez, member of the Risaral Teachers' Trade Union Association (22 August 2000); (73) Luis Mesa, member of ASPU (26 August 2000); (74) Hernando Cuartos Agudelo, member of SINALTRAINAL (1 September 2000); (75) Rosalba Calderón Chávez, member of ANTHOC (3 October 2000); (76) Reinaldo Acosta Celemín, member of the Civil Servants' Association (3 October 2000); (77) Aldona Tello Barragán, vice-president of the Magdalena Lottery Sellers' Trade Union, in the city of Santa Marta (17 January 2001); (78) Miguel Antonio Medina Bohórquez, member of SINTRENAL, in Altagracia, in the administrative district of Riseralde (17 January 2001); (79) José Luis Guette, president of the Ciénaga section of SINTRAINAGRO, in the province of Magdalena (13 December 1999); (80) Juan Carlos Alvis Pinzón, relative of the Deputy Secretary General of the General Confederation of Democratic Workers (CGTD), in Aipe (25 July 2000);

(81) Clovis Flórez, president of Agrocosta-Córdoba Section, in Montería, Córdoba (15 September 2000).

Attempted murders

(1) Wilson Borja Díaz, president of the State Service Workers' Federation (FENALSTRASE), was intercepted by hired killers on 14 December 2000 and was shot and seriously wounded. He is currently in a weak state and under medical supervision; (2) Gustavo Alejandro Castro Londoño, official of the executive committee of CUT-Meta region 1, victim of attempted murder on 15 January 2001 in Villavicencio, and currently in hospital; (3) Ricardo Navarro Bruges, president of the Workers' Trade Union of the University of Santa Marta (SINTRAUNICOL), victim of attempted murder on 12 January 2001; (4) Ezequiel Antonio Palma, former official of the Workers' Trade Union of the Municipality of Yumbo, victim of attempted murder on 11 January 2001; (5) César Andrés Ortiz, trade unionist of the CGTD, victim of attempted murder on 26 December 2000.

Disappearances

(1) Alexander Cardona, executive committee member of USO; (2) Ismael Ortega, treasurer of Sintraproaceites-San Alberto (César); (3) Walter Arturo Velásquez Posada, Nueva Floresta School, municipality of El Castillo in the education district of El Ariari, Meta administrative district; (4) Gilberto Agudelo, president of the National Trade Union of University Workers of Colombia (SINTRAUNICOL); (5) Nefatalí Romero Lombana, from Aguazúl (Casanare) and Luis Hernán Ramírez, from Chámeza (Casanare), members of SIMAC-FECODE; (6) Roberto Cañarte M., member of SINTRAMUNICIPIO BUGALAGRANDE, from the Paila Arriba district (Valle); (7) Germán Medina Gaviria, member of SINTRAEMCALI, disappeared on 14 January 2001 in the area of El Porvenir, Cali:

– regarding the outstanding allegations on the raid by anti-riot police on the premises of the Operations Centre of the Empresa de Acueducto de Bogatá to prevent workers belonging to the Workers' Trade Union of the Empresa de Acueducto from demonstrating, during which police manhandled the president of the trade union and arrested workers, the Committee requests the Government to keep it informed of the outcome of the inquiries;

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

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

– regarding the allegations of death threats against trade union officials and members, the Committee requests the Government to take steps to protect all trade union officials and members mentioned in the allegations as having been threatened;

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

– regarding the inquiry under way relating to the raid on the premises of the executive subcommittee of the CUT-Atlántico and the assault on a trade union member during this

raid, and the raid on the headquarters of FENSUAGRO and surveillance of its president by the armed forces, the Committee requests the Government to take immediate steps to initiate inquiries or to conclude those inquiries already under way, in order to clarify these instances of violence and to promptly and fully punish those responsible. The Committee also requests the Government to take steps to ensure that such situations do not occur again in the future;

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

B. New allegations

330. The Trade Union Association of Civil Servants of the Ministry of Defence, Armed Forces, National Police and Related Bodies (ASODEFENSA) (communications dated 23 February and 1 August 2001), the World Confederation of Labour (WCL) (communication dated 9 February 2001), the International Confederation of Free Trade Unions (ICFTU) (communications dated 25 January, 17 February, 20, 26 and 27 March, 4, 11 and 18 April, 15, 22 and 23 May, 28 June, 15 and 24 October, 15 November, 6 and 18 December 2001 and 21 January and 6 February 2002), the World Federation of Trade Unions (WFTU) (communications dated 28 and 29 March, 6, 14 and 31 July, 16 August, 29 and 31 October, 2, 20 and 28 November, and 5 December 2001 and 9 and 17 January 2002), the Single Confederation of Workers of Colombia (CUT), the Confederation of Workers of Colombia (CTC), the General Confederation of Democratic Workers (CGTD) and the Confederation of Pensioners of Colombia (CPC) (communication dated 13 June 2001) allege the following acts of violence.

Murders

(1) Luis Hernán Campano Guzmán, member of AICA, a subsidiary of FECODE, murdered by paramilitary forces on 8 June 2000 in the municipality of Florencia, Department of Caqueta;

(2) Javier Jonás Carbono Maldonado, secretary-general of SINTRAELECOL, murdered on 9 June 2000 in Santa Marta;

(3) Candelaria Flórez, wife of Alberto Ruiz Guerra, member of ADEMACOR, a subsidiary of FECODE, murdered by paramilitary forces on 17 June 2000;

(4) Robert Cañarte Montealegre, member of the Workers' Trade Union of the municipality of Bugalagrande, murdered by paramilitary forces on 29 June 2000 in Bugalagrande, Department of Valle del Cauca;

(5) Rubén Darío Guerrero Cuentas, trade union official of the Workers' Trade Union for the Management of Taxes and National Customs, murdered on 19 August 2000 in Ciénaga;

(6) Moisés Sanjuán, member of the Workers' Benefit Society Trade Union, was the workers' representative to the Executive Committee of the Benefit Society (COMFANORTE), murdered by paramilitary forces on 29 August 2000 in Cúcuta;

(7) Omar Rodríguez, member of SINALTRAINAL, murdered on 31 August 2000;

(8) Gil Bernardo Rojas Olachica, member of SES, murdered by paramilitary forces on 2 September 2000 in Barrancabermeja;

(9) Francisco Espadín Medina, member of SINTRAINAGRO, murdered on 7 September 2000 in the municipality of Turbo;

(10) William Iguarán Cottes, member of SINTRAUNICOL, murdered by paramilitary forces on 11 September 2000 in Montería;

(11) Miguel Angel Pérez, member of SINTRASINTETICOS, murdered on 11 September 2000 in Medellín;

(12) Humberto Peña Riaño, member of AICA, a subsidiary of FECODE, murdered by paramilitary forces on 28 September 2000 in Norccia;

(13) Melsy Mora Hincapié, member of ADIDA-FECODE, murdered by paramilitary forces on 23 October 2000 in the municipality of Copacabana;

(14) Alfredo Germán Delgado Ordóñez, member of SIMANA, a subsidiary of FECODE, murdered presumably by paramilitary forces on 13 November 2000 in the department de Nariño;

(15) Edgar Arturo Burgos Ibarra, member of SIMANA, a subsidiary of FECODE, murdered presumably by paramilitary forces on 13 November 2000 in the department of Nariño;

(16) Jairo Vicente Vallejo Champutics, member of SIMANA, a subsidiary of FECODE, murdered on 13 November 2000 in the department of Nariño;

(17) Carlos Cordero, member of ANTHOC, murdered by paramilitary forces on 6 December 2000 in Peñas Blancas;

(18) Gabriela Galeano, trade union official of ANTHOC, murdered by paramilitary forces on 9 December 2000 in Cúcuta;

(19) Hernán Betancourt, member of SINTRAUNICOL, murdered by paramilitary forces on 15 December 2000 in Cali;

(20) Ricardo Flórez, member of SINTRAPALMA, murdered on 8 January 2001;

(21) Edgar Orlando Marulanda Ríos, trade union official of SINTRAFOAN, murdered by paramilitary forces on 10 January 2001 in the municipality of Segovia;

(22) Arturo Alarcón, member of ASOINCA, a subsidiary of FECODE, murdered by paramilitary forces on 18 January 2001 in the municipality of Piendamó;

(23) Jair Cubides, member of SINTRADEPARTAMENTO, murdered on 21 January 2001 in Cali; the murder coincided with the change of leaders within the union and the new office was about to be recognized by the Ministry of Labour;

(24) Walter Dione Perea Díaz, trade union representative of the Teachers' Union of Antioquia (ADIDA-FECODE), murdered by paramilitary forces on 26 January 2001 in the department of Antioquia;

(25) Carlos Humberto Trujillo, member of ASONAL JUDICIAL, murdered on 26 January 2001 in the municipality of Buga;

(26) Elsa Clarena Guerrero, member of ASINORT, murdered on 28 January 2001 in a military barrack in the municipality of Ocaña;

(27) Carolina Santiago Navarro, member of ASINORT, murdered on 28 January 2001 in the municipality of Ocaña;

(28) César Daniel Rivera Riveros, professor of the University of Atlántico, murdered on 3 February 2001;

(29) Alfonso Alejandro Naar Hernández, member of ASEDAR, a subsidiary of FECODE, murdered on 8 February 2001 in the municipality of Arauca;

(30) Alfredo Flórez, member of SINTRAPROACEITES, murdered by paramilitary forces on 11 February 2001 in the municipality of Puerto Wilches;

(31) Nilson Martínez Peña, member of SINTRAPALMA, murdered by paramilitary forces on 12 February 2001 in the municipality of Puerto Wilches;

(32) Raúl Gil, member of SINTRAPALMA, murdered on 11 February 2001 in the municipality of Puerto Wilches;

(33) Pablo Padilla, vice-president of SINTRAPROACEITES-San Alberto Section, murdered by paramilitary forces on 16 February 2001 in the municipality of San Alberto;

(34) Julio César Díaz Quintero, member of SINTRAISS, murdered by paramilitary forces on 16 February 2001 in Barrancabermeja;

(35) Cándido Méndez, member of SINTRAMIENERGETICA-La Loma Section, murdered on 18 February 2001 in the municipality of Chiriguaná;

(36) Edgar Manuel Ramírez Gutiérrez, vice-president of SINTRAELECOL-Norte de Santander Section, murdered on 22 February 2001 in Concepción; he had been detained the day before by paramilitary forces and he had already received threats due to the fact that he was a well-known leader at the time of the murder;

(37) Lisandro Vargas Zapata, trade union official of the University Teachers' Association (ASPU), murdered by paramilitary forces on 23 February 2001 in Barranquilla;

(38) Víctor Carrillo, executive official of SINTRAELECOL, murdered on 1 March 2001 in a paramilitary barrack in the municipality of Málaga;

(39) Darío Hoyos Franco, leader of the trade union movement supporting the struggles of agricultural workers, murdered on 3 March 2001 in the municipality of Fusagasugá;

(40) Valmore Locarno, president of SINTRAMINERGETICA, murdered on 12 March 2001 in the Loma de Potrerillo coal mine; he did not enjoy any protection, even if the Government was informed of the risks he was facing, as it appeared in Document 20 of 19 December 2000 of the Committee on the evaluation of risks of the Ministry of the Interior;

(41) Jaime Orcasitas, vice-president of SINTRAMINERGETICA, murdered on 12 March 2001 in the Loma de Potrerillo coal mine in similar circumstances and conditions as the previous union leader;

(42) Rodion Peláez Cortés, official of ADIDA, murdered on 13 March 2001 in Cocorna;

(43) Rafael Atencia Miranda, member of the Petroleum Industry Workers' Trade Union (USO), murdered by paramilitary forces, and with obvious signs of torture, on 18 March 2001 in the municipality of Barrancabermeja;

(44) Jaime Sánchez, member of SINTRAELECOL, murdered by paramilitary forces on 20 March 2001 in the municipality of Sabana;

(45) Andrés Granados, member of SINTRAELECOL, murdered by paramilitary forces on 20 March 2001 in the municipality of Sabana;

(46) Juan Rodrigo Suárez Mira, member of ADIDA and delegate to the Congress of the Colombian Teachers' Federation, murdered by paramilitary forces on 21 March 2001 in Medellín;

(47) Alberto Pedroza Lozada, murdered on 22 March 2001;

(48) Luis Pedraza, member of USO, murdered by paramilitary forces on 24 March 2001 in the municipality of Arauca;

(49) Ciro Arias, president of SINTRAINTABACO, murdered by paramilitary forces on 24 March 2001 in the municipality of Capitanejo;

(50) Robinson Badillo, official of SINTRAEMSDES, murdered by paramilitary forces on 26 March 2001 in Barrancabermeja;

(51) Mario Ospina, member of ADIDA-FECODE, murdered on 27 March 2001 in the municipality of Santa Bárbara;

(52) Jesús Antonio Ruano, member of ASEINPEC, murdered on 27 March 2001 in the municipality of Palmira;

(53) Ricardo Luis Orozco Serrano, vice-president of ANTHOC, murdered on 2 April 2001 in Barranquilla; his highly risky profile was pointed out by the CUT to the Government, but in 2000 the Committee on the evaluation of risks of the Ministry of the Interior evaluated that his situation only presented a low risk;

(54) Aldo Mejía Martínez, president of SINTRACUEMPONAL-Codazzi Section, murdered by paramilitary forces on 4 April 2001 in the municipality of Codazzi;

(55) Saulo Guzmán Cruz, president of the Health Workers Trade Union of Aguachica, murdered by paramilitary forces on 11 April 2001 in the municiaplity of Aguachica;

(56) Francisco Isaías Cifuentes, member of ASIOINCA, a subsidiary of FECODE, murdered by paramilitary forces on 26 April 2001 in Popayán; he had been displaced from the municipality of Cajibío to the mountainous region of Colombia due to his role as a leader during the protest march of rural workers in 1999;

(57) Leyder María Fernández Cuéllar, wife of the above, murdered on 26 April 2001;

(58) Frank Elías Pérez Martínez, member of ADIDA-FECODE, murdered on 27 April 2001 between the municipalities of Santa Ana and Granada;

(59) Darío de Jesús Silva, member of ADIDA-CUT, murdered on 2 May 2001 in the municipality of Sabaneta;

(60) Juan Carlos Castro Zapata, member of ADIDA-CUT, murdered on 9 May 2001 in the municipality of Copacabana;

(61) Eugeniano Sánchez Díaz, president of SINTRACUEMPONAL, murdered on 10 May 2001 in the municipality of Codazzi;

(62) Julio Alberto Otero, member of ASPU-CUT, murdered by paramilitary forces on 14 May 2001 in Santa Marta;

(63) Miguel Antonio Zapata, president of ASPU-Caquetá Section, murdered by paramilitary forces on 16 May 2001 in Valledupar;

(64) Carlos Eliecer Prado, member of SINTRAEMCALI, murdered by paramilitary forces on 21 May 2001 in Cali;

(65) Henry Jiménez Rodríguez, member of SINTRAEMCALI, murdered on 25 May 2001 in Cali;

(66) Nelson Narváez, official of SINTRAUNICOL, murdered on 29 May 2001 in Montería in the department of Córdoba;

(67) Humberto Zárate Triana, member of SINTRAOFICIALES, murdered on 5 June 2001 in Villavicencio in the department of Meta;

(68) Gonzalo Zárate Triana, official of ASCODES, murdered on 5 June 2001 in Villavicencio in the department of Meta;

(69) Manuel Enrique Charris Ariza, member of SINTRAMIENERGETICA, murdered on 11 June 2001 in the municipality of Soledad in the department of Atlántico;

(70) Edgar Thomas Angarita Mora, member of ASEDAR and FECODE, murdered on 12 June 2001 in the department of Arauca, after having participated in a demonstration on Vía Fortul Sarabena in protest against Bill 012;

(71) Samuel Segundo Peña Sanguino, member of SINTRAMINERGETICA, went missing on 17 June in the department of Magdalena, and was found murdered on 19 June 2001 in the same department;

(72) Oscar Darío Soto Polo, president of SINALTRAINBEC and vice-president of COMFACOR, murdered on 21 June 2001 in Montería in the department of Córdoba, during negotiations on a list of demands with the multinational Coca-Cola, in which he participated as a negotiator until the talks were suspended following the request of the union concerning the need for security measures taken by the management in order to grant protection to trade union leaders so that the free exercise of trade union rights could be guaranteed within the enterprise;

(73) Germán Carvajal Ruiz, president of the executive subcommittee of SUTEV-Obando Section, FECODE-CUT, murdered on 6 July 2001 in the department of Valle del Cauca; since he had become a target in the department of Caquetá because of his trade union activities, he had to be transferred to the department of Valle del Cauca, where he was finally murdered;

(74) Isabel Pérez Guzmán, member of SINTRAREGINAL, murdered on 8 July 2001 in the department of Sucre;

(75) Hugo Cabezas, member of SIMANA-FECODE, murdered on 9 July 2001 in the department of Nariño;

(76) Jairo Domínguez, member of SUTIMAC-CUT, was abducted on 3 July 2001 and then murdered on 10 July 2001 in the department of Antioquia;

(77) Miguel Ignacio Lora Méndez (o Ramirez), he was investigating the local networks which were financing the Colombian self-defence units and he was a member of ASONAL-CUT, murdered on 11 July 2001 in the department of Córdoba (at the same time his wife was seriously injured);

(78) James Urbano, official of Valle Workers' Trade Union, a subsidiary of CGTD, murdered on 12 July 2001 in the department of Valle del Cauca;

(79) Saúl Alberto Colpas Castro, president of SINTRAGRICOLAS-FENSUAGRO, murdered on 13 July 2001 in the department of Atlántico;

(80) Lucila Rincón, member of ANTHOC-CUT, as well as other members of her family, were murdered by paramilitary forces on 16 July 2001 in the department of Tolima while they were looking for other family members who were also detained;

(81) Obdulia Martínez, member of EDUCESAR-FECODE-CUT, murdered on 22 July 2001 in the department of César;

(82) Silvia Rosa Alvarez Zapata, member of ADIDA-FECODE, murdered on 25 July 2001 in the department of Antioquia;

(83) Rubén Darío Orozco Grajales, member of ADIDA-FECODE, murdered on 24 July 2001 in the department of Buritica;

(84) María Helena Ortiz, attorney-general and member of ASONAL-CUT, murdered on 28 July 2001 in the department of Santander (her husband, Néstor Rodríguez, and her son were seriously injured at the same time);

(85) María del Rosario Silva Ríos, member of ASONAL-CUT, murdered on 28 July 2001 in the department of Valle del Santander;

(86) Segundo Florentino Chávez, secretary-general of the Workers, Officials and Public Employees' Trade Union of the municipality of Dagua, murdered on 13 August 2001 in the department of Valle del Cauca; she had been threatened on several occasions and had asked for urgent measures to be taken to guarantee the security of trade union leaders, a request which was approved on 10 July 2001 but was still subject to finance clearing;

(87) Miryam de Jesús Ríos Martínez, member of ADIDA, murdered on 16 August 2001 in the department of Antioquia;

(88) Manuel Pájaro Peinado, treasurer of the Civil Servants' Trade Union of the District of Barranquilla (SINDIBA), murdered on 16 August 2001 in the department of Atlántico; he had requested to be included in the Protection Programme of the Ministry of the Interior but without success. His murder took place while the union was protesting against Law No. 617 which provided for massive dismissals of workers;

(89) Doris Lozano Núñez, member of SINTRAEMECOL, murdered on 16 August 2001;

(90) Héctor Eduardo Cortés Arroyabe, member of ADIDA-CUT, disappeared on 16 August 2001 and found murdered on 18 August 2001 in the department of Antioquia;

(91) Fernando Euclides Serna Velásquez, member of the collective security plan of the national CUT of Bogotá, disappeared on 18 August 2001 and found murdered the following day in the department of Cundinamarca;

(92) Evert Encizo, member of the Teachers' Trade Union of Meta (ADEM-CUT), murdered on 22 August 2001 in the department of Meta; he was involved with internally displaced people;

(93) Yolanda Paternina Negrete, member of ASONAL-CUT, murdered on 29 August 2001 in the department of Sucre; she was a judge specialized in cases of public order and was dealing with several high-risk cases;

(94) Miguel Chávez, member of ANTHOC-CUT, murdered on 30 August 2001 in the department of Cauca;

(95) Manuel Ruiz, official of CUT, murdered on 26 September 2001 in the department of Córdoba;

(96) Ana Ruby Orrego, member of the Valle Trade Union of Education Employees (SUTEV-CUT), murdered on 3 October 2001 in the department of Valle del Cauca;

(97) Gustavo Soler, official of the Mining and Energy Workers' Trade Union, murdered on 6 October 2001 in the department of César;

(98) Jorge Iván Rivera Manrique, member of the Risaralda Teachers' Trade Union (SER-CUT), murdered on 10 October 2001 in the department of Risaralda;

(99) Cervando Lerma, well-known and active member of USO-CUT, murdered on 10 October 2001 in the department of Santander;

(100) Ramón Antonio Jaramillo, legal adviser for SINTRAEMSDES-CUT, murdered on 10 October 2001 in the department of Valle del Cauca, at the same time as paramilitary forces were perpetrating a massacre in the region;

(101) Jairo Balvuena, legal adviser for SINTRAEMSDES-CUT, murdered on 10 October 2001;

(102) Luis López and Luis Anaya, president and treasurer of the San Silvestre Drivers and Transport Workers' Trade Union (SINCOTRAINDER-CUT), respectively, murdered on 16 October 2001 in the department of Santander;

(103) Arturo Escalante Moros, member of USO, disappeared on 27 September and was found murdered on 19 October 2001;

(104) Luis José Mendoza Manjares, member of the executive board of the University Teachers' Trade Union (ASPU-CUT), murdered on 22 October 2001 in the department of César;

(105) Martín Contreras Quintero, attorney-general and founder of SINTRAELECOL-CUT, murdered on 23 October 2001 in the department of Sucre;

(106) Ana Rubiela Villada, member of the Valle Trade Union of Education Employees (SUTEV-CUT), disappeared on 27 September 2001 and found murdered on 26 October 2001 in the department of Valle del Cauca;

(107) Sandro Antonio Ríos Rendón, member of SINTRAEMSDES-CUT, murdered on 30 October 2001;

(108) Carlos Arturo Pinto, member of ASONAL-CUT, murdered on 1 November 2001 in Cucuta, in the department of Norte de Santander;

(108bis) Pedro Cordero, member of the Magistrates' Union of Nariño, murdered on 9 November 2001 in the department of Nariño;

(109) Luis Alberto Delgado, member of the Teachers' Union of Nariño (SIMANA-CUT), murdered on 10 November 2001; he had been the victim of an attack on the previous day in the municipality of Tuquerres, in the department of Nariño;

(110) Edgar Sierra Parra, member of ANTHOC-CUT, was abducted on 3 October 2001 in the municipality of Tame, department of Arauca, and was found murdered on 10 November 2001 in the municipality of Rondón, department of Arauca, with obvious signs of torture;

(111) Hoover de Jesús Galeano, member of the Pereira executive subcommittee of the Public Services, Independent and Decentralized Institutions, Workers' and Employees' Trade Union (SINTRAEMSDES-CUT), workers' delegate and well-known activist, murdered on 11 November 2001 in the department of Risaralda;

(112) Tirso Reyes, member of the Single Union of Teachers of Bolívar (SUDEBCUT), murdered on 12 November 2001 in the department of Bolivar;

(113) Emiro Enrique Pava de la Rosa, trade union official of the Subsection of Magdalena Medio of USO, murdered on 13 November 2001 in the department of Antioquia;

(114) Diego de Jesús Botero Salazar, trade unionist from Valle del Cauca and attorney of that municipality, murdered on 14 November 2001 in Valle del Cauca;

(115) Gonzalo Salazar, president of the Single Trade Union of Security Guards of Colombia (SINUVICOL-CUT), murdered on 24 November 2001 in Cali;

(116) Jorge Eliécer González, president of the Natagaima Section of ANTHOC-CUT, abducted and murdered on 25 November 2001 with obvious signs of torture, in the department of Tolima;

(117) Javier Cote, treasurer of the Association of Civil Servants of the Judiciary ASONAL-CUT, murdered on 3 December 2001 in the department of Tolima;

(118) Aury Sará Marrugo, president of the Section of Cartagena of USO-CUT, found murdered during the first days of December 2001; he was abducted on 30 November by paramilitary forces from the Colombian self-defence units (AUC) and in the presence of two policemen, in the city of Cartagena. The leader of the AUC had identified him as a member of the guerrilla and demanded the presence of the High Commissioner for Peace in order to release him. Mr. Marrugo was well known for defending workers' rights;

(119) Enrique Arellano, who was escorting Mr. Aury, found murdered during the first days of December 2001;

(120) Magnolia Plazas Cárdenas, member of ASONAL-CUT, murdered on 5 December 2001 in the department of Caquera;

(121) Francisco Eladio Sierra Vázquez, president of the Andes Section of the Workers' Union of the municipality of Antioquia (SINTRAOFAN-CUT); the leaders of this union were all convened to attend a meeting with the AUC of Farallones de Bolívar. In that meeting, the names and positions of all union leaders were given, and then the murder of Mr. Vásquez was planned and executed. During the same meeting, a member of the AUC, commander Manuel, questioned Mr. José David Taborda, another union leader. In fact, all the union leaders were threatened during that meeting;

(122) Edgar Herran, president of the National Union of Drivers, SINDINALCH Section of Villavicencio, murdered on 26 December 2001;

(123) Carlos Alberto Bastidas Corral, member of the Magistrates' Union of Nariño (SIMANA-CUT), murdered on 8 January 2002;

(124) Luis Alfonso Jaramillo Palacios, member of the Medellín section of the Autonomous Public Sector Workers' Union and Decentralized Institute of Colombia (SINTRAEMSDES-CUT), murdered on 11 January 2002 in Medellín, department of Antioquia, for having defended workers' rights;

(125) Enoc Samboni, leader of the CUT, murdered on 12 January 2002 in the department of Cauca, by paramilitary forces who also robbed trade union documents. The Inter-American Commission on Human Rights of the Organization of American States had requested protection for Enoc Samboni through the Protection Programme of the Ministry of the Interior;

(126) Sister María Ropero, former president of the Union of Mothers of the Local Community (SINDIMACO-CUT), murdered by paramilitary groups on 16 January 2002 in Cúcuta. Sister Ropero was well known for her work in favour of children as well as workers and had received several death threats.

Attempted murders

(1) Albeiro González García, president of ASODEFENSA, "Eje Cafetero" (coffee-growing area) was sent to the war zone as a civilian and refused to go; subsequently he was attacked on 24 September 1998 and is currently living in exile in Europe;

(2) Ricardo Herrera, official of SINTRAEMCALI, was attacked in Cali on 19 September 2000;

(3) Héctor Fabio Monroy, member of AICA-FECODE, was attacked with a firearm on 23 February 2001;

(4) Maria Elisa Valdes Morales, president of SINDESS-Dagua-Valle del Cauca Section, attacked on 26 March 2001;

(5) the executive committee of SINTRAEMCALI was attacked during a meeting to draw up proposals for the Plan of Recovery of Cali Enterprises, held in the outskirts of Cali on 10 June 2001;

(6) María Emma Gómez de Perdomo, member of ANTHOC, was shot four times and wounded when attacked in the city of Honda on 13 June 2001;

(7) Clemencia del Carmen Burgos, member of ASONAL-CUT, who was investigating the financial networks of the Self-Defence Units of Colombia on 11 July 2001;

(8) Jhon Jairo Ocampo Franco, trade union official and instructor, attacked on 9 August 2001;

(9) Omar García Angulo, member of SINTRAEMECOL, attacked on 16 August 2001;

(10) Carlos Arturo Mejía Polanco, member of the regional Section of Yumbo of the Single Workers' Union for the Industry of Construction Materials (SUTIMAC-CUT), attacked on 16 November 2001;

(11) Daniel Orlando Gutierez Ramos, member of the Union of Cali Municipal Enterprise Workers (SINTRAEMCALI), attacked on 3 January 2002;

(12) Sigilfredo Orveso, activist in SINTRAEMCALI, attacked on 10 January 2002.

Abductions and disappearances

(1) Germán Medina Gaviria, member of SINTRAEMCALI, on 14 January 2001;

(2) Julio César Jaraba, member of SINTRAISS, disappeared on 23 February 2001;

(3) Gerzain Hernández Giraldo, member of SINTRAELECOL, on 24 February 2001;

(4) Jaime Duque Castro, president of the Single Trade Union of Industrial Construction Materials' Workers (SUTIMAC), Santa Barbara Section, abducted on 24 March 2001;

(5) Paula Andrea Gómez Mora (daughter of Edinson Gómez, member of SINTRAEMCALI, who has been threatened on various occasions), abducted on 18 April 2001 and freed on 20 April 2001;

(6) Eumelia Aristizabal, member of ADIDA, missing since 19 April 2001;

(7) Rosa Cecilia Lemus Abril, official of FECODE, target of a foiled abduction attempt on 14 May 2001;

(8) William Wallens Villafañe, member of USO, went missing on 29 May 2001, in the department of Santander;

(9) Six workers from Medellín Public Enterprises, members of SIMTRAEMDSDES, abducted on 12 June 2001 in the department of Antioquia;

(10) William Hernández, went missing on 22 June 2001 in the department of César;

(11) Rodrigo Aparicio, went missing on 22 June 2001 in the department of César;

(12) Eduardo Franco, went missing on 22 June 2001 in the department of César;

(13) Jaime Sampayo, went missing on 22 June 2001 in the department of César;

(14) Julio Cabrales, went missing on 22 June 2001 in the department of César;

(15) Cristóbal Uribe Beltrán, member of ANTHOC-CUT, abducted on 27 June 2001;

(16) Diego Quiguanas González, member of SINTRAEMCALI, went missing on 29 June 2001;

(17) Cristina Echeverri Pérez, member of EDUCAL-CUT, on 1 July 2001 in the immediate environs of Manizales;

(18) Alfonso Mejía Urión, member of ADUCESAR-FECODE-CUT, went missing on 4 July 2001;

(19) Jairo Tovar Díaz, member of ADES-FECODE-CUT, on 29 July 2001 in the outskirts of the municipality of Galeras;

(20) Julio Enrique Carrascal Puentes, member of the national executive committee of CUT, abducted on 10 August 2001;

(21) Winsgton Jorge Tovar, member of ASONAL-CUT, abducted in the immediate environs of the municipality of Dagua;

(22) Alvaro Alberto Agudel Usuga, member of ASONAL-CUT, went missing on 20 August 2001;

(23) Jorge Feite Romero, member of the Retired Persons' Association of the University of Atlántico (ASOJUA), on 28 August 2001;

(24) Carmen Pungo and Ricaurte Jaunten Pungo, officials of ANTHOC-CUT, on 2 September 2001;

(25) Alvaro Laiton Cortés, president of the Teachers' Trade Union of Boyacá, abducted on 2 September 2001 and released a short time later;

(26) Marco Tulio Agudero Rivera, member of ASONAL-CUT, on 5 October 2001 in the municipality of Cocorna;

(27) Iván Luis Beltrán, member of the executive committee of FECODE-CUT, on 10 October 2001;

(28) Julio Ernesto Cevallos Guzmán, member of ADIDA-CUT, on 15 October 2001;

(29) Carlina Ballasteros, member to the Single Union of Teachers of Bolívar (SUDEB-CUT), on 5 November 2001;

(30) Jorge Enrique Posada, member of ASONAL, on 5 November 2001;

(31) Jhon Jaimes Salas Cardona, member of ADIDA-CUT, on 26 November 2001;

(32) Leonardo Avendaño, activist in SINTRAEMSDES-CUT, on 5 January 2002;

(33) Carlos Arturo Alarcón Vera, member of ADIDA-CUT, on 12 January 2002.

Death threats

(1) Juan de la Rosa Grimaldos, president of ASEINPEC;

(2) María Clara Baquero Sarmiento, president of ASODEFENSA;

(3) Giovanni Uyazán Sánchez;

(4) Alirio Uribe Muñoz, member of the Lawyers' Collective "José Alvear Restrepo";

(5) Reinaldo Villega Vargas, member of the Lawyers' Collective "José Alvear Restrepo";

(6) the following trade union officials and members of the USO: Carlos Oviedo, César Losa, Ismael Ríos, José Meneses, Julio Saldaña, Ladislao Rodríguez, Luis Linares, Rafael Ortiz, Ramiro Luna;

(7) Rosario Vela, member of SINTRADEPARTAMENTO;

(8) the following trade union officials and members of FECODE: Gloria Inés Ramírez;

(9) Jorge Nisperuza, president of the executive subcommittee of CUT-Córdoba;

(10) Mario de Jesús Castañeda, president of the executive subcommittee of CUT-Huila;

(11) Gerardo Rodrigo Genoy Guerrero, president of the National Workers' Trade Union of SINTRABANCOL;

(12) Otoniel Ramírez, president of the subcommittee of CUT-Valle;

(13) José Rodrigo Orozco, member of the executive committee of CUT-CAUCA;

(14) the workers of SINTRAHOINCOL, on 9 July 2001;

(15) Leonel Pastas, trade union official of the Colombian National Institute for Agrarian Reform (INCORA), on 14 August 2001;

(16) Rusbel, trade union official of INCORA, on 14 August 2001;

(17) Edgar Púa and José Meriño, treasurer and legal adviser of ANTHOC, respectively, on 16 August 2001;

(18) Gustavo Villanueva, trade union official of ANTHOC, on 16 August 2001;

(19) Jesús Tovar and Ildis Jarava, trade union officials of ANTHOC, have been followed by heavily armed men since 16 August 2001;

(20) workers belonging to the Antioquia Official Municipal Workers' Union (SINTRAOFAN) are being intimidated by paramilitary groups in order to force them to renounce membership of the trade union organization;

(21) Aquiles Portilla, trade union official of FECODE, kept under surveillance on 29 August 2001;

(22) Edgar Mojico and Daniel Rico, president and press secretary, respectively, of the Petroleum Industry Workers' Trade Union (USO), threatened by the United Self-Defence Units of Colombia;

(23) Hernando Montoya, trade union official of SINTRAMUNICIPIO, CARTAGO, received threats on 7 September 2001 from a security cooperative that has been accused of murdering other trade union officials;

(24) Over Dorado Cardona, trade union official of ADIDA, on 19 September 2001;

(25) Julián Cote, Fredys Rueda and Rafael Jaime of the USO, received death threats on 20 September 2001;

(26) Orlando Herrán, Rogelio Pérez Gil, Edgar Alvarez Cañizales, Dalgy Barrera Gamez, Jorge Vázquez Nivia, Javier González, Humberto Castro, Cervulo Bautista Matoma, members of the CGTD, received death threats and have been kept under surveillance;

(27) Jaime Goyes, Jairo Roseño, Rosalba Oviedo, Pedro Layton, Ricardo Chávez, Diego Escandón, Luis Ortega, trade union officials from the department of Nariño, received death threats from the United Self-Defence Units of Colombia on 8 October 2001;

(28) the entire executive committee of SINTRAVIDRICOL-CUT was the target of death threats on 26 October 2001;

(29) Jorge Eliécer Londoño, member of SINTRAEMSDES-CUT, received death threats on 2 November 2001;

(30) Carlos Alberto Florez Loaiza, member of the Executive Committee of SINTRAEMSDES, on 5 January 2002;

(31) José Homer Moreno Valencia, member of SINTRAEMSDES-CUT, on 10 January 2002.

Harassment

(1) Esperanza Valdés Amórtegui, treasurer of ASODEFENSA, was the target of illegal spying when microphones were installed at her place of work;

(2) Henry Armando Cuéllar Valbuena, physically attacked and harassed;

(3) Carlos González, president of the University of Valle Workers' Trade Union, assaulted by the police on 1 May 2001;

(4) Freddy Ocoro, president of the Workers' Trade Union of the municipality of Bugalagrande, assaulted by the police on 1 May 2001;

(5) Jesús Antonio González, director of the Department of Human and Labour Rights for CUT, assaulted by the police on 1 May 2001.

Civilians sent to combat zones

The Ministry of Defence, as a means of anti-union persecution, continues to force civilians to go to combat zones, dressed as soldiers, unarmed and with no military instruction. The following people have been affected in this way:

(1) Carlos Julio Rodríguez García, trade union member of ASODEFENSA;

(2) José Luis Torres Acosta, trade union member of ASODEFENSA;

(3) Edgardo Barraza Pertuz;

(4) Carlos Rodríguez Hernández;

(5) Juan Posada Barba.

Detentions

On 19 October 2001, the following trade union officials (active and retired) of the USO were detained: Edgar Mojica, Luis Viana, Ramón Rangel, Jairo Calderón, Alonso Martínez and Fernando Acuña, former president of FEDEPETROL.

331. The Trade Union Association of Civil Servants of the Ministry of Defence, Armed Forces, National Police and Related Bodies (ASODEFENSA) alleges: (a) frequent and unjustified refusals to allow employees to meet with ASODEFENSA in meeting rooms at the workplace for reasons of security; (b) bulletins, news-sheets, pamphlets and other trade union updates are prevented from circulating; (c) trade union information cannot be posted on notice boards in the workplace; (d) work colleagues are prohibited from speaking of trade union matters during the working day; (e) permission to carry out trade union activities is granted on some occasions and unfairly withheld on others; and (f) refusal to protect trade union offices and the at-risk families of those trade union officials who have been threatened.

332. The complainant organization also opposes Decree No. 1792 of 14 September 2000 for the following reasons: (1) it restricts the right to exercise freedom of association as referred to in article 39 of the Political Constitution by revoking Law No. 200 of 1995 relating in particular to freedom of association; (2) article 8; and (3) it generalizes the prohibition of the right to strike to cover all those providing services to the Ministry of Defence.

333. Finally, the complainant organization alleges: (1) the dismissals of Delfirio Peñaloza Ruiz, Fernando Matiz Olaya, Alberto González Garcia, Luis Abel Manrique, José Joaquín Moreno Durán, Jorge Eliécer Núñez Rodríguez, among others, and the transferral and harassment of the workers of Club Militar, the Unified Southern Command and the police for being members of ASODEFENSA; (2) the disregard for the trade union immunity of Graciela Martínez (reserve member of the national executive committee) and Cenelly Arias Ortiz (treasurer of the executive subcommittee – Medellín Section); and (3) the Ministry of Labour and Social Security's delay in resolving the complaints relating to obstruction of trade union activities.

C. The Government's reply

334. In a communication dated 23 November 2001, the Government states that by going directly to the original sources, i.e. primarily the trade union organizations, it was able to obtain written statements directly from the officials of the trade union organizations affected, which provided confirmation and allowed it to draw up a table showing the breakdown of information on those murdered between January and December 2000, the place where the murder was committed, the trade union organization to which the person belonged and the position held, the date of the murder, the person presumed responsible and the person who laid the complaint. In some cases, the table also has information on the court responsible for issuing the relevant sentence. This table is the result of six months' work by the internal working group for the protection and promotion of workers' human rights of the Ministry of Labour and Social Security.

335. The subcommission in charge of drawing up the list of victims, established on a temporary basis, under the guidance of the Minister of Labour and Social Security, Dr. Angelino Garzón, and with representatives from some of the main sections of the Inter-Institutional Commission for the Promotion and Protection of Workers' Human Rights, presented a consolidated list of information from the past ten years (1991-2000), with the list for 2000 marked provisional.

336. The Government indicates that it is aware of the seriousness of the situation and wishes to discharge its duty conscientiously, using the instruments that it has to hand. It adds that this work must continue so that those efforts already made are not wasted and it can make progress in reaching the goal of designing a strategy to fight against impunity. Impunity gives rise to violence. By joining forces and, in the case of the Government, providing an organized presentation of the information and a "manual of complaints of human rights' violations", along with an "interinstitutional network", the essential elements for drawing up such a strategy are in place. These initiatives can be developed very quickly, and resources and political will are necessary to make them a reality. The Commission should then make suggestions and look into possibilities in these areas.

D. The Committee's conclusions

337. *The Committee notes the Government's single substantive reply dated 23 November 2001 with regard to the internal working group for human rights of the Ministry of Labour and Social Security in drawing up a table showing the breakdown of information on the murders committed between January and December 2000, the date on which and the place where the murders took place, the person presumed responsible and, in a few cases, the court in which the relevant criminal procedures are being heard. The Committee notes that this list does not contain any murders committed during 2001. Moreover, the table does not provide any information on the follow-up of these murders. It does not state whether complaints were lodged or the courts in which these are being heard. There is also no summary of any sentencing by the courts. The Committee regrets that, in the last analysis, the contents of the table provide only incomplete replies to the repeated recommendations of the Committee in its previous examination of the case.*

338. *The Committee deeply regrets that the Government has not answered the recommendations of the Committee, nor has it sent its observations on the serious allegations presented by the complainants, concerning a serious increase in the violence. The Committee also deeply regrets that it cannot but conclude that, since this case was last examined at its March 2001 meeting, there has been no sign of progress in reducing the violence against the trade union movement, its representatives and members. According to the complainants, there have been more than 120 murders, ten attempted murders, more than 30 abductions and disappearances, a great many death threats, numerous detentions of trade union members and a number of trade union members sent to combat zones since the beginning of 2001 up until the end of December 2001. The Committee repeats once again that "freedom of association can only be exercised in conditions in which fundamental human rights, and in particular those relating to human life and personal safety, are fully respected and guaranteed" and that "the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and it is for governments to ensure that this principle is respected" [see* ***Digest of decisions and principles of the Freedom of Association Committee,*** *4th edition, 1996, paras. 46-47]. The Committee adds that "the killing, disappearance or serious injury of trade union leaders and trade unionists requires the institution of independent judicial inquiries in order to shed full light, at the earliest date, on the facts and the circumstances in which such actions occurred and in this way, to the extent possible, determine where responsibilities lie, punish the guilty parties and prevent the repetition of similar events" [see* ***Digest****, op. cit., para. 51].*

339. *The Committee once again in the strongest terms urges the Government: (1) to initiate inquiries into* ***all*** *the violent acts listed, both those corresponding to the previous examination of the case and those that are current (murders, attempted murders, abductions and disappearances, death threats and detentions); (2) to take the necessary steps to end the intolerable situation of impunity and to punish those responsible for the*

numerous acts of violence and to achieve, once and for all, provable results in disbanding the paramilitary groups and other violent revolutionary groups; and (3) to send the information that has been requested, in particular that relating to the activities and results of the subcommission created to clarify the enormous divergences in the figures given for trade union officials and members murdered. The Committee stresses that impunity, whether it is perpetrated or condoned by governments or others in relation to extreme or widespread violations of fundamental rights of freedom of association, is a clear threat to essential trade union rights and the very basis of democracy itself. The Committee urges the Government to keep it informed of developments.

340. *The Committee requests the Government to relate all the facts available to it which could contribute to clarify the motives for the acts of violence, the circumstances within which they have been committed and the persons involved on a case-by-case basis. For this purpose, it would be advisable to deal specifically with situations in which violence against trade union members is very intensive – for example, in the sectors including education, the petrol industry, the health services, as well as municipal and departmental administrations. Information should also be brought to light for regions where an extreme frequency of violence occurs, such as the departments of Valle del Cauca and Antioquia, and the municipality of Barrancabermeja, with due regard to Empresa de Colombia de petroleos and Empresa de gases de Barrancabermeja. The Committee also requests the Government to relate all the facts available to it which could help to explain the impunity of the acts of violence against trade union members. The Committee once again reminds the Government of its responsibility for the protection of workers against acts of violence and for a responsible factual and analytical assessment of each and every crime committed. Thus, it suggests that the complainants and the Government seek technical assistance from the Office for this assessment.*

341. *The Committee notes the Government has not entirely answered the allegations presented by ASODEFENSA relating to: (a) the refusal to grant permission for trade union activities; (b) the prohibition to circulate bulletins, news-sheets and pamphlets containing trade union information, to post trade union information on notice boards, to allow meetings to take place in the auditoriums in workplaces, or to speak of trade union maters; (c) the anti-union dismissals, transfers and harassment for belonging to ASODEFENSA of Delfirio Peñaloza Ruiz, Fernando Matiz Olaya, Alberto González García, Luis Abul Manrique, José Joaquín Moreno Durán and Jorge Eliécer Núñez Rodríguez, among others; and (d) the disregard for the trade union immunity of Graciela Martínez and Cenelly Arias Ortiz. The Committee recalls that the publication and distribution of news and information of general or special interest to trade unions and their members constitutes a legitimate trade union activity and the application of measures designed to control publication and means of information may involve serious interference by administrative authorities with such activity. The Committee also recalls that no person should be dismissed or prejudiced in his or her employment by reason of trade union membership or legitimate trade union activities [see* ***Digest****, op. cit., paras. 161 and 696]. The Committee emphasizes that permission to carry out trade union activities should not be refused arbitrarily. The Committee requests the Government to take the necessary steps to ensure respect for these principles and to guarantee workers the right to publish news and information, post notices and to meet, and that the trade union immunity of Graciela Martínez and Cenelly Arias Ortiz be recognized. With regard to the other allegations relating to anti-union discrimination, the Committee requests the Government to initiate immediately the appropriate inquiries and to keep it informed of developments.*

342. *Regarding the allegations of ASODEFENSA of the refusal to extend protection to trade union offices, trade union officials and their families against threats of violence and death, the Committee recalls that "a climate of violence, coercion and* ***threats*** *of any kind aimed at trade union leaders and their families does not encourage the free exercise and full*

enjoyment of the rights and freedoms set out in Conventions Nos. 87 and 98. All States have 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 life" [see ***Digest****, op. cit., para. 62]. The Committee therefore requests the Government promptly to take the necessary steps to guarantee the material security of trade union offices and the physical safety of trade union officials and their families. The Committee requests the Government to keep it informed of developments.*

343. *Regarding the objections of ASODEFENSA to Decree Law No. 1792 of 14 September 2000, as follows: (1) it restricts the right to exercise freedom of association by revoking Law No. 200 of 1995 which enshrined this right; and (2) article 8 of this Decree generalizes the prohibition of the right to strike for civilian personnel in the armed forces, the Committee notes that the text of this Decree makes no reference to the right of association, in the sense either of prohibiting it or of permitting it. However, the Committee recalls that civilian personnel from the Ministry of Defence should have the right to establish and join trade union organizations and should be adequately protected against anti-union discrimination in the same way as other trade union officials and activists in the country. Regarding the general prohibition of the right to strike, the Committee recalls that "the right to strike may be restricted or prohibited: (1) in the* ***public service*** *only for public servants exercising authority in the name of the State; or (2) in essential services in the strict sense of the term (that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population)" [see* ***Digest****, op. cit., para. 526]. The Committee, however, considers that the civilian personnel of the Ministry of Defence who are not in positions of authority (manufacturers, armoury workers, catering staff, among others) should have the right to strike at least in areas where armed hostilities are not being carried out. Consequently, the Committee requests the Government to take the necessary legislative measures to bring Decree Law No. 1792 into line with the principles of freedom of association.*

The Committee's recommendations

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

(a) Noting that since the previous examination of this case there has been no progress as concerns the situation of violence against trade union leaders and members, the Committee once again in the strongest terms urges the Government:

(1) to initiate inquiries into all the violent acts listed, both those corresponding to the previous examination of the case and those that are current (murders, attempted murders, abductions and disappearances, death threats and detentions);

(2) to take the necessary steps to end the intolerable situation of impunity and to punish those responsible for the numerous acts of violence and to achieve, once and for all, provable results in disbanding the paramilitary groups and other violent revolutionary groups.

(b) The Committee deeply regrets that the Government has not sent the information requested relating to the activities and results of the subcommission created to clarify the enormous divergences in the figures

given for trade union officials and members murdered. The Committee strongly urges the Government to keep it informed of the situation.

(c) Regarding the allegations of ASODEFENSA relating to: (i) the refusal to grant permission for trade union activities; (ii) the prohibition to circulate bulletins, news-sheets and pamphlets containing trade union information, to post trade union information on notice boards, to allow meetings to take place or to speak of trade union matters; (iii) the anti-union dismissals, transfers and harassment for belonging to ASODEFENSA of Delfirio Peñaloza Ruiz, Fernando Matiz Olaya, Alberto González García, Luis Abul Manrique, José Joaquín Moreno Durán and Jorge Eliécer Núñez Rodríguez, among others; and (iv) the disregard for the trade union immunity of Graciela Martínez and Cenelly Arias Ortiz, the Committee requests the Government to send its observations.

(d) Regarding the further allegations of ASODEFENSA of anti-union discrimination, the Committee requests the Government to take steps to initiate immediately the appropriate inquiries and to keep it informed of developments.

(e) Regarding the refusal to extend protection to trade union offices, trade union officials and their families against threats of violence and death, the Committee requests the Government promptly to take the necessary steps to guarantee the material security of trade union offices and the physical safety of trade union officials and their families, and to send its observations in this respect.

(f) Regarding the objections of ASODEFENSA to Decree Law No. 1792 of 14 September 2000, the Committee requests the Government to take the necessary legislative measures to bring Decree Law No. 1792 of 14 September 2000 into line with the principles of freedom of association.

(g) The Committee requests the Government to relate all the facts available to it which could contribute to clarify the motives for the acts of violence, the circumstances within which they have been committed and the persons involved on a case-by-case basis. For this purpose, it would be advisable to deal specifically with situations in which violence against trade union members is very intensive – for example, in the sectors including education, the petrol industry, the health services, as well as municipal and departmental administrations. Information should also be brought to light for regions where an extreme frequency of violence occurs, such as the departments of Valle del Cauca and Antioquia, and the municipality of Barrancabermeja, with due regard to Empresa de Colombia de petroleos and Empresa de gases de Barrancabermeja. The Committee also requests the Government to relate all the facts available to it which could help to explain the impunity of the acts of violence against trade union members. The Committee once again reminds the Government of its responsibility for the protection of workers against acts of violence and for a responsible factual and analytical assessment of each and every crime committed. Thus, it suggests that the complainants and the Government seek technical assistance from the Office for this assessment.

CASES NOS. 1948 AND 1955

INTERIM REPORT

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

Allegations: Acts of anti-union discrimination

345. The Committee last examined these cases at its March 2001 meeting [see 324th Report, paras. 290-302]. The Trade Union of Workers of the Bogotá Telecommunications Enterprise (SINTRATELEFONOS) presented new allegations in a communication dated 20 June 2001.

346. The Government sent its observations in communications dated 5 April, 4 September and 26 October 2001.

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

A. Previous examination of the cases

348. In its previous examination of these cases, when it considered allegations of acts of anti-union discrimination, the Committee made the following recommendations [see 324th Report, para. 302]:

(a) the Committee expressed the hope that the judicial proceedings begun by Ms. Adelina Molina de Cárdenas, dismissed in March 1999, would be concluded in the near future and requested the Government to keep it informed of the result;

(b) regarding the judicial proceedings relating to the 23 trade union members dismissed in 1997 from the Bogotá Telecommunications Enterprise (ETB), the Committee urged the legal authorities to come to a decision as soon as possible and requested the Government to ensure that the decision was complied with if it ordered the reintegration of the workers. The Committee requested the Government to keep it informed of the result of the judicial proceedings;

(c) the Committee requested the Government to send, without delay, its observations on the following allegations: (1) the disciplinary proceedings that were begun against the entire union executive committee of SINTRATELEFONOS for 1997-99, during which period a list of petitions for 2000-01 was presented; and (2) the dismissal of Ms. Martha Querales and Mr. Jorge Iván Castañeda, members of SINTRATELEFONOS, for reporting corruption among members of the management of the ETB; and

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

B. New allegations by the complainants

349. In its communication of 20 June 2001, the Trade Union of Workers of the Bogotá Telecommunications Enterprise (SINTRATELEFONOS) states that, of the 23 trade union members dismissed on 4 November 1997, the following three trade union officials have not been reinstated; Rafael Humberto Galvis J., President of SINTRATELEFONOS, Rodrigo H. Acosta B., legal adviser for SINTRATELEFONOS and Sandra Patricia Cordero T., press and information secretary. On 11 April 2000, the Constitutional Court, in decision T-418, overturned the ruling of protection *(tutela)* that ordered the reinstatement of the majority of those workers who had been dismissed by the Bogotá Telecommunications Enterprise (ETB), which had subsequently taken place, with the exception of the trade union official Rodrigo Acosta, who did not benefit from this temporary reinstatement. During this period, Sandra Patricia Cordero T. and Rafael H. Galvis Jaramillo were elected to the new trade union executive committee, but the enterprise refused to acknowledge their trade union privileges and proceeded to dismiss them again.

350. The complainant organization states that the Office of the Procurator-General of the Nation decided, on 20 September 2000, to suspend the sale procedure for the ETB as a result of serious irregularities such as those that have been reported by SINTRATELEFONOS since 1997. This prompted the management of ETB to dismiss the trade union officials and a further 20 workers. The Ministry of Labour and Social Security repealed resolutions Nos. 002286 and 002287 of 9 October 1997, which declared the work stoppages of 1997 illegal, through resolution No. 00864 of 18 May 2001. Therefore, there is no legal argument to support the dismissals of the 23 workers belonging to SINTRATELEFONOS, including the three trade union officials. However, the management of the ETB refuses to reinstate them. The complainant organization points out that continual delays and the inefficiency of the justice system in Colombia have meant that the courts for both the ordinary proceedings and for the special jurisdiction proceedings have not ruled now for three years and seven months. To date, only Jorge Ayala, worker, has been reinstated under Order No. 0282 of the High Court of Cundinamarca and the enterprise has not fully complied with the ruling as it tried to place him in a job that was different from that which he had when he was dismissed. The result of this is that his length of service is not recognized. As can be seen, the employer shows no respect for trade union guarantees and even less for the rights of workers. Hernando Casallas and Hernando López were only temporarily reinstated at the ETB as a result of the protection ruling and these labour issues are to be resolved in the civil courts.

351. According to the complainant organization, justice has also not been done in the other cases. However, Germán Rodríguez, Alfredo Tarazona, Bernardo Hernández, Serafín Gómez, Josué Moisés Carrasco, Orlando Chingate Cabrera, and Guillermo Ferreira have taken early retirement. The proposal by the ETB management that trade union officials Rafael H. Galvis and Rodrigo Acosta Barrios take early retirement and that Sandra Patricia Cordero receive compensation was not accepted by the three trade union officials. Nor was it accepted by ten of their colleagues: Rafael Benítez, Guillermo Blanco, Rafael Guerra, Esmedi Wilson López, José Marino, Juan de la Cruz Páez, Raúl Ramírez, Fernando Rodríguez, Pedro Rojas and Felipe Toledo. Subsequent to the dismissals (4 November 1997), the trade union officials Sandra Patricia Cordero, Rafael Humberto Galvis Jaramillo and Rodrigo Hernán Acosta were subjected to an increase in disciplinary proceedings under Law No. 200 (single disciplinary code) with the aim of proving "presumed just cause" for the dismissals by the ETB. The complainant organization states that Flor Alba Pérez, Gladys Pérez, Jorge Alejandro Sánchez, Alvaro Miguel Vásquez, Arcadio Virviescas and Héctor Parra, workers at the Engativa Office of the ETB, were illegally laid off on 27 January 1999 as a result of supposed administrative restructuring and are still without jobs. This violates the collective agreement in force signed by the ETB and

SINTRATELEFONOS. Martha Querales and Jorge Iván Castañeda were dismissed for having reported corruption among members of the enterprise's management to SINTRATELEFONOS.

352. Six workers from the commercial division (Gustavo Albarracín Villegas, Martha Yaneth Contreras, Ricardo Alberto López, Adelina Molina de Cárdenas, William Alberto Quevedo Ramírez and Amparo Zapata Valderrama) have not been reinstated because of presumed breaches of contract that have been established unilaterally by the enterprise. The complainant organization states in reply to a request from the Committee on Freedom of Association, that Elías Quintana and Carlos Socha have still not been reinstated and used to work for the ETB. They were affiliated with SINTRATELEFONOS, held no official trade union post and were restricted from entering certain areas of the enterprise and from attending meetings with workers from the enterprise, by order of the ETB management. Finally, the complainant organization states that the ETB management disregarded the collective work agreement: (1) disregarding the bonus for performance, which had already been paid out unequally and with a substantial difference in favour of workers in management who were generally not members of a union; (2) imposing in 1996, a new procedure, which differed from previous agreements, denying the retroactivity of redundancy compensation, and, from October 1996 applying Law No. 50 of 1994; and (3) replacing employees or staff with contracted workers from intermediary enterprises, and the murder of the legal adviser of SINTRATELEFONOS, Dr. Eduardo Umaña Mendoza, which occurred on 18 April 1999 and remains unresolved and unpunished, as on 18 April 2001 the Attorney-General's Office released one of the principal suspects on the very date three years to the day that the murder took place.

C. The Government's reply

353. In its communications dated 5 April, 4 September and 26 October 2001, the Government states:

(a) the judicial proceedings begun by Ms. Adelina Molina de Cárdenas are currently in the preliminary stages, and Ms. Molina de Cárdenas admits that she stated that she was pregnant following the termination of her contract. The Bogotá Telecommunications Enterprise (ETB) confirms that the grounds used to dismiss the worker were not related to her pregnancy;

(b) regarding the dismissal of 23 trade union members on 4 November 1997, seven workers freely and voluntarily accepted a conciliation procedure (Germán Rodríguez, Alfredo Tarazona, Fernando Hernández, Serafín Gómez, Josué Moisés Carrasco, Orlando Chingate and Guillermo Ferreira) and there are 16 cases pending before the Ordinary Labour Court (including proceedings for trade union officials Rafael Galvis, Rodrigo Acosta and Sandra P. Cordero). These are in the preliminary stages. The Ministry of Labour and Social Security, in resolution No. 00864 of 18 May 2001 (attached), repealed in their entirety resolutions Nos. 002286 and 002287 issued by this office on 9 October 1997 in which the partial stoppages carried out by the workers of the ETB on 17 April, 27 and 30 May, and 4, 5 and 6 June 1997 were declared illegal. It was these administrative acts that led to the dismissal of the complainants. Therefore, the ETB now has no legal basis for having dismissed the employees concerned. The Government is awaiting the legal rulings in the light of the published resolutions and it will send information with regard to these decisions when they are forthcoming;

(c) regarding Martha Querales and Jorge Iván Castañeda, the Internal Affairs Department of the ETB has taken no disciplinary steps. This being the case, there is no inquiry with regard to the complainants;

(d) with regard to the sale of shares owned by the Capital District of Santa Fe de Bogotá in the ETB, and the dismissals that took place on 4 November 1997, the enterprise states that these are two different processes, in so far as the legality of the privatization process has no direct bearing on the dismissals referred to by the complainants. The ETB adds that the privatization process was declared in court and the ETB and the Capital District received favourable rulings in all procedures. Therefore, the ETB concludes that the fact that the sale procedure was declared illegal has nothing to do with the illegality of the dismissals of trade union officials and activists and that the reasons for which the sale procedure was stopped are to be found in Decree No. 792 of 21 September 2000;

(e) regarding the declaration that the work stoppages that took place on 17 April, 30 March, 4, 5 and 6 June 1997 were illegal, the ETB states that in spite of that which is laid down in the Ministry of Labour and Social Security's resolution No. 00864 of 18 May 2000, which revokes resolutions Nos. 002286 and 002287 of 9 October 1997, in which the Ministry declares that such work stoppages are illegal, it is for a labour court ultimately to decide whether or not those dismissed are to be reinstated;

(f) the ETB states that it complied with the ruling of Bogotá Circuit Court No. 18 for Labour and the Judicial District Labour High Court with regard to the reinstatement of Jorge Ignacio Ayala Benavides. The employee was reinstated in a job similar to that which he had had when he was dismissed and he received unpaid wages covering the period from the date of dismissal until his reinstatement. Moreover, since his reinstatement he has continued to benefit from the same wage and benefits conditions laid down in the collective labour agreement signed between SINTRATELEFONOS and ETB and applicable to him at the time of his dismissal;

(g) regarding those who did not accept the conciliation proposal of the enterprise, this occurred for economic reasons as those concerned did not agree with the amount offered;

(h) regarding the cases of Flor Alba Pérez, Gladys Pérez, Jorge Alejandro Sánchez, Alvaro Miguel Vásquez and Arcadio Virviescas, who were dismissed in 1999, the ETB states that as a result of restructuring in 1999 it was necessary to cut some positions with the resulting unilateral termination of labour contracts with a number of people, among them those mentioned in the complaint. This termination was based on the collective labour agreement, clause 19, and the Substantive Labour Code. The former workers began labour proceedings in the ordinary courts and these are under way. The ETB adds that, to date, Jorge Iván Castañeda is still with the enterprise and Martha Querales was laid off with the appropriate compensation and benefits. Finally, the ETB states that regarding the cases of Gustavo Albarracin Villegas, Martha Yaneth Contreras, Ricardo Alberto López, Adelina Molina de Cárdenas and William Alberto Quevedo Ramírez, their employment was terminated with just cause and in accordance with the collective labour agreement and the law. The workers lodged an action for protection of constitutional rights (*tutela* proceedings), which was unsuccessful;

(i) regarding the status of Elias Quintana and Carlos Socha, the ETB states that these men do not seem to be registered in their archives as workers;

(j) regarding the disciplinary proceedings, the ETB states that two disciplinary proceedings were begun against Rafael Galvis, Germán Rodríguez and Sandra Cordero, one for violence against the vehicle transporting the president of the enterprise, in which no sanctions were imposed through application of article 6 of Law No. 200 of 1995, according to which, all reasonable doubt shall favour the person accused when there is no way of removing this. The other disciplinary

proceedings relates to preventing workers from entering the workplace, in which Rafael Galvis and Sandra Cordero were subject to disciplinary measures. In both proceedings they were allowed a representative to act for them, which shows that due process was respected. However, the ETB states that the behaviour investigated in these disciplinary proceedings bears no relation to the motives upon which were based the dismissals with just cause that took place on 4 November 1997. Finally, the ETB states that Rodrigo Acosta was not the subject of an inquiry nor was he subject to disciplinary measures;

(k) the ETB states that, for security reasons, there is restricted entrance to some areas, such as telephone operator services, general distribution, computing centres and the CAOM (Centre for Administration, Operations and Maintenance of Exchange and Transmission), among others. This restriction applies to all enterprise staff; and

(l) regarding the pay-out of the performance bonus, this payment was based on achieving the goals established for 2000.

D. The Committee's conclusions

354. *The Committee observes that, when it examined this case at its March 2001 meeting, it requested the Government to take action on a number of allegations. Specifically, the Committee requested the Government: (1) to keep it informed of the outcome of the legal proceedings initiated by Ms. Adelina Molina de Cárdenas and of the judicial proceedings relating to the 23 trade union members dismissed in 1997 from the Bogotá Telecommunications Enterprise (ETB) and, should the ruling call for the reinstatement of the workers, to ensure that this was complied with; (2) to send observations on the disciplinary proceedings against the entire trade union executive committee of SINTRATELEFONOS for 1997-99 and the dismissal of Martha Querales and Jorge Iván Castañeda for reporting corruption among members of the management of the ETB. The Committee requested the complainants to supply more precise information on whether the trade union officials Elías Quintana and Carlos Socha – dismissed according to the complainants – were workers of the ETB and to indicate the name of the member of SINTRAELECOL who was dismissed from the Bogotá Power Company. The Committee also observes that SINTRATELEFONOS has presented new allegations relating to the following points:*

(a) excesssive delays in the judicial proceedings;

(b) the 23 trade union members (including three trade union officials, Rafael Humberto Galvis, Rodrigo H. Acosta and Sandra P. Cordero) have not been reinstated and on 11 April the Constitutional Court reversed the ruling for protection of constitutional rights (tutela) *that ordered that the majority of workers be reinstated, including the trade union officials who had been elected to the trade union executive committee. Of these 23 workers, seven (Germán Rodríguez, Alfredo Tarazona, Bernardo Hernández, Serafín Gómez, Josué Moisés Carrasco, Orlando Chingate Cabrera and Guillermo Ferreira) took early retirement, while the three trade union officials and ten workers refused it. Furthermore, Sandra P. Cordero, Rafael H. Galvis Jaramillo and Rodrigo H. Acosta were subjected to an increase in disciplinary proceedings aimed at demonstrating just cause for dismissal and were restricted in their access to certain areas of the enterprise as well as to meetings with workers;*

(c) the Office of the Procurator-General of the Nation ordered that the sale of the ETB be halted because of serious irregularities; this had already been reported by the complainant organization, which led to the dismissals;

(d) the Ministry of Labour repealed resolutions Nos. 002286 and 002287 of 9 October 1997, which declared the work stoppages of 1997 illegal and which also gave rise to the dismissals. In spite of the fact that there is no longer any legal basis for these dismissals, the enterprise refuses to reinstate the workers (it has only reinstated Jorge Ayala, placing him in a job that differs from his previous one, and Hernando Casallas and Hernando López, on a temporary basis);

(e) the judicial proceedings have been postponed and there is no ruling on that basis;

(f) the following have still not been reinstated: Flor Alba Pérez, Gladys Pérez, Jorge Alejandro Sánchez, Alvaro Miguel Vásquez and Arcadio Virviescas, workers at the Engativa Office of the ETB who were dismissed in January 1999, Martha Querales and Jorge Iván Castañeda for reporting corruption among members of the management of the ETB, and Gustavo Albarracín Villegas, Martha Yaneth Contreras, Ricardo Alberto López, Adelina Molina de Cárdenas, William Alberto Quevedo Ramírez, and Amparo Zapata Valderrama, from the commercial division;

(g) the breaches of the collective agreement in paying out the performance bonus in an unfair way which benefited workers not belonging to a trade union, in denying retroactive redundancy compensation and in replacing employees with contract workers;

(h) the release of the main suspect in the murder of Dr. Eduardo Umaña Mendoza, legal adviser of SINTRATELEFONOS.

355. *With regard to the judicial proceedings begun by Ms. Adelina Molina de Cárdenas, the Committee notes that the Government states that this is in the preliminary stages and that when questioned Ms. Adelina Molina de Cárdenas acknowledged that she stated that she was pregnant following her dismissal and that the ETB confirms that the grounds used to dismiss her were not related to her pregnancy.*

356. *With regard to the allegations relating to the 23 trade union members belonging to SINTRATELEFONOS dismissed by the ETB, the Committee notes the information provided by the Government according to which seven conciliation procedures took place freely and voluntarily (in the cases of Germán Rodríguez, Alfredo Tarazona, Bernardo Hernández, Serafín Gómez, Josué Moisés Carrasco, Orlando Chingate Cabrera and Guillermo Ferreira) and that the remaining legal procedures are in the preliminary stages, including those of the three trade union officials. Moreover, the Committee notes the Government's statement that resolutions Nos. 002286 and 002287, which declared the work stoppages that took place in 1997 illegal and which led to the dismissals, were repealed but that the ETB declares that it is for a labour court ultimately to determine whether or not those dismissed are to be reinstated. The Committee requests the Government to let it know whether the ETB has begun legal proceedings and, if this is not the case, that the dismissed workers be immediately reinstated and receive their unpaid salaries. The Committee requests the Government to keep it informed of developments.*

357. *Regarding the situation of Jorge Ignacio Ayala Benavides who, according to the allegations, was reinstated in a different job from that which he had held previously, the Committee notes the Government's statement that in accordance with the ruling of Circuit Court No. 18 the worker was reinstated in a position of similar category, that he was paid the wages owing to him and that he is covered by the provisions laid down in the collective labour agreement.*

358. *Regarding the disciplinary proceedings begun against the trade union officers, the Committee notes the Government's statement that one of these proceedings relates to*

violence against the vehicle transporting the president of the enterprise but that no disciplinary measures were taken and the other relates to Rafael Galvis and Sandra Cordero, who were subjected to disciplinary measures for preventing workers from entering the workplace, and that according to the Government these processes had no bearing on the dismissals of 4 November 1997 and that on both occasions the defendants' right to a defence was guaranteed. The Committee also notes that, according to the enterprise, the restricted entry to some areas of the enterprise applied to all staff. The Committee recalls that "governments should guarantee access of trade union representatives to workplaces, with due respect for the rights of property and management, so that trade unions can communicate with workers, in order to apprise them of the potential advantages of unionization" [see ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 954]. The Committee requests the Government to ensure that this principle is fully respected.*

359. *Regarding the allegations relating to the dismissal of Martha Querales and Jorge Iván Castañeda, members of SINTRATELEFONOS, for having reported corruption among members of the ETB management, the Committee notes the Government's statement that Jorge Iván Castañeda is still employed by the enterprise and that Martha Querales has been laid off with the appropriate compensation. The Committee requests the Government to take steps to ensure that an independent investigation is promptly undertaken into the circumstances of this dismissal, and if it is confirmed that it took place for anti-union reasons that the employee is immediately reinstated and paid the wages owing to her. The Committee requests the Government to keep it informed of developments.*

360. *Regarding the suspension of the sale procedure of the ETB ordered by the Office of the Procurator-General of the Nation as a result of serious irregularities, the Committee notes the Government's statement that this had no bearing on the dismissals at the ETB.*

361. *Regarding the dismissals of Gustavo Albarracín Villegas, Martha Yaneth Contreras, Ricardo Alberto López, Adelina Molina de Cárdenas, William Alberto Quevedo Ramírez, and Amparo Zapata Valderrama, from the commercial division, the Committee notes the Government's statement that these employees were dismissed in accordance with the collective labour agreement and that the proceedings for protection of constitutional rights* (tutela) *were unsuccessful.*

362. *Regarding the dismissals of Flor Alba Pérez, Gladys Pérez, Jorge Alejandro Sánchez, Alvaro Miguel Vásquez and Arcadio Viviescas, of the Engativa Office of the ETB who were dismissed in January 1999, the Committee notes the ETB's information that these dismissals took place as a result of restructuring and that the employees have begun legal proceedings, which are in the preliminary stages. The Committee requests the Government to keep it informed of the outcome of these proceedings.*

363. *The Committee notes that the Government's observations and the allegations presented by the complainant regarding the association of Elías Quintana and Carlos Socha with the ETB and their membership of SINTRATELEFONOS are contradictory as the enterprise denies that these persons are employees. Given that the complainants have alleged that these persons were dismissed, the Committee requests the Government to carry out an inquiry and to correct any prejudicial action taken against these persons for anti-union reasons. The Committee requests the government to keep it informed of the outcome of this inquiry.*

364. *Finally, regarding the alleged anti-union discrimination in the payment of the performance bonus envisaged in the collective labour agreement, the Committee notes that according to the ETB this pay-out was based on achieving the goals established for 2000. The Committee regrets that the Government sent no information with regard to the other*

violations of the collective labour agreement presented by the complainant. The Committee requests the Government to ensure that the collective labour agreement is adhered to and to ensure that the payment of the performance bonus is not used as an instrument of anti-union discrimination in that it benefits only those workers who do not belong to a trade union.

365. *The Committee also regrets that the Government has sent no information with regard to the inquiry into the murder of Dr. Eduardo Umaña Mendoza, legal adviser of SINTRATELEFONOS. However the Government notes that this murder was referred to in Case No. 1787 and that it will be examined under this case*

366. *Finally, as concerns the allegations of continual delays and inefficiency of the justice system in Colombia that, according to the complainants, have meant that the courts for both the ordinary proceedings and for the special jurisdiction proceedings have not ruled for three years and seven months, the Committee recalls the principle that justice delayed is justice denied [see* ***Digest****, op. cit., para. 105].*

The Committee's recommendations

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

(a) Regarding the 23 trade union members of SINTRATELEFONOS who were dismissed by the Bogotá Telecommunications Enterprise (ETB), the Committee requests the Government to provide information on whether the ETB has begun legal proceedings and, if this is not the case, that those workers dismissed be immediately reinstated and paid the wages owing to them. The Committee requests the Government to keep it informed of developments in this respect.

(b) Regarding trade union officials being restricted from entering some areas of the enterprise, the Committee requests the Government to ensure respect for the principle according to which governments should guarantee access of trade union representatives to workplaces, with due respect for the rights of property and management, so that trade unions can communicate with workers, in order to apprise them of the potential advantages of unionization.

(c) Regarding the dismissal of Martha Querales, member of SINTRATELEFONOS, for having reported corruption among members of the ETB management, the Committee requests the Government to take steps to ensure that an independent investigation is promptly undertaken into the circumstances of her dismissal, and if this is confirmed to have taken place for anti-union reasons that she be immediately reinstated and paid the wages owing to her. The Committee requests the Government to keep it informed of developments.

(d) The Committee requests the Government to keep it informed of the outcome of the judicial proceeding launched by the workers from the Engativa Office in 1999.

(e) Regarding the association of Elías Quintana and Carlos Socha with the ETB and their membership of SINTRATELEFONOS, the Committee requests the Government to carry out an inquiry into the matter and to resolve any prejudicial action taken against these persons for anti-union reasons. The Committee requests the Government to keep it informed of the outcome of this inquiry.

(f) Regarding the pay-out of the performance bonus, envisaged in the collective labour agreement in an anti-union manner, the Committee requests the Government to ensure that the provisions of the collective labour agreement are fulfilled and that the payment of the bonus is not used as an instrument of anti-union discrimination in that it benefits only those workers who do not belong to a trade union.

CASE NO. 1962

INTERIM REPORT

Complaints against the Government of Colombia presented by — the Single Confederation of Workers of Colombia (CUT) — the General Confederation of Democratic Workers (CGTD) — the Public Works Trade Union (SINTRAMINOBRAS) and — the National Union of State Employees of Colombia (UTRADEC) and others

Allegations: Anti-union dismissals, violation of the right to collective bargaining in the public sector

368. The Committee last examined this case at its March 2001 meeting [see 324th Report, paras. 303-316]. The National Union of State Employees of Colombia (UTRADEC) sent new allegations in communications dated 18 July and 10 August 2001. The Public Employees' Trade Union of the Municipality of Neiva (SINTRAOFICIALES) sent new allegations in a communication dated 9 May 2001; the Public Works Trade Union (SINTRAMINOBRAS) sent new allegations in a communication dated 5 February 2001; the Trade Union of Public Servants and Employees of the Colombian Institute of Hydrology, Meteorology and Land Development (SINALTRAHIMAT) sent new allegations in communications dated 5 February, 16 April, 24 May, 20 and 26 June, 9, 18 and 27 July, 10 August and 4 and 14 December 2001; the Public Servants and Employees' Trade Union of Pitalito sent new allegations in a communication dated 1 June 2001 and the executive subcommittee of the Single Confederation of Workers of Colombia (CUT)-Huila Section sent new allegations in a communication dated 1 June 2001.

369. The Government sent its observations in communications dated 23 January, 5 April, 4 September, 23 November 2001 and 9 January 2002.

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

A. Previous examination of the case

371. In its previous examination of the case at its March 2001 meeting, the Committee made the following conclusions and recommendations concerning the allegations still pending [see 324th Report, para. 316]:

(a) The Committee repeats its previous recommendation and requests the Government to take the necessary measures with regard to the competent authorities of the Municipality of Neiva to ensure that they pay compensation to all of the workers dismissed in violation of the collective agreement.

(b) Regarding the dismissal of the five trade union leaders of the INAT, the Committee hopes that, within the framework of the dialogue which has begun, the parties will arrive at an agreement in the near future that is satisfactory to both and requests the Government to keep it informed of developments. Furthermore, the Committee requests the Government to inform it of the result of the appeal before the Constitutional Court relating to the dismissal of the five trade union leaders.

(c) The Committee urges the Government to send its observations relating to the following allegations without delay: (1) the dismissal of members of the executive committee of SINTRADESAI; (2) the dismissal of Ms. Pamela Newball, leader of the Public Works Trade Union of the Municipality of Cúcuta; (3) the refusal of the Government to negotiate the claims of public servants; (4) the political persecution of Mr. Fermín Vargas Buenaventura, a lawyer, for the defence of trade union rights; and (5) the dismissal of two trade union leaders of SINTRAINPROMEN of the Colombian Institute of Family Welfare (Gladis Correa Ojeda and Marlen Ortiz), and ten trade union leaders of SINTREMAR of the Municipality of Arauca (Alfonso Moreno Vélez, Rigo Idilio Torres Yustre, Alvaro Moreno Moreno, Leomarín Roa Morles, Sabiniano Sosa, Zacarías Urrea Gutiérrez, Rafael David Figuera, Emiro Vasquez Baos, Roberto Alexi Rojas, Carlos Geovany Eulegelo).

(d) The Committee requests the Government to provide its observations concerning the 11-day detention of Juan Bautista Oyola Palomá, President of the Public Services Trade Union of the Tunjuelito Hospital, the proceedings launched against him and his suspension from duties.

B. New allegations

372. In communications dated 18 July and 10 August, the National Union of State Employees of Colombia (UTRADEC) alleges that with regard to the dismissal of the members of the executive committee of SINTRADESAI, it is not aware of any measures taken by the Government to sanction this dismissal or any measures to guarantee the reinstatement of those dismissed. The complainant organization adds that, since the dismissal of the executive committee, the trade union organization on the island of San Andrés has practically collapsed.

373. Regarding the Public Works Trade Union of Cúcuta, the complainant organization indicates that, following the massive dismissals of its members, only nine trade union officials remain. These officials were reinstated, although they are no longer in their original jobs, and proceedings to lift the trade union immunity of these employees have begun so that the municipal administration will be able to dismiss them once again.

374. Regarding the dismissal of the two trade union leaders of SINTRAINPROMEN (Gladis Correa Ojeda and Marlén Ortiz), the complainant organization states that the Colombian Government has done little or nothing on this issue so that the Director of the JCBF may engage in dialogue with this trade union; on the contrary, the annihilation of this organization continues with irregular dismissals of its members, mostly women, and nothing has been resolved with regard to the reinstatement of the dismissed officials, violating the guarantee of trade union immunity.

375. Regarding the dismissal of ten trade union leaders of SINTREMAR on 24 April 2001, the Labour Division of the High Court of the District of Cúcuta, upheld the decision of the court of first instance, which ordered the Municipality of Arauca to reinstate Carlos Emiro Vásquez Baos, Roberto Alexis Rojas Salas, Luis Alfonso Moreno Vélez, Rafael David Figuera Cisneros, Carlos Geovanny Eulegelo Mendivelso, Leomarín Roa, Zacarías Urrea and Sabiniano Sosa to jobs of a category equal to or better than those they held in this administrative body when they were dismissed and to pay them all the wages, benefits and other income to which they are entitled from the date of this ruling.

376. The complainant organization states that regardless of the aforementioned, the employees have not, to date, been reinstated. Meanwhile, in extraordinary proceedings for protection of constitutional rights (*tutela* proceedings), the jurisdictional disciplinary chamber of the North Santander Council of the Judicature, on 6 July 2001 handed down a ruling that rendered null and void the ruling of 24 April 2001 of the Labour Division of the High Court of the District of Cúcuta in the special proceedings for reinstatement under trade union immunity. In reply to this, both SINTREMAR and UTRADEC, on 13 July 2001, contested the ruling with the office of Doctor Calixto Cortés Prieto, the trial judge. The latter is proof of how the Government of Colombia, through some agents in the legal sphere maintains impunity, violates freedom of association and mocks the rights of workers, and breaks the legal security of *res judicata*. The complainant organization adds that if the courts agree to lift trade union immunity, the Mayor's Office of the Municipality of Arauca intends to dismiss Norberto Antonio Marín Bravo, legal adviser for SINTREMAR, whose job has been suppressed without reason or justification, with the sole objective of weakening the trade union organization.

377. Regarding collective bargaining for public employees, the complainant organization states that the Colombian Government under Act No. 411 of 1997, approved the Labour Relations (Public Service) Convention, 1978 (No. 151), and yet this has in no way helped to encourage collective bargaining or to promote the exercise of this right as, in spite of the efforts made by the subcommission on coordination of the public sector, wherein the text of a regulatory decree was agreed upon, the legal office of the President of the Republic has objected to it contrary to other government bodies who have agreed to it, such as the Ministry of Labour, the Treasury, the Ministry of National Planning and the administrative department of the Ministry of Public Administration.

378. In a communication dated 9 March 2001, the Public Employees' Trade Union of the Municipality of Neiva (SINTRAOFICIALES) states that, at the request of the Colombian Ministry of Labour and Social Security, the trade union and the Municipality of Neiva met on 5 April 2001 to find a solution to the case in question. On this occasion, the representative of the trade union requested the Mayor of Neiva to comply with the recommendations of the Committee on Freedom of Association and to reinstate the workers dismissed in 1993 by the Municipality of Neiva and, if this were not possible, that each of the workers be paid full compensation. According to the jurisprudence of the Constitutional Court, the State is obliged to comply with these recommendations in accordance with the rulings of August 1999 and September 2000. The chief of the legal office indicated that the administration of Neiva, following analysis and a detailed review, will proceed to establish its position with regard to the recommendations, believing it timely in the future to hold a subsequent meeting and reiterated its complete readiness to find solutions or alternatives that will allow the case to be successfully closed.

379. For its part, the trade union undertook to send the Mayor a settlement proposal.

380. This proposal, requested by the Mayor of Neiva, complies with the recommendations of the Committee on Freedom of Association, ordering the reinstatement of the 134 workers dismissed and the payment of the salaries and benefits owing to them, with their respective

conventional and/or lawful increases. The defendant in the labour proceedings was the Municipality of Neiva and not the Municipal Department of Public Works; and the Municipality as a territorial entity has not closed down or been liquidated and there are jobs there to be carried out by public employees. The department liquidated in 1993 was one of its administrative branch offices, which was replaced with the Municipal Institute of Civil Works (IMOC) and, more recently, with the Department of Infrastructure and Municipal Road Development (Decree No. 000469 of 30 December 1999 of the Mayor's Office of Neiva). The wages and benefits to be paid to the workers who are reinstated should include the respective increases agreed upon. The Public Employees' Trade Union of the Municipality of Neiva had agreed the following concessions: a wage increase of 30 per cent (agreement No. 24, clause 9), wage factors (agreement No. 16), holiday bonus (agreement No. 18), Christmas and June bonuses (agreement No. 20), transport subsidy (agreement No. 24), labour stability (agreement No. 24), monthly shortfall bonus (agreement No. 24), length of service bonus (agreement No. 24), bonus for more than 20 years of service (agreement No. 24) and retirement (agreement No. 12, clause 9) for those workers with 20 years' service or more and, to this effect, taking into account the length of time they had been dismissed, 50 years of age or more at the date of the ruling on the action for protection of constitutional rights (*tutela* proceedings).

381. In communications dated 5 February, 16 April, 24 May, 20 and 26 June, 9, 18 and 27 July, and 4 and 14 December, the Trade Union of Public Servants and Employees of the Colombian Institute of Hydrology, Meteorology and Land Development (SINALTRAHIMAT) states that on 9 February 2001, a meeting was held between the president of the trade union and the chief of the legal office to implement proceedings in order to resolve the issues contained in Case No. 1962, currently before the Committee on Freedom of Association. The president of the trade union stated that the enterprise should agree with the five trade union officials (Hernando Bonilla Buendía, Alberto Medina Medina, José Antonio Alarcón, Jesús Antonio Mejía Díaz and Alvaro Cabrera Achury) on their reinstatement with regard to their trade union immunity or the relevant compensation should they not be reinstated in accordance with the recommendations of the ILO Committee on Freedom of Association. The head of the legal office indicated that, as indeed the Institute had reaffirmed, it has been complying with the judicial rulings with regard to the trade union officials mentioned as laid down by law but that in the interests of reaching an agreement with the former employees, the Institute believed it would be prudent to request these proceedings be suspended in order to present the board of directors of INAT with the proposals in order to find a solution to the conflict. The parties agreed to meet again on 21 February 2001.

382. The complainant organization states that on 7 June 2001 and in reply to an official communication of 24 April 2001 sent to the Director-General of the Institute, in which he was requested to comply with the recommendations of the Committee on Freedom of Association, the head of the legal office of INAT indicated that the Institute had complied with the requirements of the legal rulings, explaining that none of these had ordered reinstatement and pointing out that having paid the compensation for retirement from service and the other costs laid down in the ruling, that INAT considered the case judicially closed. If the legal authorities considered that the unilateral decision to terminate the contracts of the public employees of INAT, Regional Office No. 7, was not illegal, given that the reason for this can be found in the Constitution and in the law, i.e. provisional article 20, Decree No. 2135 of 1992 and Decree No. 1616 of 1993, respectively, and rejected the claims for reintegration, it would be inappropriate and inconvenient for the administration to compensate its former employees again as this would imply further expenditure for the public treasury. This conclusion was supported by the Ministry of Labour and Social Security.

383. In a communication dated 1 June 2001, the Public Servants and Employees' Trade Union of Pitalito-Huila states that its case is similar to that of Neiva. The dismissal of all the employees of Pitalito and members of the trade union organization of the municipality was so unjust and unusual that the Ministry of Labour and Social Security of Huila itself in resolutions Nos. 043 of 15 September 1994 and 001 of 8 March 1995, fined the Municipality of Pitalito the sum of US$493,500 for having violated the collective labour agreement in force.

384. Moreover, the right of workers to be relocated in another public department was violated since agreement No. 008 of the Municipal Council of Pitalito and Decree No. 066 of 1993 of the Mayor's Office ordered the suppression and liquidation of the Municipal Department of Public Works, where the workers were employed, and at the same time ordered the establishment of the Municipal Institute of Works, the Department of Works and the Institute of Works which, although formally separate, were functionally the same and the Institute replaced the Department as follows: (1) in the same act, the Department of Works was dissolved and the Institute of Works was created (agreement No. 008/93, article 1); (2) the functions of the Department of Works are substantially the same as the Institute of Works; (3) the machinery belonging to the Department of Works passed to the Institute of Works (agreement No. 008/93, article 4); (4) the goods and chattels of the Department of Works passed to the Institute of Works (agreement No. 008/93, article 4 and Decree No. 066 of 1993, article 4); (5) the only thing that did not pass from the Department of Public Works to the Institute of Public Works was the workers, as on 17 September 1993 they were dismissed by the Municipality of Pitalito.

385. In a communication dated 1 June 2001, the Single Confederation of Workers of Colombia (CUT) indicate that, to date, neither the State nor the Municipality of Neiva has wanted to comply with the recommendations of the ILO. There has been no political will in spite of the fact that, as has already been mentioned, the Public Employees' Trade Union of the Municipality of Neiva proceeded to lodge an action for protection of constitutional rights (*tutela* proceedings), taking as its legal basis the recommendation of November 1999 and ruling T-568 of 10 August 1999 of the Constitutional Court, in which it was established that the recommendations of the Governing Body, as the international controlling body, were obligatory for the State of Colombia. This was subsequently ignored by other judicial bodies of the country. In reality, the courts issued the interpretation that was the most unfavourable for the workers, disregarding the Political Constitution, constitutional jurisprudence and the internal processing of the complaints before the Committee on Freedom of Association in order to say that only those rulings of the International Court of Justice were obligatory.

386. The complainant states that it has tried to find rapprochement in various different ways but in vain. On 5 April 2001, there was a meeting at the Ministry of Labour and Social Security with the Mayor's Office of Neiva. As a result of this meeting, the complainant organization provided the Mayor's Office of Neiva with a proposal for settlement, and this proposal has received no reply.

C. The Government's reply

387. In communications dated 23 January, 5 April, 4 September and 23 November 2001, the Government states that with regard to the proceedings initiated against the Municipality of Arauca, the Labour Court of Arauca ruled in favour of Alfonso Moreno Vélez, Emiro Vasquez, Rafael David Figuera, Roberto Alexis Rojas, Carlos Geovanny Eulegelo, Sabiniano Sosa, Zacarías Urrea and Leomarin Roa Morales, and this ruling was ratified by the High Court of Cucúta. With regard to the proceedings of Rigo Idilio Torres and Alvaro Moreno, these are awaiting rulings in the court of second instance. The Government adds that the Arauca Territorial Office for Labour and Social Security issued resolution No. 006

of 24 March 2000 in which it fined the Mayor's Office of Arauca the sum of 50 valid legal minimum wages for blatant violation of the collective labour agreement in force in ignoring the procedure laid down in the agreement for the dismissal of workers, given that it disregarded the proposals presented by SINTREMAR and, in this way, prevented the trade union from playing a part in the procedure of the dismissal of the workers. In its communication of 9 January 2002, the Government acknowledges the reconciliation meetings held between the Municipality and SINTREMAR, from which it can be gathered that the situation has not changed.

388. The proceedings begun by Gladis Correa Ojeda are in the preliminary stages and, in the proceedings of Marlen Ortiz, Circuit Labour Court 20 of Santa Fe de Bogotá issued a ruling ordering the children's home, Los Ositos, to reinstate her and to pay the wages and benefits owing to her since her dismissal up until the date of her reintegration and, as a second point, acquitted the Colombian Institute of Family Welfare, a ruling which will be duly executed so long as there is no appeal.

389. Regarding the dismissal of trade union members and officials of SINALTRAHIMAT, the Government states that the ruling issued on 22 October 1999 by the Civil, Family and Labour Court of the District High Court of Neiva in the ordinary labour proceedings begun by Hernando Bonilla Buendía and Jesús Antonio Mejía Díaz ordered the National Institute of Land Development (INAT) to pay these former employees compensation for the suppression of their jobs, taking inflation into account, and a fine if it does not immediately comply and, with regard to José Antonio Alarcón, to pay him a pension. These payments were duly carried out. In spite of the fact that the ordinary proceedings begun by the former workers stated their status as trade union officials, claiming reinstatement to the jobs that they held before they were dismissed from the enterprise and compensation for disregard for their trade union immunity, the legal authorities, with regard to the reinstatement, considered that the unilateral decision to terminate the employment contracts of the public employees of INAT, Regional Office No. 7, Nieva, was not illegal as it was based on the Constitution and the law, provisional article 20, Decree No. 2135 of 1992 and Decree No. 1616 of 1993, respectively, and as such complied with the law that ordered the restructuring of the Institute and the ruling did not admit the claims for reinstatement but ordered the payment of the fines indicated. Now that INAT has complied with these rulings, it cannot order the reinstatements prescribed by a foreign competent authority as such behaviour, reversing a legal ruling, would incur criminal sanctions. The Government states that INAT was not ordered to reinstate the trade union officials dismissed but that faced with the physical and legal impossibility of reinstating the dismissed workers it was ordered to pay them compensation, which it so did.

390. Through a number of communications and in meetings held at the Ministry of Labour, INAT has indicated to the complainant organizations that reinstatement is not possible as the legal rulings did not order this.

391. The Government states that the Committee's recommendation did not make reinstatement compulsory for the Institute. Official communication No. 002447 of 7 June 2001 sent to Hernando Bonilla Buendía and the other signatories, states the position of INAT in the face of the repeated requests of the former trade union officials and indicates that to compensate its former workers again would lead to further outlay by the public treasury as well as being inappropriate and inconvenient for the administration, given that it could incur criminal procedures.

392. The Government states that it requested the coordinator of the human resources group to provide information with regard to vacant positions in Regional Office No. 7, Neiva-Huila; in memorandum No. 132 of 20 February 2001, the coordinator of the human resources group stated that there were no vacant positions in Regional Office No. 7. Based on this

information, INAT has dealt in an appropriate way with the requirements of the trade union officials, doing everything possible to find a definitive solution to the situation of the former workers and stating that at no time has it disregarded the recommendations of the ILO and that it has carried out all possible reconciliation at the request of the Ministry of Labour and Social Security.

393. The Government states that in accordance with the ruling issued by the Consultation and Civil Service Department of the Council of State on 12 October 2000, referring to the legal rulings ordering reinstatement to non-existent positions owing to the closing of the branch of the state entity, the administration recognizes the importance of compensation in the form of wages and benefits owing as this reimburses the damage caused by the act declared invalid to the plaintiff. Non-reinstatement is offset by the compensation that, in accordance with article 148 of Decree No. 2171 of 1992 was paid by the entity to the former worker because of suppression of his/her job.

394. With regard to workers dismissed at the Municipality of Neiva in violation of the collective labour agreement, the Government states that the legal security of Colombia and its associates would be fragmented if the rulings of its courts were not respected. In view of the above and of the universally recognized three-way division of public powers of the State and of the popular election of mayors and governors, the Government cannot force the Municipality of Neiva to disregard legal rulings and to order the reinstatement and/or payment of compensation that was not requested in the claims. However, it officially requested the Mayor's Office of Neiva to provide a detailed and specific report on the cancellation of compensation for the workers dismissed from this municipality. The head of the legal office of the Mayor's Office of Neiva, in an official communication dated 20 September 2000, stated that the Municipality had retired six employees for being unfit to work, four of them from 1 February 1993 and two from 1992; it had granted retirement pensions to 27 workers between 1992 and 1997; it had paid the fine for late compliance ordered by the High Court of Neiva to 21 workers, amounting to US$210,358,038. Moreover, it had investigated the position taken by the Municipality of Neiva, and offered as the one and only remaining possibility to give priority to the employment of dismissed workers in jobs that would be created in the future. The Colombian Government has systematically held reconciliation meetings between the Municipality of Neiva and the workers dismissed as a result of the restructuring brought about by resolution No. 016 of 1993. The most recent meeting took place on 5 April 2001 and once again the Municipality of Neiva offered to review conscientiously the cases presented to it without implying that the decision taken in 1993 was mistaken or that the Municipality of Neiva would disregard the rulings of the Colombian courts, which, as was said earlier, were favourable for it.

395. Regarding the dismissal of the trade union officials of SINTRADESAI, the Government states that the support group for complaints to and interventions by the ILO, in Official communication No. 026904 of 14 August 2001, requested information with regard to the status of the administrative labour inquiry begun against the Governor's Office of San Andrés, Providencia and Santa Catalina and that it will send its observations on the outcome of the inquiry shortly.

396. Regarding the political persecution of Fermín Vargas Buenaventura, the Government states that this does not fall into the competency of the Ministry of Labour and Social Security and that there are other forums that investigate situations of this kind, i.e. the Superior Council of the Judicature, which is charged with overseeing proceedings relating to litigating lawyers in this country, or the Attorney-General's Office.

397. Regarding the case of Juan Bautista Oyola Palomá, the District Attorney's Office 195, Unit III for criminal offences against public authorities and the law, is cognizant of this case and reports that there are proceedings against this person for a combination of

offences involving extortion and ideological deception in a public document. In a resolution of 7 December 2000, his legal situation was resolved by securing preventive detention without the right to parole and requesting his suspension from duties from the Health Department. In a resolution of 5 January 2001, house arrest was substituted for preventive detention with a security of a fine of two minimum wages and a signed undertaking. He was also prohibited from leaving the country. In accordance with a resolution of 9 May 2001, the decision to charge was made and the preliminary procedures are under way. Once the respective procedures have been completed, it will be sent to the Circuit Criminal Court to begin the trial stage. In accordance with the above, the Tunjuelito Hospital, complying with the District Attorney's Office, issued resolution No. 039 dated 31 December 2000 in which it suspended Juan Bautista Oyola Palomá from his duties.

D. The Committee's conclusions

398. *The Committee observes that when it last examined this case at its March 2001 meeting, it requested the Government: (1) to take the necessary measures to ensure that to the competent authorities of the Municipality of Neiva pay compensation to all of the workers dismissed in violation of the collective agreement; (2) to keep it informed of developments regarding efforts made as part, of the dialogue that had begun so that the parties conclude an agreement concerning to the dismissal of the five trade union leaders of INAT; (3) to send its observations without delay as regards the dismissal of the members of the executive committee of SINTRADESAI, the dismissal of Pamela Newball, leader of the Public Works Trade Union of the Municipality of Cúcuta, the Government's refusal to negotiate the claims of public servants, the political persecution of Fermín Vargas Buenaventura, a lawyer for the trade union, and the dismissal of two trade union leaders of SINTRAPROINMEN of the Colombian Institute of Family Welfare and ten trade union leaders of SINTREMAR of the municipality of Arauca; and (4) to provide its observations concerning the 11-day detention of Juan Bautista Oyola Palomá, President of the Public Services Trade Union of the Tunjuelito Hospital.*

399. *Regarding the dismissal of workers at the Municipality of Neiva in violation of the collective agreement, the Committee notes that the Public Employees' Trade Union of the Municipality of Neiva (SINTRAOFICIALES) states that at the request of the Ministry of Labour and Social Security a reconciliation meeting was held between the trade union and representatives of the Municipality on 5 April 2001. The Committee notes that on this occasion the complainant organization repeated its request for reinstatement of those workers dismissed or, if this were not possible, that they be compensated fully; the head of the legal office stated that the office would proceed to establish its position in the light of the recommendations and that it would be necessary to arrange a new meeting, which has still not taken place. The Committee also notes the allegations of the executive subcommittee of the Single Confederation of Workers of Colombia (CUT)-Huila Section with regard to the workers of the Municipality of Neiva, according to which and in spite of the efforts made to find a solution, there have been no positive results. As a result of the meeting with the Mayor of Neiva, CUT presented a settlement proposal to which it has still had no reply.*

400. *The Committee notes the Government's statement that the legal rulings must be respected and that the Government cannot force the Municipality of Neiva to disregard the legal rulings and order reinstatement and/or payment of compensation. The Government indicates that the only prospect would be to give those workers dismissed preference when employing people for jobs that will be created in the future. To this end the Government has carried out reconciliation meetings between the trade unions representing those who have been dismissed and the Municipality of Neiva. The Committee repeats the observations made when it last examined this case and stresses that "such an argument*

cannot be used to undermine the principles of freedom of association and that any necessary legislative amendments should be made to ensure these principles are respected" [see 324th Report of the Committee on Freedom of Association, para. 312]. In these circumstances, the Committee reiterates once again its previous recommendation to the Government and requests it to take steps to ensure that the competent authorities of the Municipality of Neiva pay compensation to all of the workers dismissed in violation of the collective agreement. The Committee also requests the Government to keep it informed of the reconciliation meetings held to this effect.

401. *Regarding the dismissal of the five trade union leaders of INAT, the Trade Union of Public Servants and Employees of the Colombian Institute of Hydrology, Meteorology and Land Development (SINALTRAHIMAT) states that on 9 February 2001 a meeting between the complainant organization and a representative of INAT was held. On this occasion, according to the documentary attestation of the act sent by the complainant organization, the head of the legal office of INAT indicated that the Institute had complied with the legal rulings but would try to come to a reconciliation with the former employees. The complainant organization states that in spite of this, on 7 June 2001, the head of the legal office sent a communication (attached) in which they were informed that the Institute had complied with the legal rulings and that none of these called for reinstatement. The communication stated that once the compensation for retirement from service and other costs ordered in the rulings had been paid, INAT would consider the case closed.*

402. *The Committee notes the Government's statement that on 22 October 1999 the ordinary labour courts ordered compensation for suppression of jobs, taking inflation into account, and a fine if this was not paid immediately. With regard to the request for reinstatement, the Government states that the legal authorities considered that the unilateral decision taken to terminate the labour contracts was not illegal and as such complied with the law ordering restructuring of the Institute; they did not admit the claims for reinstatement and ordered only the payment of the fines indicated. The Government states that INAT has indicated in a number of communications that reinstatement is impossible as this was not part of the legal rulings. It adds that even though it has tried to employ these workers in available positions in the Municipality of Neiva, the coordinator of the human resources group stated that these positions were still not available. In spite of the efforts undertaken by the Government, INAT considers the case legally closed now that the compensation ordered by the rulings had been paid. The Committee requests the Government to continue to take steps to find the trade union leaders employment opportunities as soon as possible in positions that become available in the future.*

403. *The Committee notes the allegations of the National Union of State Employees of Colombia (UTRADEC) with regard to the dismissal of the members of the executive committee of SINTRADESAI, according to which the Government has taken no steps to reinstate these employees, which has practically caused the disappearance of the trade union on the island of San Andrés. The complainant organization adds that following a mass dismissal, only a few of the members of the Public Works Trade Union of Cúcuta, remain and that proceedings to lift the trade union immunity have begun so that the trade union leaders can be dismissed.*

404. *The Committee notes the Government's statement that the support group for complaints to and interventions by the ILO requested information with regard to the status of the administrative labour inquiry begun against the Governor's Office of San Andrés and that it will send its observations on the outcome of this shortly. The Committee recalls "the importance it attaches to such proceedings being concluded expeditiously, as justice delayed is justice denied [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 104]. In these circumstances, the Committee requests the Government to take steps to complete the administrative labour*

inquiry into the Governor's Office of San Andrés as soon as possible and to keep it informed of developments. Regarding the mass dismissal and the lifting of trade union immunity of officials belonging to the Public Employees' Trade Union of Cúcuta, the Committee requests the Government to send its observations without delay.

405. *Regarding the dismissal of two trade union leaders of SINTRAINPROMEN (Gladis Correa Ojeda and Marlen Ortiz), the Committee notes the information provided by UTRADEC that the Government has taken no steps to hold discussions with the trade union. On the contrary, it states that trade union members continue to be dismissed in an unacceptable way, in violation of the guarantee of trade union immunity. The Committee notes the Government's statement that the proceedings for Gladis Correa Ojeda are in the preliminary stages and that those for Marlen Ortiz have ordered the children's home, Los Ositos, to reinstate her and pay her the wages and benefits owing to her. The Committee requests the Government to keep it informed of the proceedings relating to the dismissal of trade union official Gladis Correa Ojeda.*

406. *Regarding the dismissal of ten trade union leaders of SINTREMAR, the Committee notes the Government's statement that the Arauca Labour Court ruled in favour of Alfonso Moreno Vélez, Emiro Vásquez, Rafael Davi Figuera, Robert Alexi Rojas, Carlos Geovanny Eulegelo, Sabiniano Sosa, Zacarías Urrea and Leomarín Roa Morales, and that this ruling is final. Furthermore, the Arauca Territorial Office for Labour and Social Security fined the Municipality of Arauca the sum of 50 valid legal minimum wages for violation of the collective labour agreement in force in ignoring the procedure laid down for the dismissal of employees and lack of consultation over the proposals presented by SINTREMAR. The Committee requests the Government once again to provide information on the situation, given that the complainant organizations have highlighted new proceedings against the reinstatements. Regarding the proceedings for dismissal of Rigo Idilio Torres and Alvaro Moreno, the Government states that these are awaiting a decision in the court of second instance. The Committee requests the Government to keep it informed of the outcome of the proceedings.*

407. *The Committee notes the allegations of UTRADEC that the Mayor's Office of the Municipality of Arauca is trying to dismiss Norberto Antonio Marín Bravo, legal adviser for SINTREMAR, whose job has been suppressed for no reason, and requests the Government to keep it informed of the situation.*

408. *Regarding the political persecution of Fermín Vargas Buenaventura, a lawyer for the trade union, the Committee notes the Government's statement that cases of this type do not fall within the competency of the Ministry of Labour and Social Security and that there are other authorities qualified to examine these. In this respect, the Committee recalls that the proceedings lodged with it are always directed against governments and not against a specific ministry or office. Therefore, the fact that the Ministry of Labour may not be competent to investigate the allegations does not excuse the Government from having to provide a detailed reply. Therefore, the Committee requests the Government to take steps without delay to see that the relevant state body begins an inquiry into the allegations and to keep it informed of developments.*

409. *Regarding the dismissal and proceedings against Juan Bautista Oyola Palomá, the Committee notes the Government's statement that the District Attorney's Office has informed it that this former employee is being tried for a combination of offences involving extortion and ideological deception in a public document and that currently the proceedings are with the criminal court to begin trial. Therefore, the Tunjuelito Hospital suspended Juan Bautista Oyola Palomá from his duties. The Committee hopes that proceedings will be concluded in the near future and, should Mr. Oyola Palomá be judged*

innocent, that he is reinstated in his job and with his trade union office without delay. The Committee requests the Government to keep it informed in this respect.

410. *The Committee notes the new allegations presented by the Public Servants and Employees' Trade Union of Pitalito-Huila, according to which the Municipality of Pitalito proceeded to dismiss all the workers and members of the trade union. The complainant organization indicates that the Ministry of Labour fined the Municipality for violation of the collective labour agreement in force. The complainant organization also believes that the right of workers to be relocated in another public department was violated as the same decree ordering the suppression of the Municipal Department of Public Works created the Municipal Institute of Public Works. The Committee notes that the Government has not replied to these allegations nor has it replied to: (a) the dismissal of Pamela Newball, leader of the Public Works Trade Union of the Municipality of Cúcuta, and the start of proceedings to lift the trade union immunity of nine trade union officials; and (b) the refusal of the Government to negotiate the claims of public servants. The Committee requests the Government to send its observations on these issues without delay.*

The Committee's recommendations

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

(a) Regarding the workers dismissed at the Municipality of Neiva in violation of the collective labour agreement, the Committee reiterates once again its previous recommendation to the Government and requests it to take the necessary measures to ensure that the competent authorities of the Municipality of Neiva pay compensation to all workers dismissed in violation of the collective labour agreement, and to keep it informed of the reconciliation meetings held for this purpose.

(b) Regarding the dismissal of the trade union leaders of SINALTRAHIMAT, the Committee requests the Government once again to continue making efforts to find these trade union leaders employment in positions that will become available in the future.

(c) Regarding the dismissal of the trade union leaders of SINTRADESAI, the Committee requests the Government to take steps to conclude as soon as possible the administrative labour inquiry into the Governor's Office of San Andrés, and to keep it informed of the outcome.

(d) Regarding the mass dismissal and the lifting of the trade union immunity of the officials of the Public Works Trade Union of Cúcuta so that they can be dismissed, the Committee requests the Government to send its observations without delay.

(e) Regarding the dismissal of the trade union official Gladis Correa Ojeda, the Committee requests the Government to keep it informed of the proceedings in progress.

(f) Regarding the dismissal of the trade union leaders of SINTREMAR, Rigo Idilio Torres and Alvaro Moreno, the Committee requests the Government to keep it informed of the outcome of the proceedings; the Committee notes that the ruling ordering the reinstatement in their jobs of the other trade

union leaders has been complied with but it requests the Government to provide new information on the situation given that the complainants have pointed out that there are new proceedings against these reinstatements.

(g) Regarding the allegation that the Mayor's Office of the Municipality of Arauca is trying to dismiss Antonio Marín Bravo, legal adviser for SINTREMAR, the Committee requests the Government to keep it informed in this respect.

(h) Regarding the political persecution of Fermín Vargas Buenaventura, a lawyer for the trade union, the Committee requests the Government to ensure that the relevant state body begins without delay an inquiry into the situation and requests the Government to keep it informed of developments.

(i) Regarding the dismissal and the criminal proceedings against Juan Bautista Oyola Palomá, the Committee hopes that the criminal proceedings will be concluded in the near future and, should Mr. Oyola Palomá be judged innocent, that he is reinstated in his job and with his trade union office without delay. The Committee requests the Government to keep it informed in this respect.

(j) Regarding the following allegations: (a) the dismissal of Pamela Newball, leader of the Public Works Trade Union of the Municipality of Cúcuta, and the start of proceedings to lift the trade union immunity of nine trade union leaders; (b) the refusal of the Government to negotiate the claims of public servants; and (c) the dismissal of all workers and trade union members of the Public Servants and Employees' Trade Union of Pitalito-Huila by the Municipality of Pitalito, the Committee requests the Government to send its observations without delay.

CASE NO. 2046

INTERIM REPORT

Complaints against the Government of Colombia presented by
— the Colombian Union of Beverage Industry Workers (SINALTRAINBEC)
— the Union of Pilsen Workers (SINTRAPILSEN)
— the Union of Metal Industry Workers (APOLO)
— the Unitary Central Organization of Workers (CUT Antioquia section)
— the Unitary Union of Noel Workers (SINTRANOEL)
— the Union of Workers of the National Coffee Growers Federation (SINTRAFEC)
— the National Union of Bavaria SA Workers (SINALTRABAVARIA) and
— the National Union of Caja Agraria Workers (SINTRACREDITARIO)

Allegations: Acts of discrimination and anti-union practices

412. The Committee examined this case most recently at its March 2001 meeting [see 324th Report, paras. 340-359]. The National Union of Bavaria SA Workers (SINALTRABAVARIA) submitted further allegations in communications dated 27 April

and 7 and 19 June 2001. The Colombian Union of Beverage Industry Workers (SINALTRAINBEC) presented further allegations in a communication dated 11 September 2001.

413. The Government sent its observations in communications dated 5 April, 4 September, 26 October and 19 November 2001.

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

A. Previous examination of the case

415. At its March 2001 meeting, when it examined allegations of acts of discrimination and anti-union practices in various enterprises, the Committee formulated the following recommendations [see 324th Report, para. 359]:

(a) the Committee requests the Government to keep it informed about all legal actions brought in respect of the amendment of the statutes of the Unitary Union of Noel Workers (SINTRANOEL) to change it into an industrial union;

(b) concerning the failure to deduct union dues from the members of the Union of Workers of the National Coffee Growers Federation (SINTRAFEC), the Committee requests the Government to ensure that, if the parties agree under the new collective agreement to deduct the trade union dues, these deductions do indeed become effective;

(c) the Committee requests the Government to take measures to find out whether the organization SINTRAFEC has complied with the corresponding legal requirements and if this is found to be the case to register its affiliation to the industrial union SINTRAINDUSCAFE;

(d) as regards the allegation concerning the dismissals and sanctions inflicted on workers affiliated to the National Union of Bavaria SA Workers (SINALTRABAVARIA) for having participated in a work stoppage at the enterprise on 31 August 1999, the Committee deeply regrets that more than one year and seven months since the alleged incidents, the inquiry has still not been completed and asks the Government to take steps to ensure that the inquiry is rapidly concluded and to send its observations in this respect;

(e) the Committee requests the Government to immediately send its observations concerning the allegations that: (1) the enterprise Bavaria SA is violating the collective agreement by applying sanctions without the presence of the trade union, by awarding promotions according to their own criteria and by refusing to pay the deducted trade union dues; and (2) the enterprise Bavaria SA is facilitating the establishment of another trade union organization;

(f) as regards the allegations concerning the Caja de Crédito Agrario (CCA) (takeover of the offices by the forces of law and order, massive dismissal of 8,000 workers – including 1,397 trade union officials – in violation of the collective agreement, the refusal to negotiate a list of claims in the new institution Banco Agrario de Colombia which was established following the liquidation of the Caja de Crédito Agrario and the refusal to register the executive committee of SINTRACREDITARIO), the Committee requests the Government to: (i) keep it informed of the final result of the administrative inquiry under way; (ii) keep it informed of any recourse taken against the administrative decision concerning the inquiry on the Caja de Crédito Agrario's refusal to negotiate a list of claims; and (iii) keep it informed about the result of the legal actions and the criminal charges. Also, bearing in mind the extremely high number of workers and trade union officials affected by the liquidation of the Caja de Crédito Agrario and the establishment of another banking institution called the Banco Agrario de Colombia, the Committee asks the Government to ensure as a matter of priority the recruitment of the highest possible number of workers and trade union officials who have lost their jobs.

Finally, the Committee requests the Government to provide its observations concerning the complementary information submitted by the SINTRACREDITARIO in its communication of 31 January 2001.

416. In its communication of 31 January 2001, the complainant alleged that the decrees putting the Caja de Crédito Agrario (CCA) into liquidation and the Act on which they were based were declared unconstitutional by the Constitutional Court from the moment of their promulgation. Following the Constitutional Court ruling, the Government issued Administrative resolution No. 1726, signed by the Superintendent of Banks, ordering that the CCA be placed in administration. This resolution neither closed down the CCA nor cancelled contracts of employment. While the final purpose of placing the CCA in administration is its liquidation, this should be done gradually and in the meantime the Constitutional Court ruling should be complied with. Accordingly, the CCA was supposed to open negotiations on the list of demands presented in December 1999 and did not do so. The complainant emphasizes the discriminatory treatment of the trade union and CCA employees, compared to other enterprises in liquidation in which the officers' trade union immunity was respected. It maintains that the CCA did not cease to exist, but was transformed, since the same decree established Banco Agrario to take over its assets and liabilities and maintain the CCA's operations. The CCA's clients were transferred to Banco Agrario. The decrees (which were without effect pursuant to the Constitutional Court ruling) provided that the few CCA workers hired by Banco Agrario were not covered by the concept of employer substitution. It points out that only a few CCA employees went over to Banco Agrario, but under precarious employment contracts which involved losing the benefits of coverage by the collective agreement. Lastly, it adds that to date 59 labour court decisions have been issued across the country ordering reinstatement of workers covered by trade union immunity, two of which have become final. However, neither the CCA nor Banco Agrario have seen fit to comply with them.

B. New allegations and additional information

417. In its communications dated 27 April, and 7 and 19 June 2001, the National Union of Bavaria SA Workers (SINALTRABAVARIA) alleges that: (1) no solution has been found to date with regard to the dismissals and sanctions inflicted on workers and members of the organization for having participated in a strike in the enterprise on 31 August 1999; (2) the enterprise interfered in the trade union's autonomy by challenging without justification the election of SINALTRABAVARIA's executive committee; (3) the enterprise refused to engage in collective bargaining; (4) the enterprise applied the collective agreement incorrectly by giving preference to non-union members, awarding the agreed benefits (raises, bonuses and loans, among others); (5) blacklists were drawn up; (6) trade union member Mr. Jairo Noguera Cortez was dismissed; (7) trade union officers were constantly denied trade union leave; and (8) trade union officers covered by trade union immunity were dismissed when the production of aluminium cans and caps was partially closed down definitively without judicial authorization.

418. In its communication dated 11 September 2001, the Colombian Union of Beverage Industry Workers (SINALTRAINBEC) alleges that since its inception the enterprise has committed anti-union acts against all of its members, and unfairly dismissed trade union member Mr. Jaime Romero instead of reinstating him, as the court considered that the fact that he was a trade unionist made it impossible to reinstate him. The complainant alleges that it attempted to participate throughout the collective bargaining process, but that both the SINTRACERVUNION trade union and the enterprise failed to recognize SINALTRAINBEC and the Government did not provide the necessary protection and guarantees to enable it to participate in collective bargaining. SINALTRAINBEC never excluded itself from collective bargaining. Nonetheless, the enterprise is now alleging the existence of an agreement concluded with SINTRACERVUNION in order to disregard

SINALTRAINBEC's demands. SINALTRAINBEC alleges further that the management of the enterprise made its members targets of the paramilitary forces by calling them "guerrillas", libelling them with the intention of having them eliminated, and they are currently receiving threats. Lastly, it alleges that disciplinary proceedings were initiated against a large number of SINALTRAINBEC members because it submitted a list of demands.

C. The Government's reply

419. Concerning the amendment of SINTRANOEL's by-laws, the Government states that at no time did the organization request the Ministry of Labour and Social Security to examine the amendments in order to approve them. However, it states that the ASPROAL trade union (an enterprise union of workers of the Noel Biscuit Company) was registered by resolution No. 000101 of 24 January 2000.

420. As regards the failure to deduct the trade union dues of SINTRAFEC members, the Government states that administrative proceedings are statute-barred, since the union dues in question date back to the period from 1984 to 1987, and that the judicial authority rejected the action brought by the trade union in the absence of legal provisions obliging the enterprise to deduct the dues. The Government also states that in November 1998 the National Federation of Coffee Growers and Coffee Warehouses SA (ALMACAFE) stopped deducting the dues of the trade unions SINTRAINDUSCAFE and SINTRAFEC on the grounds that parallel trade unions existed in the enterprise, as stipulated in section 360 of the Substantive Labour Code, despite the fact that the workers concerned had requested in writing that dues be deducted for both trade unions. In view of this, SINTRAINDUSCAFE brought an action for protection of their constitutional rights *(tutela)* against the National Federation of Coffee Growers and in the end the Constitutional Court ordered that the dues be deducted, given that the employer's present attitude was one of disregard for the right to organize. The tenth labour inspectorate convened the parties to a conciliation hearing at which they stated that the union dues in question were being deducted.

421. As regards the administrative labour proceedings brought against the Bavaria SA enterprise for dismissals of members of the SINALTRABAVARIA trade union for having participated in the strike of 31 August 1999, the Government states that once the probationary period established by the twelfth inspectorate of the Cundinamarca Territorial Directorate of the Ministry of Labour and Social Security, was terminated, the relevant resolution was drafted and is currently awaiting signature by the Coordinator for Inspection and Surveillance. The Government indicates that the observations will be sent on the subject in the near future.

422. As regards the allegation concerning violation of the collective agreement by applying sanctions without the presence of the trade union and other allegations made by SINALTRABAVARIA, the Government states that a support group for cases pending before the ILO has requested information on the progress of the inquiry and that it will send information on its final outcome.

423. As regards the allegation that Bavaria SA is facilitating the establishment of a new trade union organization, the Government states that the registration of this organization was carried out in accordance with the formalities prescribed in labour legislation, given that it consisted of workers of the enterprise who met the requirements for registration and in accordance with the provisions on freedom of association laid down in ILO Conventions Nos. 87 and 98. The Government adds that Bavaria SA and SINALTRABAVARIA signed a coexistence agreement dated 9 June 2001 and a collective labour agreement with effect from 1 January 2001 to 31 December 2002.

424. In its communication dated 6 November 2001, the Government states that: (1) concerning the failure to reinstate Mr. Jaime Romero, the executive branch has no power to interfere in the decisions of the judiciary, by virtue of the constitutional separation of powers; (2) as regards the failure to recognize the right of SINALTRAINBEC to participate in collective bargaining in the Cervecería Unión enterprise, the Antioquia regional department of the Ministry of Labour and Social Security will open an administrative inquiry in order to ascertain whether the enterprise failed to comply with section 2 of Decree No. 1373, which obliges the majority trade union to inform the other trade unions of the date on which general assemblies are to be held in the enterprise so that the latter may submit their demands; (3) as regards persecution for having put forward a list of demands, the relevant inquiries will be opened; (4) as regards accusations of being "guerrillas" and the threats made against SINALTRAINBEC members, means of guaranteeing their safety are available to the persons concerned and the Ministry of Internal Affairs has a programme in place for the protection of trade union leaders whose physical integrity has been threatened.

425. As regards the allegations concerning the Caja de Crédito Agrario (CCA), the Government states that the Coordinator for Inspection and Surveillance of the Cundinamarca Territorial Directorate of the Ministry of Labour and Social Security decided, by resolution No. 000500 of 14 April 2000, in the context of an administrative inquiry, to refrain from taking administrative measures against the CCA, which was in liquidation. Concerning the allegation by SINTRACREDITARIO that the enterprise refused to negotiate, the Government states that according to information provided by the Ministry of Labour, at the time of election of representatives for collective bargaining and on the date on which the list of demands was presented, the persons nominated by the trade union for such purposes were not in fact employed by the CCA and, in view of the fact that according to section 432(2) of the Substantive Labour Code, delegates elected for bargaining purposes must be currently employed by the enterprise or establishment, the Ministry could not require the CCA to initiate bargaining.

426. As regards the registration of the executive committee of the National Union of Caja Agraria Workers (SINTRACREDITARIO), the Government states that the Ministry of Labour, by resolution No. 00427 of 20 April 2001, refused registration given that, under section 388 of the Substantive Labour Code and article 5(2) of the trade union's by-laws, in order to be a member of the executive committee, candidates are required to be employed by the CCA, which does not at present have any direct employees, as it was dissolved and subsequently went into liquidation. The Government adds that section 467 of the Substantive Labour Code provides that the collective labour agreement only applies to employment contracts during its term. Consequently, since there are no active employees, the collective agreement is not in effect, given that its term expired on 31 December 1999.

D. The Committee's conclusions

427. *The Committee observes that when it examined this case concerning acts of discrimination and anti-union practices at its March 2001 meeting, it had requested the Government to take certain measures or communicate information in this regard.*

Noel Biscuit Company

428. *As regards the Committee's request for information concerning all legal actions brought in respect of the amendment of the statutes of SINTRANOEL to change it into an industrial union, the Committee notes the information provided by the Government to the effect that the SINTRANOEL trade union has not brought any legal actions in order to amend its*

statutes. The Committee also notes that the Government states that the ASPROAL trade union of workers of the Noel Biscuit Company was duly registered.

National Coffee Growers Federation of Colombia

429. *As regards the allegations presented by SINTRAFEC concerning the failure to deduct trade union dues, the Committee notes that the Government states that administrative proceedings are statute-barred, since the union dues in question date back to the period from 1984 to 1987, and that the judicial authority rejected the actions brought in the absence of legal provisions obliging the enterprise to deduct the dues. As regards the failure to deduct the union dues of SINTRAINDUSCAFE members, the Committee notes that the Government states that the dues in question are now being deducted.*

Bavaria SA enterprise

430. *As regards the alleged dismissals of members of the SINALTRABAVARIA union for having participated in the strike of 31 August 1999, the Committee notes that the Government states that the resolution of the administrative inquiry is awaiting signature by the Coordinator for Inspection and Surveillance. The Committee deplores the fact that despite the time which has elapsed, no decision has been taken in this regard and requests the Government to send its observations as soon as possible.*

431. *As regards the allegations concerning: (1) interference by the enterprise by challenging the registration of the executive committee of SINALTRABAVARIA; (2) refusal by the enterprise to negotiate the list of demands; (3) application of the collective agreement to the clear benefit of workers who are not members of the trade union; (4) the establishment of blacklists; (5) the dismissal of Mr. Jairo Noguera Cortez; (6) the constant denial of trade union leave to trade union officers; and (7) the dismissal of officers covered by trade union immunity, the Committee notes that the Government states that a coexistence agreement was signed on 9 June 2001 and a collective agreement was signed with effect from 1 January 2001 to 31 December 2002.*

432. *Concerning the allegations that the Bavaria SA enterprise is facilitating and promoting the establishment of a new trade union, the Committee notes that the Government states that the registration of the new organization was carried out in accordance with the formalities prescribed by labour legislation.*

Cervecería Unión SA

433. *As regards the decision not to reinstate Mr. Jaime Romero handed down by the judiciary (which only ordered that he be compensated), the Committee notes that according to the Government, the executive branch has no power to interfere in the decisions of the judiciary. The Committee recalls nonetheless that "no one should be subjected to anti-union discrimination because of his or her legitimate trade union activities and the remedy of reinstatement should be available to those who were victims of anti-union discrimination" [see* ***Digest of decisions and principles of the Freedom of Association Committee,*** *1996, para. 755]. The Committee deeply deplores the dismissal of Mr. Romero on anti-union grounds and requests the Government to take measures so that he may be reinstated in his job or, if this is not possible, to ensure that he is fully compensated.*

434. *As regards the allegations concerning: (1) the failure to recognize the right of SINALTRAINBEC to participate in collective bargaining in the Cervecería Unión enterprise; (2) persecution for having put forward a list of demands, the Committee notes that the Government states that the Ministry of Labour will open the relevant*

administrative inquiries. The Committee requests the Government to keep it informed in this respect.

435. *As regards the allegations to the effect that the enterprise accuses SINALTRAINBEC members of being "guerrillas" and the threats made against them, the Committee notes the information provided by the Government concerning the means available to the persons concerned to guarantee their safety and the sanctions applicable to persons who commit acts of anti-union discrimination. Given the risk that this kind of accusation involves in Colombia to the safety and physical integrity of the trade unionists who are being accused, the Committee requests the Government to take the necessary measures to ensure that the members who have been threatened are promptly and effectively afforded protection and that such acts are not repeated. The Committee requests the Government to keep it informed of any measures taken in this respect.*

Caja de Crédito Agrario

436. *As regards the allegations presented by SINTRACREDITARIO concerning: (1) the refusal by the Ministry of Labour and Social Security, by resolution No. 00427 of 20 April 2001, to register the executive committee of SINTRACREDITARIO; (2) the refusal by the Caja de Crédito Agrario to negotiate the list of demands; and (3) the recruitment of some employees by the Banco de Crédito Agrario without adhering to the terms of the collective agreement in force, the Committee notes that the Government states that: (1) the executive committee could not be registered owing to the fact that the CCA did not have any active employees at the time the request was made; (2) on the date on which the list of demands was presented the persons nominated by the trade union for bargaining purposes were not employed by the CCA; (3) under section 467 of the Substantive Labour Code, collective agreements apply to contracts of employment during their term and that as there are no active employees in the CCA, the term of the collective agreement expired on 31 December 1999. Therefore this collective agreement did not apply to the recruitment of new workers by the Banco de Crédito Agrario. Given the enormous number of jobs affected by the liquidation of the CCA, the Committee requests the Government to recommend to the recently established Banco Agrario, should it anticipate hiring new workers, to make every effort to re-hire as many as possible of the workers and trade union officers who have lost their jobs. The Committee requests the Government to keep it informed in this respect.*

437. *As regards the dismissal of officers of SINTRACREDITARIO, disregarding their trade union immunity, and the failure to carry out court orders for the reinstatement of some of these trade union officers (59 according to the complainant), the Committee deplores the fact that the Government has not provided information in this respect. In these circumstances, the Committee urges the Government to take steps without delay to ensure that the court decisions ordering their reinstatement are carried out and requests it to keep it informed of the final outcome of the rest of the judicial proceedings.*

The Committee's recommendations

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

(a) As regards the alleged dismissals of members of SINALTRABAVARIA for having participated in the strike of 31 August 1999, the Committee deplores the fact that despite the time which has elapsed, no decision has been taken in this regard and requests the Government to take measures to expedite the administrative proceedings and to transmit new information in this respect as soon as possible.

(b) Noting the court's opinion to the effect that it is impossible to reinstate Mr. Romero, who was dismissed for anti-union reasons, the Committee requests the Government to take measures so that he may be reinstated in his job and, if this is not possible, to ensure that he is fully compensated.

(c) As regards the alleged failure to recognize the right of SINALTRAINBEC to participate in collective bargaining in the Cervecería Unión enterprise, and the allegations concerning persecution for having put forward a list of demands, the Committee requests the Government to open the relevant administrative inquiries without delay and to keep it informed in this respect.

(d) As regards the accusations of being "guerrillas" and the threats made against SINALTRAINBEC members by the Cervecería Unión enterprise, the Committee requests the Government to take the necessary measures to ensure that the members who have been threatened are promptly and effectively afforded protection and that such acts are not repeated. The Committee requests the Government to keep it informed of the measures taken in this respect.

(e) The Committee requests the Government to recommend to the recently established Banco Agrario, should it anticipate hiring new workers, to make every effort to re-hire as many as possible of the workers and trade union officers who have lost their jobs. The Committee requests the Government to keep it informed in this respect.

(f) As regards the dismissal of trade union officers, disregarding their trade union immunity, and the failure to carry out the court orders for the reinstatement of some of these officers by the Caja de Crédito Agrario, the Committee urges the Government to take steps without delay to ensure that the court decisions ordering their reinstatement are carried out and requests it to keep it informed of the final outcome of the rest of the judicial proceedings.

CASE NO. 2142

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

Complaint against the Government of Colombia presented by the National Trade Union of Metalworkers, Metallurgists, Steelworkers, Miners and Electrical and Electronic Workers (SINTRAMETAL)

Allegations: The impossibility to obtain legal personality for a trade union, anti-union dismissals, compulsory collective agreements

439. The complaint is contained in a communication dated 25 May 2001 from the National Trade Union of Metalworkers, Metallurgists, Steelworkers, Miners and Electrical and Electronic Workers (SINTRAMETAL). The Government replied in a communication dated 11 December 2001.

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

A. The complainant's allegations

441. In its communication of 25 May 2001, the National Trade Union of Metalworkers, Metallurgists, Steelworkers, Miners and Electrical and Electronic Workers (SINTRAMETAL) states that in 1976 the Trade Union of Employees of Inca Metal S.A. (SINTRAINCAMETAL) registered as a trade union of the enterprise, but was destroyed by the enterprise and in 1978 its legal personality as a trade union was cancelled. The complainant (which represents the workers of the former trade union SINTRAINCAMETAL) states that in 1991 SINTRAINCAMETAL tried to reactivate its legal personality as a trade union but was unable to obtain the cooperation of the Ministry of Labour. The complainant adds that, in this context, collective contracts were made compulsory for those workers not belonging to a trade union (most recently for the 1998-2001 period) and a number of workers were dismissed for refusing to sign. Similarly, when workers were encouraged to join the industrial trade union SINTRAMETAL, 22 workers were dismissed in August 1999. The complainant adds that the 22 workers who were dismissed were the mainstay of trade unionism in the enterprise and were, in fact, the founders of the former trade union of the enterprise and had not accepted the collective contract of 1998. The complainant considers that these dismissals correspond to an act of anti-union persecution as more than 200 workers were taken on following the authorizations for the dismissals granted by the Ministry of Labour (the complainant states that legal proceedings relating to the dismissals were begun but that these were not successful).

B. The Government's reply

442. In a communication dated 11 December 2001, the Government states that: (1) Inca Metal S.A. and the national trade union SINTRAMETAL have negotiated a collective agreement for the January 2000-May 2002 period that lays down labour relations and conditions for those workers who are members of SINTRAMETAL-Medellín Section (a copy of the agreement was attached wherein it states that workers who do not belong to a trade union can be covered by the agreement); (2) regarding the dismissal of the 22 workers, the Ministry of Labour authorized this dismissal on the basis of the legal regulations in force at the time of the dismissals; (3) regarding the efforts to revive the trade union SINTRAINCAMETAL, the latter did not fulfil the condition established in law that it must have more than 25 workers; and (4) the Ministry of Labour and Social Security convened a reconciliation meeting with the enterprise and the national trade union SINTRAMETAL with a view to finding a solution to the points raised in the complaint. (A copy of the act of reconciliation was attached in which the representative of SINTRAMETAL states that: the dismissals of the workers were anti-union in character; a collective contract had been negotiated before the collective agreement was signed, which did not allow for trade union membership; and the trade union organization is ready to discuss the issues and come to agreement as long as the enterprise is prepared to do so. The representative of the enterprise stated that: the enterprise has respected the right to establish and join trade unions; a collective agreement was negotiated with the trade union SINTRAMETAL; and the dismissal of the workers is a result of restructuring in the productive processes and is not related to trade union activities).

C. The Committee's conclusions

443. *Regarding the allegation that the trade union SINTRAINCAMETAL was unable to obtain legal personality, which had been cancelled in 1978, the Committee notes the Government's statement that the prerequisite laid down in law that a trade union must have more than 25 members had not been fulfilled. In this respect, the Committee requests the Government to ensure that as soon as the organization fulfils this requirement, and any others, laid down in law, that the trade union of Inca Metal S.A. is granted legal personality. The Committee requests the Government to keep it informed in this respect.*

444. *Regarding the allegation that 22 workers were dismissed from the enterprise in 1999, the Committee notes the Government's statement that the Ministry of Labour authorized this dismissal on the basis of the legal regulations in force at the time (in the resolution issued by the Ministry, the dismissal of 30 workers is authorized with reference to the economic situation of the enterprise; at the same time, in the act of reconciliation completed between SINTRAMETAL and Inca Metal S.A., the representative of the enterprise indicates that the dismissals took place as a result of restructuring in the productive processes and were not related to trade union activities). The Committee also notes that the complainant states that those workers dismissed began legal proceedings relating to their dismissals and that these were not successful. In these circumstances, and taking into account that the complainant maintains that the enterprise subsequently hired more than 200 workers, the Committee requests the Government to recommend to Inca Metal S.A., should it anticipate hiring more workers, to make every effort to re-hire as many as possible of the 22 workers who were dismissed for economic and restructuring reasons. The Committee requests the Government to keep it informed of developments.*

445. *Regarding the allegations referring to collective contracts being made compulsory (the most recent of these for the 1998-2001 period) in view of the impossibility of signing a collective agreement, the Committee notes the Government's statement that Inca Metal S.A. and the trade union SINTRAMETAL concluded a collective agreement for the January 2000-May 2002 period that covers labour relations and conditions for workers at the enterprise who are members of SINTRAMETAL-Medellín Section (a copy of the agreement was attached wherein it states that those workers who do not belong to a trade union can be covered by the agreement).*

The Committee's recommendations

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

(a) As regards the fact that the trade union of Inca Metal S.A. was unable to obtain legal personality as a trade union, the Committee requests the Government to ensure that the trade union is granted legal personality as soon as it has complied with the requirements laid down in law (in particular, to have a minimum membership of 25 workers). The Committee requests the Government to keep it informed in this respect.

(b) As regards the dismissal of 22 workers from the enterprise in 1999, the Committee requests the Government to recommend to Inca Metal S.A., should it anticipate hiring new workers, to make every effort to re-hire as many as possible of the 22 workers who were dismissed for economic and restructuring reasons. The Committee requests the Government to keep it informed of developments.

CASE NO. 1865

INTERIM REPORT

Complaints against the Government of the Republic of Korea presented by
— the Korean Confederation of Trade Unions (KCTU)
— the Korean Automobile Workers' Federation (KAWF)
— the International confederation of Free Trade Unions (ICFTU) and
— the Korean Metal Workers' Federation (KMWF)

Allegations: Arrest and detention of trade union leaders and members; government refusal to register newly established organizations; adoption of labour law amendments contrary to freedom of association

447. The Committee already examined the substance of this case at its May 1996, March and June 1997, March and November 1998, March 2000 and March 2001 meetings, when it presented an interim report to the Governing Body [304th Report, paras. 221-254; 306th Report, paras. 295-346; 307th Report, paras. 177-236; 309th Report, paras. 120-160; 311th Report, paras. 293-339; 320th Report, paras. 456-530; 324th Report, paras. 372-415; approved by the Governing Body at its 266th, 268th, 269th, 271st, 273rd, 277th and 280th Sessions (June 1996, March and June 1997, March and November 1998, March 2000 and March 2001)].

448. The Korean Confederation of Trade Unions (KCTU) provided new allegations in communications dated 2 March and 8 June 2001. The Government provided its observations in a communication dated 10 January 2002.

449. The Republic of Korea has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

450. During its previous examination of this case, the Committee had noted that the case addressed allegations both of a legislative and factual nature. With regard to the issues of a legislative nature, the Committee had recalled that they related to the right to organize of public servants, the right to strike in non-essential public services, trade union pluralism at the enterprise level, the prohibition of payment of wages to full-time union officials, the lifting of the ban on third-party intervention in collective bargaining and industrial disputes, the trade union membership and office of dismissed and unemployed workers and the very broad interpretation of "obstruction of business" under section 314 of the Penal Code. The Committee had expressed the firm hope that these issues would be resolved quickly in accordance with freedom of association principles and had requested the Government to keep it informed of the deliberations within the Tripartite Commission on all these issues.

451. Regarding the allegations of a factual nature, the Committee had urged the Government to drop the charges against the former KCTU president, Mr. Kwon Young-kil Young-kil, concerning events that had occurred before the January 1997 strikes as a result of his trade union activities. The Committee had also requested the Government to ensure in future cases that the four-step plans it adopted in April 1999 to minimize the arrest and detention of trade unionists was effectively implemented, and that police intervention in labour

disputes was strictly limited to situations where law and order was seriously threatened, so that in the future trade unionists were no longer arrested, detained or charged for legitimate trade union activities.

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

(a) The Committee reiterates its call, on all the parties, to act in good faith and expresses its firm hope that tripartite dialogue will continue on all issues it raised.

(b) As regards the legislative aspects of this case, the Committee:

(i) requests the Government, once again, to take concrete steps as soon as possible to extend the right of association, and to recognize the right to establish and join trade union organizations, for all public servants who should enjoy these rights, in accordance with freedom of association principles;

(ii) regretting that an additional delay of five years has now been imposed as regards the legalization of trade union pluralism at the enterprise level, requests the Government to provide its observations on the KCTU's allegations of February 2001, and urges it, once again, to speed up that process with a view to promoting the implementation of a stable collective bargaining system;

(iii) notes with regret that the Government did not provide information on the other outstanding legislative issues (notification of the identity of third parties in collective bargaining and industrial disputes, and repealing of penalties related thereto; refusal to allow dismissed workers to maintain trade union membership, and ineligibility of non-members of trade unions to stand for office), reiterates its previous requests in these respects, and urges the Government to provide as soon as possible its observations on these issues;

(iv) noting that the legal definition of the infraction of "obstruction of business" under section 314 of the Penal Code is so wide as to encompass practically all activities related to strikes, requests the Government to bring this provision in line with the narrower interpretation given to it by the Supreme Court as well as with freedom of association principles, and recommends that this matter be discussed by the Tripartite Commission with a view to making formal proposals;

(v) asks the Government to repeal section 40(2) of the TULRAA in conformity with freedom of association principles;

(vi) urges the Government to speed up the work of the Tripartite Commission and to keep it informed of the outcome of the deliberations within the Tripartite Commission or the National Assembly on all the above issues, which the Committee firmly hopes will be examined and resolved quickly in accordance with freedom of association principles; and

(vii) requests the Government to keep it informed on all measures taken to give effect to the above recommendations.

(c) As regards the factual aspects of this case:

(i) noting with deep concern that Mr. Kwon Young-kil has received a suspended sentence of ten months of imprisonment for violation of a provision which is incompatible with freedom of association principles, the Committee regrets that the Government would continue to press charges against Mr. Kwon Young-kil Young-kil, urges it to drop the charges concerning his legitimate trade union activities, and requests the Government to keep it informed of the outcome of pending trials, including Mr. Kwon Young-kil's appeal against the judgement of the Seoul District Court of 31 January 2001;

(ii) the Committee requests the Government to keep it informed of developments concerning the 70 KCTU leaders and members, including judicial decisions, if any;

(iii) the Committee requests the Government to ensure in future cases that the four-step plan it adopted in April 1999 to minimize the arrest and detention of trade unionists

be effectively implemented, and that police intervention in labour disputes be strictly limited to situations where law and order are seriously threatened, so that in future trade unionists are no longer arrested, detained or charged for legitimate trade union activities;

(iv) the Committee calls on all parties to exercise restraint in pursuing activities linked to labour relations disputes; and

(v) the Committee requests the Government to keep it informed of the outcome of the appeals lodged against the judgements of the courts of the first instance regarding the dismissal of 182 workers at the Sammi Specialty Steel Company and of six workers at the Dong-hae Company, and urges the Government to pursue its efforts towards maintaining social dialogue between labour and management on these issues.

B. The Government's reply

Legislative aspects of the case

Developments concerning the Tripartite Commission

453. In its communication dated 10 January 2002, the Government indicates that the Third Session of the Tripartite Commission, which was launched on 1 September 1999, is composed of the General Committee, the Standing Committee, four special committees (public sector, financial sector, working-hour reduction and non-regular workers), and two subcommittees (industrial relations, and economic and social). Each committee has been involved in in-depth discussions on pertinent labour issues and institutional reforms.

454. The subcommittee on industrial relations has had working-level consultations on essential public services on six occasions. It discussed the concept, criteria and scope of essential public services, and procedures and requirements where essential public services are referred to compulsory arbitration, as well as the appropriateness in designating hospitals, the oil industry and city railways as essential public services. Moreover, the subcommittee on the Basic Labour Rights of Public Officials has been newly set up and has had discussions on how to guarantee basic labour rights of public officials.

Right to organize of public servants

1. The right to join the Public Officials' Workplace Associations (POWAs) for certain categories of public servants

455. The Government states that in accordance with the agreement at the first Tripartite Commission of 6 February 1998 to recognize public officials' rights to organize in phases, the POWA, has been operating since 1 January 1999. As of the end of December 2001, a total of 333 POWAs had 78,000 members, up 70 per cent from 41,000 in the same period of the previous year. The increase was due to the measures the Government took to revitalize POWAs' activities. On 24 April 2000, it revised "The Work Guideline on the POWAs", so that heads of organizations could allow a team leader of level six public officials at the position of supervision and management, administrative officials at bureaus and departments, and public officials in charge of guidance and regulation to join the POWAs. The Government will continue to expand the eligibility scope of the POWA within the context of its objective, reflecting opinions of public officials at the lower level. Yet, public officials in charge of personnel, budget and confidential documents, etc., are restricted from joining the POWA according to the Act on the establishment and operation of the POWA. These restrictions were made for the following reasons: management-level officials are assigned to dictate and supervise, and thus participate in consultations in the same capacity as employers. This restriction on the participation of workers in charge of

personnel, budget, and confidential documents, etc., at the POWA is to ensure the efficiency of the work of organizations and the independence of the POWA.

2. The recognition of the Public Officials' Union (POU)

456. The Government indicates that, under the basic principle agreed upon in February 1998 at the Tripartite Commission to allow the POU in phases, the Tripartite Commission set "Measures to Protect the Basic Labour Rights of Public Officials" as the discussion agenda for the year 2001. Relevant persons of the POWAs and the Ministry of Government Administration and Home Affairs (MOGAHA) were consulted twice on 16 and 30 March 2001 about the issue. Surveys were conducted on laws of other countries during the period of 1 May to 30 June 2001. "The Subcommittee on Basic Labour Rights of Public Officials", formed on 17 July 2001 at the Tripartite Commission, has discussed POWA problems, how to resolve them, forms and contents of legislation concerning the POU and timing for introduction of the POU. The Government firmly believes that the right of public officials to organize should be guaranteed as a basic labour right in line with international standards. However, opposing views exist on when and how to recognize this right. Thus, the Government will make a careful decision, considering general public opinion as well as the results of the discussions at the abovementioned subcommittee of the Tripartite Commission.

Legalization of trade union pluralism at the enterprise level and establishment of a stable collective bargaining system

457. The Tripartite Commission on 9 February 2001 decided to put off the implementation of multiple trade unions at the enterprise level to the year 2007. The main reason for postponement was to have full preparation time. There was also some apprehension that a hasty enforcement of the system yet to be agreed by labour and management would cause confusion. The Government indicates that during this five-year period, it will make efforts to improve awareness and practices regarding multiple unions, and develop a bargaining system which is in line with internationally accepted standards and which fits with domestic labour and management relations, through discussions using various channels, including the Tripartite Commission. Moreover, the Commission will conduct research and surveys from 2002 on how to develop a new collective bargaining system under union pluralism while continuing the discussion. If tripartite agreement is reached on a new collective bargaining system, multiple unions may be introduced before 2007.

Ban on the payment of wages to full-time union officials

458. With regard to section 24 of the Trade Union and Labour Relations Adjustment Act (TULRAA), which prohibits employers from remunerating full-time union officials as of 1 January 2002, the Government states that the entry into force of this provision, which is closely linked to the issue of legalizing trade union pluralism at the enterprise level, is also deferred for a period of five years. At the end of this five-year period, unions would, in principle, pay their full-time officials. In the meantime, the Government would form a fact-finding mission comprised of outside experts to conduct surveys from January to June 2002 on the number of union officials and the financial capacity of these unions. The Tripartite Commission's subcommittee on labour relations would also discuss practical ways to improve the financial capacity of unions during this interim period.

Right to strike in non-essential public services

459. The Government indicates that, a dispute in any of the essential public services contained in section 71(2) of the TULRAA could be referred to compulsory arbitration, resulting in the prohibition of the right to strike in that service. This does not mean, however, that all disputes in such services are automatically referred to compulsory arbitration. Moreover, inner-city bus services and banking services had been removed as of 1 January 2001 from this list of essential public services. Consequently, the remaining public services where the right to strike could be prohibited included railroad services (including intercity rail), water, electricity, gas supply, oil refinery and supply services, hospital services and telecommunications services. Discussions would continue in the Tripartite Commission's Subcommittee on Labour and Management Relations on further modifying the scope of essential public services in line with ILO principles on freedom of association. However, according to the Government, it is improbable that services such as "oil refinery and supply services" will be removed from the list of essential public services in view of the impact that these services have on national security and the economy.

Denial of dismissed and unemployed workers to keep their union membership and the ineligibility of non-members of trade unions to stand for office

1. On the recognition of the right of dismissed and unemployed workers to keep their union membership

460. The Tripartite Commission agreed on 28 September 1998 to recognize the right of displaced workers to join non-enterprise-level unions. The Government prepared a revised legislative bill and pushed forward legislation, but differences in opinions between relevant ministries delayed the legislation. Discussion has continued at meetings between the ruling party and the Government and with relevant ministers as well as the Tripartite Commission. But no agreement has been reached. The Government will work diligently to come up with an agreement through in-depth discussion and coordination between relevant ministries, and take subsequent measures following the agreement.

2. On the ineligibility of non-members of trade unions to stand for office

461. Article 23(1) of the TULRAA prescribes that union officials shall be elected among union members. The eligibility is restricted in order to ensure independence and the democratic operation of trade unions. The Tripartite Commission has discussed the issue of recognizing the right of displaced workers at non-enterprise-level unions to lower eligibility for members of industrial and regional trade unions to stand for office. The Government will review the issue based on input from the Tripartite Commission.

The repeal of provisions concerning "Obstruction of business (section 314 of the Criminal Act)"

462. The Criminal Act of the Republic of Korea stipulates that those who interfere with the business of others by means of circulating false facts or threat of force shall be punished (section 314). The Supreme Court and the Constitutional Court ruled as follows in relation to industrial actions: collective action could be regarded as "threat of force". However, industrial action such as strikes do not fall under the definition of "obstruction of business" once they are conducted legally and peacefully in accordance with purposes, procedures, methods and means provided by labour laws with a view to conducting voluntary bargaining between labour and management for maintaining and improving working conditions. In these cases, the parties involved in industrial action will not be accountable

for civil liability and their acts will not constitute "obstruction of business" under the Criminal Code. Illegal actions of union members subject to obstruction of business have not always been strictly punished. Each case was dealt with flexibly depending on the severity of violations. In particular, for cases of simple "obstruction of business" without violence, the accused is investigated without detention unless the case is exceptional in that a life or lives are harmed, personal safety or health is threatened, or the national economy is greatly influenced. At the same time, authorities have responded sternly to violent strikes which involve such acts as the destruction of production facilities, physical assault on workers not joining their action, illegal occupation of traffic roads, throwing of Molotov cocktails, or attacking police officers. These acts have been dealt with strictly in the name of keeping law and order since the majority of the public would otherwise suffer from the damages entailed; sovereign credibility and the national economy would also be badly affected. Even in cases of illegal actions, the Government has generously treated the accused under the principle of minimizing imprisonment by investigating those who simply joined the action without keeping them under detention and or booking them, as long as they are not the main instigators or players of the action.

Repeal of section 40 of the TULRAA relating to the requirement to notify the Ministry of Labour the identity of third parties involved in collective bargaining and industrial disputes and the repeal of penalties contained in section 89(1) of the TULRAA for violation of the prohibition on persons not notified to the Ministry of Labour from intervening in collective bargaining or industrial disputes

463. The notification requirement is provided to prevent unjust interference by an unwanted third party and to guarantee voluntary problem-solving between trade unions and employers by clearly identifying which party will offer support. There have been no cases of penalties imposed under article 89 of the TULRAA. Moreover, the labour sector has not raised any issue about the provision recently. The discussion on the revision of the provision has therefore not proceeded. However, the Tripartite Commission will adopt the issue on its agenda and discuss it to respect ILO standards and recommendations. The Government will review relevant provisions of the law on the basis of discussion results.

Joint research project with the ILO envisaged by the Government

464. The Government indicates that it plans to carry out a joint project with the ILO to come up with practicable and reasonable alternatives regarding institutional revision in industrial relations such as multiple unions at the enterprise level, payment of wages to full-time union officials, and the recognition of the right of dismissed and unemployed workers to keep their union membership.

Factual aspects of the case

Withdrawal of charges against Mr. Kwon Young-kil Young-kil, former KCTU president

465. Mr. Kwon Young-kil Young-kil, the former president of the Korean Confederation of Trade Unions (KCTU), was prosecuted for illegal intervention in industrial action such as the strike by the Seoul Metropolitan Subway Corporation Trade Union from June 1994 to November 1995. He was also charged with staging illegal and violent strikes including occupying traffic roads. At the Seoul District Court trial on 31 January 2001, he was sentenced to ten months' imprisonment with a two-year stay of execution for violation of the Punishment of Violence Act, etc. The case is currently under trial on an appeal. Under

the Korean Criminal Procedure Act, withdrawal of charges is only possible before the first sentence. Therefore, withdrawal of the charges against Mr. Kwon Young-kil Young-kil is technically impossible since his case has already passed the stage of the first trial.

Outcome of appeals lodged against the judgements of the courts of first instance regarding the dismissal of 182 workers at the Sammi Specialty Steel Company and of six workers at the Dong-hae Company

1. Information of workers at the Dong-hae Company

466. When OMRON Automotive Electronics Korea took over part of Dong-hae Company on 20 March 1998, 176 out of 192 workers of the acquired company were employed by the acquiring company, seven remained at the parent company Dong-hae Inc., and the remaining nine demanded employment succession. On 30 September 1998, the nine workers applied for relief, based on unfair labour practices and unfair dismissal; six of whom were found to be dismissed unfairly, while three were found to be fairly dismissed. On 21 September 1999, OMRON Automotive Electronics Korea filed an appeal to the Seoul Administration Court after the National Labour Relations Commission's ruling but lost suit. The company then appealed to the higher court on 28 September 2000, but lost the case. The case is pending at the Supreme Court after the company entered the final appeal. The Government has arranged meetings between labour and management to resolve the matter. The Government will continue to encourage labour and management to resolve this matter through dialogue before the court ruling is rendered. If agreement between the two sides is not reached, the Government will follow the court decision.

2. Information on workers at the Sammi Specialty Steel Company

467. The Supreme Court ruling on 27 July 2001 overturned the original verdict. The Supreme Court found that it was difficult to view Changwon Specialty Steel Company's takeover of Sammi Specialty Steel Company's Changwon plant as a business transfer or succession where a company's personnel and resources are comprehensively transferred to another company. Thus, Changwon Specialty Steel Company has no obligation to succeed employment, though it has the obligation to pay Sammi Specialty Steel Company's Changwon plant debt. By winning the case, Changwon Specialty Steel Company has no obligation to succeed employment of Sammi Specialty Steel Company's Changwon plant workers.

C. The KCTU's new allegations

468. In a communication dated 8 June 2001, the KCTU asserts that the Government adopted the goal of "flexibilization of the labour market" which included efforts to scale back or repeal various welfare benefits at enterprise levels. In order to obtain the changes it had set as its goal, the Government began to intervene in the collective bargaining process, especially in the public sector. As a result, issues of working conditions, which should be concluded through collective bargaining between trade unions and employers, were dictated by the Government.

469. In many public sector entities, such as government-owned utilities, government-funded bodies, government-invested enterprises or undertakings, the Government has used the power of budget allocation and supply or remittance of operational funds to circumvent or circumscribe the collective bargaining process or forced and pressured the parties (especially the trade union which represent the workers) to the collective bargaining

process to "accept" retreats in working and employment conditions which are regulated through collective bargaining agreement. The KCTU asserts that government interference took the form of "directives" from the Ministry of Planning and Budget which is responsible for budgetary policies, including the management of various statutory funds, institutional innovation, budget formulation and execution, and reform of financial and administrative conduct of the public sector. The Ministry issues guidelines to all government-controlled, government-funded, government-invested entities for budget formulation. Each entity develops a budget plan based on the guidelines. These are adjusted, modified or refined by the Ministry for tabling at the National Assembly. The management of these entities draws up its budget, including those elements that directly affect working conditions without any consultation with trade unions. These entities hold the guidelines issued by the Ministry in higher authority than collective agreements adopted between unions and managements. This is rooted in the governmental institutional practice where the managers and the entities are penalized or reprimanded by the Ministry for failure to comply with the guidelines for budget formulation.

470. The unilateral and coercive adjustment of working conditions by the direct order of the Government violates the domestic laws which guarantee the right to bargain collectively over working conditions. The action of the Government in withholding budget allocation to those entities which "refuse" or "fail" to comply with the directive (due to the trade unions' success in upholding the collective bargaining agreement), resulting in non-payment of wages, is a serious infringement of the right to bargain collectively. These measures of the Government aim at two goals: achieving structural adjustment objectives and disempowering the trade unions. In fact, these two goals are intrinsic to the "labour market flexibility" agenda of the Government's "reform" programme. The KCTU then proceeds to give detailed examples of infringements of the right to bargain collectively in workplaces under the jurisdiction of the Korean Federation of Transportation, Public and Social Services Workers' Union, the Korean Health and Medical Industry Union, the Korean Teachers and Educational Workers' Union (CHUNKYOJO), as well as the Korean Federation of Clerical and Financial Workers.

471. The KCTU then alleges that the Government continues to deny government employees their trade union rights. More specifically, the KCTU explains that government employees' works councils (Public Officials' Workplace Associations – POWAs) having decided to form a national federation, held an inaugural conference on 24 March 2001 to launch the Korean Association of Government Employees' Works Councils (KAGEWC).

472. According to the KCTU, the Government responded to the efforts of government employees with an all-out effort to thwart the initiative of the works councils. On 21 March, the Ministry of Government Administration and Home Affairs sent a letter to the management of the Yonsei University where the conference was planned to be held, requesting the management to "disallow the holding of the conference as it deemed the conference to be an activity of illegal organization". As a result, the Yonsei University withdrew its permission for the use of its auditorium just one day before the scheduled conference. Due to the sudden cancellation of the use of the auditorium at Yonsei University, the inaugural conference had to seek a new venue. When the conference began in an auditorium at the Seoul National University, obtained through the support of the student union, university officials under pressure from the officials of the Ministry of Government Administration and Home Affairs, cut off the electricity. The general secretary of Public Services International, who attended the inaugural conference in solidarity, had to shout his message in darkness under candlelight. The inaugural conference, which brought together 115 delegates from 72 "works councils", adopted a constitution. The constitution, which stipulates the aims, composition, organs, officers, duties and membership dues, sets the Association towards eventual unionization. The constitution outlines the basic areas of the Association's work: (i) policy development and

a campaign for the reform of the public service; (ii) promotion of the role of government officials for the development of the nation, society and community; (iii) improvement of the rights and welfare of government employees through securing basic labour rights and democratic rights; (iv) consolidation of organization and capacity; (v) education, publicity and publication activities; (vi) other activities needed to realize the aim of the organization. On the basis of article 5 of the constitution, the Association is composed of "government employees' works councils" set up pursuant to section 2 of the "Act on the establishment and operation of Public Officials Workplace Associations". At the time of the formation, some 170 "works councils" were members of the Association, with a total membership of some 70,000 government employees. The inaugural conference elected the officers of the Association. Prior to the inaugural conference, the representatives of the works councils debated on the "structure" of the leadership of the organization and concluded that a unified leadership structure should be established to provide the Association with a clear mandate. The conference elected Cha Bong-cheun (representative of the works council at the National Assembly Secretariat) as its president.

473. The KCTU asserts that the successful inaugural conference to form the KAGEWC was followed by a more shrill response from the Government. On 30 March 2001, the Ministry of Government Administration and Home Affairs sent a directive to all government offices to seek punishment of "those representatives of the works councils who have participated actively in planning and organizing the formation of the Association, including those who have been elected as officers or delegates to the Association" (a copy of this directive is attached to the complaint). Following the directive to the government offices, subpoenas were issued by the police against the leadership of the Association, including the elected officers and delegates. The subpoenas were issued on the basis of legal action initiated by the heads of government offices. The Government has publicly announced that all the leading members of the Association will be dismissed from their positions.

474. Finally, the KCTU points out that a directive delivered on 29 December 2000 to all government offices from the Ministry of Government Administration and Home Affairs, belies the real attitude the Government has towards the works councils and their gradual transition to unionization (a copy of this directive is attached to the complaint). The directive identifies the examples and scope of "legal" and "illegal" activities, and those activities which should be encouraged. Legal activities, defined in the Act itself (article 5), are limited to "issues concerning the improvement of work environment", "issues concerning the improvement of work efficiency", "work-related individual complaints", and "other issues concerning the improvement of the work of the office". The first on the list of "illegal" activities is "lecture programmes or discussion fora on issues of unionization and other non-official work-related issues undertaken in the name of the research group in conjunction with trade union movement organizations". What is clear is that, the Government is "committed" to preventing the "works councils" themselves to undertake the efforts to prepare and build unions. The government employees and the works councils should refrain from efforts to prepare the introduction of government workers' unionization. Initiatives taken by them will be deemed and punished as "illegal" activities.

475. Regarding illegal strikes and the arrest and detention of trade unionists, the KCTU asserts that the number of trade unionists imprisoned over the three-and-a-half years that the Kim Dae-jung Government has been in office (528) easily surpasses the number imprisoned by the previous Government during its five years in office (507). As of 29 May 2001, the number of unionists held in prison was 50. True to a recognized pattern, the arrest, imprisonment, trial and release of trade unionists has been a fast "revolving door". Of the 89 unionists arrested and imprisoned up to 29 May 2001, almost half were released within five months of being arrested. This testifies to the fact that the Government uses this "legal

repression" of trade unionists as a "quick fix" for solving its industrial disputes and structural adjustment problems.

476. According to the KCTU, a unique feature of the arrest and imprisonment of trade unionists in 2001 is the inclusion of key leaders of non-KCTU trade unions, notably the Korean Financial Industry Workers' Union (KFIU) which is affiliated to the Federation of the Korean Trade Unions (FKTU). KFIU president Lee Yong-deuk, and eight other leaders of the federation are serving two-and-a-half years to one-year prison terms for the strike in December 2000 against the government-led amalgamation of two major city banks.

477. Another pronounced feature of the arrest and imprisonment of unionists this year is the frequent use of the charge "obstruction of business" (section 314 of the Criminal Code) against trade unionists. Of the 89 trade unionists arrested, charged and imprisoned this year, 60 per cent, that is, 53, were charged with obstruction of business which was the result, and not the cause of an illegal strike. However, nearly any industrial action could be determined to be illegal under Korean law. For example, the law stipulates that industrial action can only take place on issues related to working conditions such as wages, working hours and so on. Hence, if a union declares a strike even on matters closely related to these issues, this action is necessarily illegal thereby resulting in the charge of obstruction of business. The KCTU points out that most of the arrests of trade unionists – leading to their imprisonment – were undertaken in the context of disagreement between the Government, management and workers over the issue of restructuring.

D. The Government's reply

478. As regards the alleged infringement of public sector workers' right to bargain collectively, the Government states that it is strongly pushing for reforms in all sectors of society – including the corporate, finance and labour sectors – based on the belief that enhancing national competitiveness is the utmost priority to overcome the economic difficulties that led to the IMF bailout fund. The Government adds that the reform drive in the public sector has continued through restructuring and management innovation with comparable force as with the private sector, with a view to making a small and efficient government. These efforts have led the majority of public corporations and government-subsidized entities to take specific measures such as abolishing the cumulative retirement allowance and the paid leave system, and improving the welfare and benefits system. However, some entities are under harsh criticism for their lax management in the retirement allowance, paid leave and welfare and benefits system. The Government is responsible for managing and supervising public corporations and state institutions funded by tax payers with a view to ensuring that funds are not wasted, management is improved and operations are efficient.

479. In this context, as regards the allegation that the Ministry of Budget and Planning issued directives to government-subsidized entities relying on government budget outlays and that these measures negate trade unions' rights to collective bargaining, the Government points out that these directives are purely meant to guide negotiations between labour and management and encourage employers to improve management, and not to directly decide on working conditions. In fact, working condition matters such as wage increases and the change in the welfare and benefits system have been concluded by collective agreements between labour and management. Under this practice, government-funded agencies have revised their systems through consultations between labour and management, which is clear evidence that the right to bargain collectively and conclude agreements will not be restricted or denied. Moreover, if a budget outlay proposed by the Ministry of Budget and Planning is not in line with a collective agreement concluded between labour and management of a government-funded agency, the collective agreement has priority over the budget plan. Employers who violate this principle are subject to penalties, a measure to

ensure the effectiveness of collective agreements. The legitimacy of the Ministry's directive on budget outlays was upheld by a Constitutional Court ruling: on the constitutional complaint of Ministry-issued guidelines on designing the budget, the Constitutional Court ruled that issuing guidelines is merely a supervisory function, not one intended to directly intervene or exercise force on collective bargaining. The Court also stated that, although the guidelines may indirectly influence the claimant, their issuance was only an exercise of the authority mandated to the Ministry.

480. Regarding the allegation that the Government continues to deny government employees their trade union rights and that it obstructed the conference to launch the Korean Association of Government Employees' Works Councils (KAGEWC), the Government contends that banning this conference, which was held on 24 March 2001, was inevitable and legitimate. The Government points out that members of KAGEWC decided, on 3 February 2001, to form a national federation of Public Officials Workplace Associations (POWAs) prohibited under the Act on the establishment and operation of the Public Officials Workplace Association, ignoring the discussion about the introduction of a trade union for government employees taking place at the Tripartite Commission, the established discussion channel. On 24 March 2001, members of the KAGEWC were engaged in collective action at Seoul National University in alliance with private organizations and labour unions. This action violates section 66 of the Act on public officials which strictly prohibits the collective action of public servants. The collective action of public officials has been punishable as an act disrupting social order in the Republic of Korea where tensions exist between North and South. Before the conference was held, the Government invited participants to restrain from illegal collective action a number of times, but never threatened them or thwarted the attempt by demanding the presence of police officers. Despite this call, participants pushed forth on holding the conference. On 24 March 2001, the Government asked Yonsei University to exercise prudence in allowing the rally based on the decision that droves of public officials breaching laws may negatively impact the maintenance of national order. Seoul National University initially allowed the conference to be held because it assumed it would be a students' rally. When it belatedly realized the conference was an illegal rally, it switched off electricity supplies. It is noteworthy that the Government reported 12 KAGEWC leaders to authorities, not because they argued for the establishment of a public officials' trade union, but because they violated the provision banning the collective action of public officials.

481. As regards imprisoned trade unionists in the Republic of Korea, the Government states that, first of all, it should not be concluded that the Government has taken a hard-line attitude towards labour circles just because of an increase in the number of workers arrested. All factors, aspects and circumstances leading up to the arrests should be comprehensively considered, including modes, severity of offences and frequency of illegal industrial action. The Government points out that most of the arrested workers committed violent acts, resisted restructuring in the wake of the economic crisis or conducted radical, violent demonstrations by illegally occupying traffic roads, throwing Molotov cocktails or assaulting the police on official duty. Respecting the principle of minimizing arrests and imprisonment, the Government has taken lenient measures such that those joining the demonstrations, but neither leading violent nor committing radical acts, have been investigated without being detained or even charged.

482. With respect to the allegation that most of the arrested workers were charged with "obstruction of business" under section 314 of the Criminal Code and that of the 89 unionists arrested this year, 53 (60 per cent) were dealt with by this provision. The Government states that it has rarely arrested workers for simple illegal strikes, provided there were no exceptional grounds which would entail causing direct damage or having significant impact on related industries. Of the 190 workers arrested up to September 2001, 16 workers were arrested for leading illegal strikes and violating the "obstruction of

business" provision of the Criminal Code after consideration of the size of concerned workplaces and the negative effect these strikes would have on the national economy, even though violent acts were not committed. The remaining 174 workers were arrested for staging illegal strikes by occupying and destroying production facilities or conducting illegal, violent demonstrations by occupying downtown traffic roads, throwing Molotov cocktails and physically assaulting the police on official duty. Obstruction of business was only a part of their charges. Finally, regarding current developments in respect of the 50 arrested workers presented by the KCTU, the Government explains that of the four workers arrested before 2001, two were imposed a final sentence and are currently in jail (one of whom violated the National Security Law), and the remaining two were released either on parole or at the end of their prison terms. Of the 46 workers arrested in 2001: 33 were released on bail, had their sentence suspended or were fined (one of whom was released at the end of the prison term); four were imposed a final sentence and are currently in jail; the remaining nine are on trial (six of whom are in the first instance, two in the second instance and one in the Supreme Court).

E. The Committee's conclusions

483. *During its previous examination of the case, the Committee had reiterated its call, on all the parties, to act in good faith and expressed its firm hope that tripartite dialogue would continue on all the issues raised by it. The Committee would once again reiterate its call in this regard. The Committee proposes to review these various issues in light of the information provided by the Government.*

Legislative issues

484. *With regard to the issue of the* ***right to organize of public servants****, the Committee notes that due to the measures taken by the Government to revitalize the activities of Public Officials' Workplace Associations (POWAs), the latter had 78,000 members as of December 2001, up from 41,000 members in the same period of the previous year. While noting this information, the Committee observes that POWAs have been set up at only 333 offices out of 2,400 eligible workplaces. The Committee also refers to its previous comments on this subject [see 320th Report, para. 509; 324th Report, para. 402] i.e. that only 338,000 public servants out of a total of 930,000 are eligible to join these associations. As regards the Government's contention that management-level officials are excluded from joining the POWAs because of the supervisory functions, the Committee is of the opinion that while public servants exercising senior managerial or policy-making responsibilities may be barred from joining organizations which represent other workers, such restrictions should be strictly limited to this category of workers and they should be entitled to establish their own organizations [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 230]. The Committee recalls however, that not only are public servants exercising managerial responsibilities prohibited from establishing their own organizations but that large categories of public servants are excluded from joining POWAs. In effect, the Committee had previously noted with concern [see 309th Report, para. 144; 320th Report, paras. 509 and 510] that in addition to public servants from grades 1 to 5, public servants involved in personnel and confidential work, budgeting and accounting, receiving and distributing goods, supervising general service staff, secretarial work, guarding security facilities and driving passenger cars or ambulances were excluded from joining POWAs. In view of the restrictions on the right to associate of a wide range of public servants, the Committee would, once again, draw the Government's attention to the fundamental principle that all public service employees, with the sole possible exception of the armed forces and the police, should be able to establish organizations of their own choosing to further and defend the interests of their members [see* ***Digest****, op. cit., para. 206]. The Committee would therefore request the Government to continue to extend the right of association to*

all those categories of public servants who should enjoy this right in accordance with freedom of association principles.

485. *Furthermore, the Committee notes the Government's statement that the **right to organize of public servants** was one of the issues on the agenda of the Tripartite Commission for discussion during the year 2001. Accordingly, the Subcommittee on the Basic Labour Rights of Public Officials was established on 17 July 2001 to discuss the form and contents of legislation concerning the Public Officials' Union (POU) as well as the timing for the introduction of the POU. The Committee further notes that while the Government firmly believes that the right of public officials to organize should be guaranteed as a basic labour right, opposing views exist on when and how to recognize this right. Hence, the Government will make a careful decision, taking into account general public opinion as well as the outcome of the discussions at the abovementioned Subcommittee. In this respect, the Committee would recall that the denial of workers in the public sector to set up trade unions, where this right is enjoyed by workers in the private sector, with the result that their "associations" do not enjoy the same advantages and privileges as "trade unions", involves discrimination as regards government-employed workers and their organizations as compared with private sector workers and their organizations. Such a situation gives rise to the question of compatibility of these distinctions with freedom of association principles according to which workers "without distinction whatsoever" shall have the right to establish and join organizations of their own choosing without previous authorization [see **Digest**, op. cit., para. 216]. The Committee would recall further that the right to organize does not necessarily imply the right to strike which may be prohibited in the public service for public servants exercising authority in the name of the State or in essential services in the strict sense of the term, i.e. services whose interruption would endanger the life, personal safety or health of the whole or part of the population. Consequently, the Committee requests the Government to continue to take steps to recognize, as soon as possible, the right to establish and join trade union organizations for all public servants who should enjoy this right in accordance with freedom of association principles.*

486. *Regarding the issue of the **legalization of trade union pluralism at the enterprise level**, the Committee had deeply regretted during its previous examination of the case that the Government had postponed the recognition of trade union pluralism for an additional five years until the year 2007 [see 324th Report, para. 403]. The Committee notes the Government's statement that this decision was taken in view of the fact that both workers and employers in the country were not fully prepared to have trade union pluralism at the workplace from 2002, as had been originally planned, in the absence of agreement on the introduction of a suitable collective bargaining system. In this regard, the Government indicates that it intends, during this five-year period, to make efforts to improve awareness of practices in other countries regarding multiple unions and develop a bargaining system which is both in line with internationally accepted standards and which fits with domestic constraints. If tripartite agreement is reached on a new collective bargaining system, then multiple unions may be introduced before 2007. In this regard, the Committee notes that the Government plans to carry out a joint research project with the ILO to come up with practicable alternatives regarding institutional revision in industrial relations such as multiple unions at the enterprise level. The Committee requests the Government to speed up the process of legalizing trade union pluralism at the enterprise level with a view to promoting the implementation of a stable collective bargaining system.*

487. *As regards the **prohibition of payment by employers of wages to full-time union officials**, the Committee notes the Government's statement that this ban, which is closely linked to the issue of legalizing trade union pluralism at the enterprise level and which was initially planned to come into force as of 1 January 2002, has also been deferred for a period of five years. At the end of this five-year period, unions would in principle pay their full-time*

officials. Recalling that the payment of wages to full-time union officers by employers should not be subject to legislative interference, the Committee requests the Government to ensure that this matter is resolved in conformity with freedom of association principles.

488. *Regarding the **scope of essential public services**, currently listed in section 71(2) of the TULRAA, where the right to strike could be prohibited, the Committee notes with interest that inner-city bus services and banking services were removed from this list as of 1 January 2001. Consequently, the remaining public services where the right to strike could be prohibited include railroad services (including intercity rail), water, electricity, gas supply, oil refinery and supply services, hospital services and telecommunications services. The Committee considers that railroad services, the subway and the petroleum sector which remain on this list do not constitute essential services in the strict sense of the term whose interruption would endanger the life, personal safety or health of the whole or part of the population. They constitute, however, in the circumstances of this case, public services where a minimum service which is negotiated between the trade unions, the employers and the public authorities could be maintained in the event of a strike so as to ensure that the basic needs of the users of these services are satisfied. Noting the Government's statement that discussions will continue in the Tripartite Commission on further modifying the scope of essential public services in line with ILO principles on freedom of association, the Committee would request the Government to further amend the list of essential public services contained in section 71 of the TULRAA so that the right to strike may be prohibited only in essential services in the strict sense of the term.*

489. *With regard to the lifting of the ban on **third-party intervention in collective bargaining and industrial disputes**, the Committee notes the information furnished by the Government to the effect that the purpose of the notification of the identity of third parties to the Ministry of Labour under section 40(1)(3) of the TULRAA is merely to assist the Government identify those persons who assist the unions or employers. This provision was designed to ensure the autonomous settlement of disputes by excluding third parties whose intervention was not wanted either by labour or management. Moreover, while section 89(1) of the TULRAA did subject non-notified persons to criminal sanctions, this provision had not been applied in practice. In this respect, the Committee would recall that it had previously considered the notification requirement contained in section 40(1)(3) of the TULRAA to be onerous on unions and unjustified, especially in the light of the prohibition contained in section 40(2) of the TULRAA on non-notified persons from intervening in collective bargaining or even making any comments about an industrial dispute [see 309th Report, para 147; 320th Report, para. 511]. Moreover, it had appeared to the Committee that this notification requirement was not a pure formality since non-notified persons who intervened in collective bargaining were liable to a maximum penalty of three years' imprisonment and/or 30 million won in fines (section 89(1) of the TULRAA). The Committee had considered that such provision entailed serious risks of abuse and were a grave threat to freedom of association. The Committee deplores that no measures have been taken to give effect to the Committee's recommendation in this matter. In this respect, the Committee notes the Government's statement that it will ensure that this issue is put on the agenda of the Tripartite Commission and discussed in the light of the ILO's recommendations. Noting that the Government will review the relevant provisions of the law on the basis of the results of that discussion, the Committee once again requests the Government to repeal the notification requirement contained in section 40 of the TULRAA as well as the penalties provided for in section 89(1) of the TULRAA for violation of the prohibition on persons not notified to the Ministry of Labour from intervening in collective bargaining or industrial disputes.*

490. *With regard to the provisions in the TULRAA concerning the denial of the dismissed and unemployed workers to keep their union membership and the ineligibility of non-members of trade unions to stand for office (sections 2(4)(d) and 23(1), respectively, of the*

TULRAA), the Committee considers that the determination of conditions of eligibility of union membership or union office is a matter that should be left to the discretion of union by-laws and the public authorities should refrain from any intervention which might impair the exercise of this right by trade union organizations. The Committee, noting that the legislative process concerning the issue of dismissed trade union officials maintaining their membership is on hold, requests the Government to repeal the provisions concerning the denial of dismissed and unemployed workers to keep their union membership and the ineligibility of non-members of trade unions to stand for office (sections 2(4)(d) and 23(1) of the TULRAA).

491. *As regards the term* ***"obstruction of business"*** *under section 314 of the Criminal Code, the Committee had previously noted that the legal definition of this term was so wide as to encompass practically all activities related to strikes [see 324th Report, para. 405]. The Committee notes the Government's statement that strikes do not fall under the definition of obstruction of business "once they are conducted* ***legally*** *and peacefully in accordance with the purposes, procedures, methods and means provided by labour laws with a view to conducting voluntary bargaining between labour and management for maintaining and improving working conditions" (emphasis added). In this respect, the Committee notes that the KCTU alleges that nearly any industrial action could be determined to be illegal under Korean law which stipulates that industrial action can only take place on issues related to working conditions such as wages, working hours and so on. Hence, if a union declares a strike even on matters closely related to theses issues, this action is necessarily illegal thereby resulting in the charge of obstruction of business. In this regard, the Committee notes that the Government does acknowledge that certain workers were arrested for leading illegal strikes and violating section 314 of the Criminal Code, taking due account of the size of the workplaces concerned and the negative impact on the national economy, even though violent acts were not committed.*

492. *In this regard, the Committee is bound to recall, as it has done previously [see 320th Report, para. 526], 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. Organizations responsible for defending workers' socio-economic and occupational interests should be able to use strike action to support their position in the search for solutions to problems posed by major social and economic policy trends which have a direct impact on their members and on workers in general, in particular as regards employment, social protection and standards of living. Hence, the right to strike should not be limited solely to industrial disputes that are likely to be resolved through the signing of a collective agreement; workers and their organizations should be able to express in a broader context, if necessary, their dissatisfaction as regards economic and social matters affecting their members' interests [see* ***Digest****, op. cit., paras. 479, 480 and 484]. Recalling that the charge of obstruction of business carries extremely heavy penalties (maximum sentence of five-years' imprisonment and/or a fine of 15 million won), the Committee emphasizes that such a situation is not conducive to a stable and harmonious industrial relations system and once again requests the Government to bring section 314 of the Criminal Code in line with freedom of association principles.*

493. *As regards developments in the Tripartite Commission, the Committee notes that discussions took place in the Commission or various subjects and that the Subcommittee on Labour Relations selected as items for discussion for its 2001 agenda some issues which have been the object of its previous comments. The Committee notes however, that some progress has been made only in respect of one of these issues, namely the amendment of the scope of essential public services. The Committee firmly hopes that the Tripartite Commission will accelerate its work and will come up rapidly with concrete proposals, in*

line with freedom of association principles, on all these outstanding issues. It requests the Government, once again, to keep it informed of the outcome of the deliberations within the Tripartite Commission.

494. *Related to the immediately preceding point and recalling that, as early as June 1996 [see 304th Report, para. 254(e)], it had requested the Government to ensure that proposed amendments to labour-related legislation no longer be delayed, the Committee once again requests the Government to speed up the legislative process with a view to amending all the provisions mentioned above in line with freedom of association principles. The Committee reminds the Government in this regard that it may avail itself of the technical assistance of the Office. The Committee requests the Government to provide information on any measure taken to give effect to the Committee's recommendations on the legislative aspects of this case.*

Factual issues

495. *The Committee notes with regret that the Government states that it is not possible to drop the charges pending against Mr. Kwon Young-kil, former President of the KCTU. During its previous examination of this case [see 324th Report, para. 409], the Committee had deeply regretted to note that the Government continued to press charges against Mr. Kwon Young-kil who was convicted by the Seoul District Court for violating the prohibition of third party intervention in industrial disputes and was sentenced to ten months imprisonment with a two-year stay of execution. Recalling that the prohibition of third party intervention in industrial disputes is incompatible with freedom of association principles, the Committee once again urges the Government to ensure the dropping of all charges brought against Mr. Kwon Young-kil, concerning events that occurred before the January 1997 strikes as a result of his trade union activities. It requests the Government to keep it informed of the outcome of Mr. Kwon's appeal against the judgment issued by the Seoul District Court.*

496. *Regarding the alleged unfair dismissal of 182 workers at the Sammi Specialty Steel Company, the Committee notes that the Supreme Court ruled on 27 July 2001 that the Changwon Specialty Steel Company's takeover of the Sammi Specialty Steel Company's Changwon plant did not constitute a "merger and acquisition" and therefore did not trigger employment succession obligations on the part of the Changwon Company. The Committee takes note of this information.*

497. *As regards the alleged unfair dismissal of six workers at the Dong-hae Company, the Committee notes that the competent courts ruled that the takeover by OMRON Automotive Electronics Korea part of Dong-hae company constituted a "merger and acquisition", triggering employment succession obligations on the part of the Omron company. The case is pending at the Supreme Court after the company entered the final appeal. The Committee further notes the initiatives taken by the Government in this context, including its attempts at maintaining social dialogue between labour and management, and encourages it to continue pursuing its efforts in this direction. The Committee requests the Government to keep it informed of the outcome of the appeal lodged by the OMRON company to the Supreme Court.*

The KCTU's new allegations

498. *The Committee notes that the KCTU's new allegations concern infringements of public sector workers' right to bargain collectively, the continuing denial of trade union rights for government employees as well as the arrest and detention of trade union leaders and activists.*

499. *As regards alleged infringements of public sector workers' right to bargain collectively, the KCTU asserts that in many public sector entities, such as government-owned utilities, government-funded bodies, government-invested enterprises or undertakings, the Government has used the power of budget allocation and supply or remittance of operational funds to pressure the parties to the collective bargaining process to "accept" retreats in working and employment conditions which are normally regulated through collective bargaining. According to the KCTU, government interference takes the form of "directives" from the Ministry of Planning and Budget which issues guidelines to all government-controlled and government-funded entities for budget formulation. The KCTU alleges that the management of these entities draws up its budget, including those elements that directly affect working conditions without any consultation with the unions. This is due to the fact that the managers and the entities are penalized by the Ministry for failure to comply with the Ministry's guidelines for budget formulation. The KCTU contends that the action of the Government in withholding budget allocation to those entities which fail to comply with the Ministry's directive (due to the trade unions success in upholding the collective bargaining agreement), resulting in non-payment of wages, is a serious infringement of the right to bargain collectively.*

500. *The Committee notes that the Government refutes these allegations, indicating that these directives are purely meant to guide negotiations between labour and management and encourage employers to improve management, and not to directly decide on working conditions. In fact, working condition matters such as wage increases and the change in the welfare and benefits system have been concluded by collective agreements between labour and management. Under this practice, government-funded agencies have revised their systems through consultations between labour and management, which is clear evidence that the right to bargain collectively and conclude agreements have not been restricted or denied. Moreover, if a budget outlay proposed by the Ministry of Budget and Planning is not in line with a collective agreement concluded between labour and management of a government-funded agency, the collective agreement has priority over the budget plan. Employers who violate this principle are subject to penalties, a measure to ensure the effectiveness of collective agreements. Finally, the Government states that the legitimacy of the Ministry's directive on budget outlays was upheld by a Constitutional Court ruling: on the constitutional complaint of Ministry-issued guidelines on designing the budget, the Constitutional Court ruled that issuing guidelines is merely a supervisory function, not one intended to directly intervene in collective bargaining.*

501. *The Committee, for its part, notes that there is a glaring contradiction between the KCTU's and the Government's description of public sector collective bargaining in Korea. In view of this discrepancy, the Committee would recall the following principles. The Committee recalls that all public service workers other than those engaged in the administration of the State should enjoy collective bargaining rights and priority should be given to collective bargaining as the means to settle disputes arising in connection with the determination of terms and conditions of employment in the public service. However, the Committee is aware that collective bargaining in the public sector calls for verification of the available resources in the various public bodies or undertakings, that such resources are dependent on State budgets and that the period of duration of collective agreements in the public sector does not always coincide with the duration of the state Budgetary Law – a situation which can give rise to difficulties. Irrespective of any opinion expressed by the financial authorities, the bargaining parties should be free to reach an agreement of their own choosing; if this is not possible, any exercise by the public authorities of their prerogatives in financial matters which hampers the free negotiation of collective agreements is incompatible with the principle of freedom of collective bargaining. In the light of the above, provision should be made for a mechanism which ensures that, as regards the collective bargaining process in state-owned enterprises, both the trade union organizations and employers are adequately consulted and may express their points of*

*view to the financial authority responsible for the wage policy of state-owned enterprises [see **Digest**, op. cit., paras 893 and 898].*

502. *With regard to the allegation that the Government continues to deny government employees their trade union rights and that it obstructed the conference to launch the Korean Association of Government Employees' Works councils (KAGEWC), the Committee notes that the Government does not dispute this allegation. Rather the Government contends that banning this conference, which was held on 24 March 2001, was inevitable and legitimate. The Government points out that it deemed the holding of the inaugural conference to be the activity of an illegal organization since it violated the Act on public officials. The Committee must express its concern over these developments since it has reminded the Government on several occasions – first, in Case No. 1629 [see 286th Report, paras. 558-575; 291st Report, paras 416-426; and 294th report, paras. 259-275] and then in Case No. 1865 [see 304th Report, paras. 242-254; 306th Report, paras. 295-346; 307th Report, paras. 177-236; 309th Report, paras. 120-160; and 311th Report, paras. 293-339] – that current legislation governing public servants which denies them the right to organize is contrary to freedom of association principles. Furthermore, from the aforementioned events, as well as two Directives issued by the Ministry of Government Administration and Home Affairs (MOGAHA) (see Appendices I and II), it is clear to the Committee that the KAGEWC is deemed to be illegal by the Government because one of its aims, as set forth in its constitution, is unionization. Regretting this serious setback for the recognition of the right to unionize of public servants, the Committee urges the Government to ensure that KAGEWC's activities are no longer hindered in future. Furthermore, the Committee notes the allegations – to which the Government does not respond – that on 30 March 2001, MOGAHA sent a directive (see Appendix II) to all Government offices to seek reprisals against those representatives of KAGEWC who actively participated in planning and organizing its formation. The Committee requests the Government to indicate whether any KAGEWC leaders or members were dismissed and/or sanctioned pursuant to its formation as alleged, and if so, to take the necessary measures to ensure that they are immediately reinstated in their jobs. The Committee asks the Government to keep it informed of progress made in this regard.*

503. *As regards the arrest and detention of trade unionists, the Committee notes that 89 unionists were arrested and imprisoned up to May 2001 and that, as of 29 May 2001, the number of unionists held in prison was 50 (see Appendix III). The Committee notes although the Government does not deny the arrest and detention of these 50 unionists, it indicates that a total of 190 workers were arrested and detained as of September 2001. The Committee notes with serous concern that since the presentation of the KCTU's new allegations dated 8 June 2001 (and according to which 89 unionists were arrested), an additional 101 unionists appear to have been arrested and detained as of September 2001. The Committee requests the Government to indicate the total number of unionists who were arrested and detained in 2001 as well as the charges brought against them.*

504. *The Committee also notes that the reasons given by the KCTU and the Government respectively for the arrests and detentions of the 50 unionists (see Appendix III) as of 29 May 2001, widely differ. According to the KCTU, the arrests of trade unionists leading to their imprisonment – were undertaken in the context of disagreement between the Government, management and workers over the issue of restructuring. The Government contends, however, that the majority of the 190 unionists were arrested and detained for staging illegal strikes by occupying production facilities or conducting illegal demonstrations by obstructing traffic, or physically assaulting the police on duty. According to the Government, obstruction of business was only a part of their charges.*

505. *In this regard, the Committee must note with serous concern that it has examined the phenomenon of police intervention in activities linked to collective labour disputes – on*

grounds of defending national law and order as well as the national economy – leading to the large-scale arrest and detention of workers on various occasions in the past in the Republic of Korea. While noting that reliance on police intervention in labour disputes is the result of the Government placing a heavy emphasis on the security and stability of the country, the Committee is of the view that this sort of action only serves to aggravate industrial disputes. This point of view appears to be borne out by the complainant's assertion which is not disputed by the Government that the number of unionists arrested or detained in 2001 has increased dramatically in comparison to previous years. The Committee is convinced that it will not be possible for a stable industrial relations system to function harmoniously in the country as long as trade unionists are the subject of arrests and detentions. In view of the deteriorating social climate prevailing in the country, the Committee believes it would be particularly appropriate for the authorities to pursue measures which would allow for the building of an industrial relations system based on a climate of confidence. The Committee therefore urges the Government to take the appropriate measures so that the persons detained or on trial, as a result of their trade union activities, are released or that the charges brought against them are dropped. In the case of persons charged with violence or assault, the Committee asks the Government to ensure that these charges are dealt with as soon as possible. It requests the Government to provide information concerning measures taken on all these points.

The Committee's recommendations

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

(a) As regards the legislative aspects of this case, the Committee requests the Government:

(i) to continue to extend the right of association to all those categories of public servants who should enjoy this right in accordance with freedom of association principles;

(ii) to continue to take steps to recognize, as soon as possible, the right to establish and join trade union organizations for all public servants who should enjoy this right in accordance with freedom of association principles;

(iii) to speed up the process of legalizing trade union pluralism at the enterprise level with a view to promoting the implementation of a stable collective bargaining system;

(iv) to ensure that the payment of wages to full-time union officers by employers is not subject to legislative interference;

(v) to further amend the list of essential public services contained in section 71 of the Trade Union and Labour relations Adjustment Act (TULRAA) so that the right to strike is prohibited only in essential services in the strict sense of the term;

(vi) to repeal the requirement, contained in section 40 of the TULRAA, to notify to the Ministry of Labour the identity of third parties in collective bargaining and industrial disputes as well as the penalties contained in section 89(1) of the TULRAA for violation of the

prohibition on persons not notified to the Ministry of Labour from intervening in collective bargaining or industrial disputes;

(vii) to repeal the provisions concerning the denial of the right of dismissed and unemployed workers to keep their union membership and the ineligibility of non-members of trade unions to stand for office (sections 2(4)(d) and 23(1) of the TULRAA);

(viii) to bring section 314 of the Penal Code (obstruction of business) in line with freedom of association principles;

(ix) to speed up the work of the Tripartite Commission and to keep the Committee informed of the outcome of the deliberations within the Tripartite Commission on all the above issues, which the Committee firmly hopes will be examined and resolved quickly in accordance with freedom of association principles;

(x) to speed up the legislative process with a view to amending all the provisions mentioned above in line with freedom of association principles. The Committee reminds the Government in this regard that it may avail itself of the technical assistance of the Office. The Committee requests the Government to provide information on measures taken to give effect to the above recommendations and to keep the Committee informed thereon.

(b) As regards the factual aspects of this case:

(i) the Committee once again urges the Government to ensure the dropping of charges brought against Mr. Kwon Young-kil, former president of the KCTU, in connection with his legitimate trade union activities, and requests it to keep it informed of the outcome of Mr. Kwon Young-kil's appeal against the judgment issued by the Seoul District Court;

(ii) the Committee requests the Government to keep it informed of the outcome of the appeal lodged by OMRON Automotive Electronics Korea to the Supreme Court regarding the dismissal of six workers at the Dong-hae Company, and encourages the Government to continue pursuing efforts towards maintaining social dialogue between labour and management on this issue.

(c) As regards the KCTU's new allegations contained in a communication dated 8 June 2001:

(i) the Committee urges the Government to ensure that the activities of the Korean Association of Government Employees' Works Councils (KAGEWC) are no longer hindered in future. The Committee requests the Government to indicate whether any KAGEWC leaders or members were dismissed pursuant to its formation, as alleged, and if so, to take the necessary measures to ensure that they are immediately reinstated in their jobs. The Committee asks the Government to keep it informed of progress made in this regard;

(ii) the Committee requests the Government to indicate the total number of unionists who were arrested and detained in 2001 as well as the charges brought against them. The Committee urges the Government to take the appropriate measures so that the persons detained or on trial as a result of their trade union activities, are released, or that the charges brought against them are dropped. In the case of persons charged with violence or assault, the Committee asks the Government to ensure that these charges are dealt with as soon as possible. It requests the Government to provide information concerning measures taken on all these points.

(d) The Committee once again reiterates its call, on all the parties, to act in good faith and expresses its firm hope that tripartite dialogue will continue on all issues raised in this case. The Committee calls on all parties to exercise restraint in pursuing activities linked to collective labour disputes.

Appendix I

Ministry of Government Administration and Home Affairs

Ref.: Bokjo 12140-340

Date: March 21, 2001

To: President, Yonsei University

C.C.: Director, Student Welfare Office; Manager, Student Support Division

Re.: Request to prohibit the use of facilities by an illegal organization

1. We express our gratitude for your cooperation in the promotion of the state policies.
2. While many people of the country are concerned about illegal collective mass action by some groups, some public officials are intent on forming an organisation that is prohibited by the law and are showing signs of undertaking illegal collective activities such as calling for the introduction of trade unions for public officials. As a result, there is a need to prevent this and establish a strong discipline within the government offices.
3. The government, therefore, is undertaking all that is possible to prevent the undertaking of illegal activities by some public officials; but despite this, an organisation in the name Korean Association of Government Employees Works Councils is reported to be planning to hold an illegal gathering in the Main Auditorium of the College of Commerce and Economics of your university to propose the labour movement of public officials.
4. We call on your cooperation in prohibiting the use of your facilities and preventing the entry of related persons so that the sacrosanct space of a university is not used for such illegal activities.

Minister, Ministry of Government Administration and Home Affairs

Appendix II

Ministry of Government Administration and Home Affairs

Ref.: Bokjo 12140-386

Date: March 30, 2001

To:

C.C.: Manager, Administration Division

Re.: Cooperation in undertaking measures in response to the formation of the Korean Association of Government Employees Works Councils

1. This is related to the previous directives in Bokjo 12140-286 (Feb. 26, 2000), Bokjo 12140-1270 (Sept. 20, 2000), Bokjo 12140-1736 (Dec. 29, 2000), and Bokjo 12140-270 (March 3, 2001).

2. Despite the directive to undertake administrative measures including disciplinary actions in relation to the decision of some of ten representatives of Public Officials Workplace Associations on February 3 at the constitutional Government Centre of the national Assembly, representatives of some workplace associations gathered in a large auditorium in the College of Natural Sciences, Seoul National University on March 24 to form the Korean Associations of Government Employees Works Councils, and elected a president and a number of vice-presidents and are set on pushing ahead with illegal activities like calling for unionisation.

3. These activities, which corrupt the discipline within the government offices and damage public interest, are in violation of the provisions prohibiting collective action except for the conduct of public duty (Article 66, State Public Officials Act, and Article 58, Local Public Officials Act) and the provision prohibiting the formation of amalgamated association (Article 2, Enforcement Decree of the Act on the Establishment and Operation of Public Officials Workplace Associations) and are thus subject to administrative and legal measures.

4. Thus, the heads of unit offices are directed to undertake disciplinary actions and other necessary measures against the representatives of Public Officials Workplace Associations who have actively engaged in the planning and organising of the Korean Association of Government Employees Works Councils, including being elected as officers or delegates.

Enclosed: List of leading members in the organisation of the Korean Association of Government Employees Works Councils.

Minister, Ministry of Government Administration and Home Affairs

Appendix III

List of Trade Unionists Held in Detention (Awaiting Trial) and Imprisoned (Serving Prison Sentence) as of 29 May 2001 provided by the KCTU

Detained before 2001

Name	Position/Union	Accused of/charged with	Date and length of sentence upon conviction
Kim Kyung-hwan	KPU, Monthly Mahl	NSA	4 yr. 6 mth.
Chu Young-ho	KWWF, fmr President Daewoo Motors Workers Union	Strike, OB	1 yr. 6 mth.
Kim Han-sang	KPSU, National Social Insurance	Strike, OB	4 yrs.
Kang Jin-Kwon	KCTU Seoul Council North District	Solidarity demonstration, OB	1 yr.

Detained in 2001

Name	Position/Union	Accused of/charged with	Date and length of sentence upon conviction
Kim Chul-hong	FKTU-KFIU, Housing and Commercial Bank Pres.	Strike, OB	2yr. 6 mth.
Lee Kyung-soo	FKTU-KFIU, Kookmin Bank	Strike, OB	1 yr.
Yoon Jin-yeul	Samsung Dismissed Workers Group	Solidarity demonstration, LAD	Trial
Kim Jae-wook	Community Organizer, KCTU National Workers Rally	LAD	Trial
Lee Jeong-lim	Organizing Director, KCTU Daegu Council	LAD	Trial
Hwan Kyu-seup	KPSU-Korea Science and Technology Institute	Strike, OB	1 yr. 6 mth.
Jeong Sang-Cheul	KPSU-Korea Science and Technology Institute	Strike, OB	1 yr. 6 mth.
Kim Kwong-je	KMWF-Daewoo Motors	Strike, OB	1 yr. 6 mth.
Lee Beum-yeun	KMWF-Daewoo Motors	Strike, OB	1 yr.
Namkung Won	Daewoo Taskforce, Daewoo solidarity	LPUMC	Trial
Kim Dong-kwon	KPSU-KT Atypical Workers	Daewoo solidarity, LAD, LPUMC	Trial
Noh Eui-hak	KFCWU-Daegu Textile Workers Union	Daewoo Solidarity, LPUMC	1 yr. 6 mth.
Lee Yong-deuk	FKTU-KFIU President	Strike, OB	2 yr. 6 mth.
Hong Joon-pyo	KPSU-KT Atypical Workers	Strike	2 yr. 6 mth.
Shin Kwong-hoon	KPSU-National Health Insurance	March 31 workers rally, OPLE	Trial
Jeung Doh-Keun	Construction worker	March 31 Workers rally, OPLE	Trial
Jang Byung-je	KMWF-Daewoo Motors	Strike, OPLE-trying to enter union office	Trial

Name	Position/Union	Accused of/charged with	Date and length of sentence upon conviction
Seung Sam-yong	KMWF-Daewoo Motors	Strike OPLE-trying to enter union office	Trial
Yoo Beum-hyun	Plus Co., International Socialists case	NSA	Trial
Yang Kyu-heon	KCTU, former vice president	3rd Party	1 yr.
Kim Dong-mahn	FKTU-KFIU Organizing and Action Director	Strike, OB	1 yr.
Deek Dae-jin	FKTU-KFIU Housing and Commercial Bank Vice-President	Strike, OB	01, 2 yr. 1 yr. 2 mth.
Park Dae-joon	FKTU-KFIU Housing and Commercial Bank Org. Director	Strike, OB.	1 yr. 6 mth.
Seo Seung-bong	FKTU-KFIU Housing and commercial Bank	Strike, OB.	1 yr. 6 mth.
Nah Kyung-hoon	FKTU-KFIU Housing and Commercial Bank	Strike OB	2 yr.
Kim Ki-joon	FKTU-KFIU General Secretary	Strike, OB	1 yr.
Nam Kyu-won	KCTU-Dismissed Workers Committee	Demonstration	Trial
Hong Seok-hoon	KFCIU Construction Transportation Workers Union	Demonstration	Trial
Park Hyun-jung	KFCWU Hyoshung president	CBA strike	Trial
Kim Pil-ho	KFCWU Hyoshung first vice-president	CBA strike	Trial
Kim Choong-yeul	KFCWU Hyoshung vice-president	CBA strike	Trial
Lee Kyung-seok	KMWF carrier Atypical Workers Union, president	Strike, OB	Trial
Kim Nam-kyun	KMWF carrier Atypical Workers Union, education director	Strike, OB	Trial
Lee Shi-young	KMWF Carrier Atypical Workers Union, organising director	Strike, OB	Trial
Kim Kyung-min	KMWF Daewoo Maintenance	Daewoo solidarity, strike LPUMC	Trial
Noh Chang-yong	KMWF Daewoo Maintenance	Daewoo solidarity, strike LPUMC	Trial
Kim Jae-seong	KMWF Daewoo Maintenance	Daewoo solidarity, strike LPUMC	Trial
Kim Ho-kyun	KMWF Daewoo Maintenance	Daewoo solidarity, strike LPUMC	Trial
Kim Seok	KMWF Carrier Atypical Workers Union	Strike, OB	Trial
Shin Kun-seok	KMWF Carrier Atypical Workers Union	Strike, OB	Trial
Koh Kwong-san	KMWF Carrier Atypical Workers Union	Strike, OB	Trial
Lee Neung-bok	Solidarity action in support of Carrier Atypical Workers Union		Trail
Shin Cheun-seup	KMWF Korean metal Workers Union Tong-il Heavy Industry	Daewoo solidarity, OPLE	Trial

Name	Position/Union	Accused of/charged with	Date and length of sentence upon conviction
Moon kyung-keun	KMWF Lotte Machine Engineering	Daewoo solidarity, strike LPUMC	Trial
Song Jin-woo	KMWF Lotte Machine Engineering	Daewoo solidarity, strike LPUMC	Trial
Kwon Ho-chul	KMWF Daewoo	Strike	Trial

Acronyms

A. Organizations

KPU	Korean Press Industry Workers Union (KCTU)
KMWF	Korean Metal Workers Federation (KCTU)
KPSU	Korean Federation of transportation, Public and Social Services Unions (KCTU)
KCTU	Korean Confederation of Trade Unions
FKTU	Federation of Korean Trade Unions
KFIU	Korean Financial Industry Workers Unions (FKTU)
KFCIU	Korean Federation of Construction Industry Workers Unions (KCTU)
KFCWU	Korean Federation of Textile and Chemical Workers Unions (KCTU)

B. Laws

NSA	National Security Act
OB	"Obstruction of Business" (section 314, Criminal code)
LAD	Law on Assembly and Demonstration
LPUMC	Law on Punishment of Use of Molotov Cocktail
OPLE	"Obstruction of Public Law Enforcement" (section 136, Criminal Code)
Third Party	"Prohibition of Third Party Intervention" (a provision of now non-existent Labour Disputes Adjustment Act, revised and incorporated into the new Trade Union and Labour Relations Adjustment Act)

C. Others

KT	Korea Telecom
CBA	Collective Bargaining Agreement

CASE NO. 2104

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

Complaints against the Government of Costa Rica presented by
— the Association of Employees of the University of Costa Rica (SINDEU),
— the Union of Medical Professionals of the Costa Rica Social Insurance Fund and Allied Institutions (SIPROCIMECA), and
— the Costa Rica Union of Education Workers (SEC)

Allegations: Restrictions of the right of collective bargaining in the public sector, unfair labour practices in the public education sector

507. The complaints are contained in communications from the Association of Employees of the University of Costa Rica (SINDEU), the Union of Medical Professionals of the Costa Rica Social Insurance Fund and Allied Institutions (SIPROCIMECA) and the Costa Rica Union of Education Workers (SEC), dated respectively 6 October 2000, 26 September

2001 and 15 November 2001. The SINDEU provided additional information in a communication dated 29 January 2001.

508. The Government sent its observations in communications dated 5 January, 25 May, 24 August and 23 October 2001.

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

A. The complainant's allegations

510. In its communications of 20 September and 6 October 2000 and 29 January 2001, the Association of Employees of the University of Costa Rica (SINDEU) explains that in the past, associations representing employees of the State University, like the municipal sector organizations and autonomous institutions, have concluded collective agreements based on ILO Conventions and the National Constitution. The complainant alleges that the Constitutional Division of the Supreme Court of Justice, in Ruling No. 4453-00 of 24 May 2000, adopted a principle that absolutely ruled out any legal possibility of collective agreements in the state public sector. SINDEU considers that, according to Convention No. 98, the possibility of ruling out collective bargaining should exist only in the case of persons in positions of managerial authority, public administration or the like. In its communication of 26 September 2001, the Union of Medical Professionals of the Costa Rica Social Insurance Fund (SIPROCIMECA) points out that the principle adopted by the Constitutional Division prevents public employees with statutory employment status from negotiating their conditions of employment; the Fund has in fact declared that the conciliation agreement signed with the Union in 1993 is unconstitutional.

511. SINDEU also alleges that following a strike, the university authorities were guilty of unfair labour practices (pay cuts; transfer and subsequent dismissal proceedings against trade union official Mr. Luis Enrique Chacón Solano for allegedly "abandoning his work constantly and without good reason"; use of blacklists; failure to respect the provision of the collective agreement regarding the declaration of disputes and leave of absence for the purpose of a "permanent session" of the union's executive body (section 58(g) of the collective agreement), this being linked with the dismissal procedure against Mr. Chacón Solano. According to section 58(g):

> The University shall, except in exceptional circumstances or cases of imminent risk, grant paid leave of absence for the purpose of carrying out trade union business in the following cases, and the appropriate authority shall be informed of the reasons for that leave of absence: […]
>
> (g) A dispute may be declared only by the union's central executive body.
>
> Before such a declaration is made, the competent authority shall be informed of the problem with a view to seeking a solution within a period of not more than 24 hours. If no solution is found by the end of that period, a dispute shall be declared.
>
> It shall not be necessary to invoke this procedure before declaring a dispute where a solution has already been proposed in a previous ruling by a university authority.
>
> In any case, the declaration shall take account of the interests of the University and those of the employees.
>
> Once a dispute has been declared, up to 19 members of the union's central executive committee shall be permitted leave of absence from their paid work for the purpose of convening a permanent session of the committee until the dispute is resolved.

In the case of a dispute arising in a section of the union, its section executive committee shall enjoy the same right but only for up to six of its members.

512. SINDEU explains that, despite the commitments made over a number of years by the authorities, some ILO Conventions have not been ratified.

513. Lastly, in its communication of 15 November 2001, the Costa Rica Union of Education Workers (SEC) supplied a copy of a resolution by the administrative authorities dated 7 November 2001, which confirms certain actions by the Ministry of Education with regard to trade union leave that violated the principles of ILO Conventions Nos. 87, 98 and 135 and have accordingly given rise to a complaint to the courts by the administrative authorities.

B. The Government's reply

514. In its communications of 5 January, 25 May, 24 August and 23 October 2001, the Government states that the question of collective bargaining in the public sector, following the Constitutional Division Ruling No. 4453-00, had already been put to the ILO's supervisory bodies by a trade union organization, and the Government refers to the relevant documents. The complainant (SINDEU) and the Rector of the University of Costa Rica requested a clarification of the ruling in question. This notwithstanding, the University Council on 22 August 2000 endorsed the Rector's decision by upholding the collective agreement whose legal force and constitutionality had been questioned. This was reaffirmed on 7 September 2000, when the Council reaffirmed that all rights acquired by university staff under the collective agreement in question were and would continue to be maintained. The Government supplied copies of the relevant constitutional division rulings and describes the efforts that have been made in defence of the right of collective bargaining in the public sector, and specifically refers to the recent Executive Regulation of 31 May 2001, which governs that right in accordance with Convention No. 98, and for which the technical assistance of the ILO was obtained.

515. The Government attached a copy of Ruling No. 4453-00 and of the Constitutional Division's clarification, which in its sections most relevant to the present case states the following:

> The Second Division of the Supreme Court of Justice hereby makes known its opinion: a) collective agreements covered by the terms of section 54 and following of the Labour Code are unconstitutional if they are concluded in the public sector and applicable to employees with a public (statutory) employment status; b) collective agreements are not unconstitutional if concluded in the public sector and applicable to public sector employees, officials or workers whose employment is covered by ordinary law; c) similarly, negotiated collective instruments are compatible with the Constitution where they have been extended or amended in accordance with the general policy regarding public sector collective agreements, unless they were negotiated with employees with a public employment status, in which case they are unconstitutional; d) the Administration and judges who examine labour cases must determine whether the workers concerned are covered by public law or ordinary law in the light of their present or former functions, with a view to determining whether they may be active subjects of collective agreements. This ruling is declarative and retroactive to the date of entry into force of the respective collective agreement, without prejudice to rights acquired in good faith. However, in accordance with section 91 of the Act respecting constitutional jurisdiction, the ruling shall take effect on the date on which its summary is published in the Gazette.
>
> * * *
>
> VIII. One final consideration: what the Division is expressing in the ruling is that it is possible, in any public entities deemed to be state undertakings or economic services, for

collective agreements to be concluded, provided that the persons covered by them are not excluded by the Constitutional rules which prevent officials involved in administration from concluding collective agreements. Thus, in Part A of the substantive part of the ruling, it is stated that collective agreements are unconstitutional if they cover or are concluded by persons with public employment status. On the other hand, they are not unconstitutional where the employees concerned are in an employment arrangement covered by ordinary law (Part B). Within this basic framework of the ruling, it should be understood – logically and because the point was drafted with clarity in mind – that both these cases are part of the same conclusion, and in effect two side of the same coin. One collective agreement in the public sector may be constitutional for those with an employment arrangement governed by ordinary law, and unconstitutional for those whose employment is governed by public law. But who belongs to which sector? This will be decided by the Administration or by a judge (Part D). And Part C of the ruling refers to collective agreements that have been having effects since 1979 and which are not incompatible with the doctrine expounded in the present ruling. Which are those? This is also for the Administration to decide, including the constitutional supervisory bodies, and ultimately for the judge conducting hearings with a view to a final determination by the administrative authorities.

516. In this regard, the Government reports that the bills approving ILO Conventions Nos. 151 and 154, regarding, inter alia, collective bargaining in the public sector, have been submitted to the Legislative Assembly, which shows the Government's good will and its efforts to safeguard the institution of collective bargaining in the public sector in accordance with the ILO's principles.

517. The Government also states that another group of ILO instruments has been submitted to the Legislative Assembly. However, the Government points out that SINDEU has not specified to which ILO instruments it refers when it speaks of failure by the authorities to keep ratification commitments, and that in any case, ratification requires the approval of the instruments in question by the Legislative Assembly, which is separate from and independent of the judicial branch.

518. The Government supplies copies of the various Ministry of Labour administrative resolutions that were adopted following the complaint by SINDEU of unfair labour practices. The most recent of these, dated 19 September 2001, confirms unfair labour practices by the Rector, Vice-Rector of Administration, and the Heads of the Supplies Payments and the Human Resources Departments of the University of Costa Rica in the form of pay cuts, the dismissal procedure against Luis Enrique Chacón Solano and the University's actions with regard to declaring a dispute and permanent session of the SINDEU executive committee, although the contraventions had stopped since the actions in question took place (for example, in February 2001, the exclusion of Mr. Chacón Solano from the payroll was overruled, his normal pay was restored in March 2001, and on 19 March 2001 the Rector was notified of the suspension of the declaration of dispute and permanent session and of the reinstatement of Mr. Chacón Solano); there are therefore no grounds for bringing a complaint before the courts. The resolution urges the University authorities to refrain in future from this type of action against the union and its members. An appeal may be lodged against this resolution. It should also be noted that the investigation by the Labour Inspectorate has revealed anti-union practices with regard to the drawing up of blacklists and threats of pay cuts.

C. The Committee's conclusions

519. *As regards the alleged adverse effects of certain rulings by the Constitutional Division of the Supreme Court of Justice regarding the right of collective bargaining in the public sector, the Committee notes the Government's observations and in particular the Executive Regulation of 31 May 2001 respecting that right. The Committee also notes that legislative bills to ratify ILO Conventions Nos. 151 and 154, which deal among other things with the*

right of collective bargaining in the public administration, have been submitted to the Legislative Assembly for approval. The Committee notes that the Committee of Experts has already expressed its views on the issue of collective bargaining in the public sector, as follows:

> The Committee notes that, according to the report of the technical assistance mission, there are good grounds for believing, including the opinion expressed by the President of the Constitutional Chamber, that the Chamber's rulings Nos. 2000-04453 of 24 May 2000 and 2000-7730 of 30 August 2000, as well as the Chamber's vote of clarification (No. 2000-09690) of 1 November 2000, totally exclude collective bargaining for all public sector employees with a statutory employment status, including those working in public or commercial enterprises or in independent public institutions. The Committee notes the action taken by the Government, in the context of this case law, to defend the right of collective bargaining in the public sector, and more particularly the recent Decree No. 29576-MTSS of 31 May 2001 (regulations for the negotiation of collective agreements in the public sector), which only excludes from this right public servants of the highest level in the public sector, and that the above regulations, in accordance with the recommendations of the technical assistance provided by the ILO, includes certain substantial improvements with regard to the 1993 regulations (for example, abolition of the approval commission, broadening the scope of application of the Convention, limitations on collective bargaining only for the public sector or its representatives) and which were the subject of certain comments by the technical assistance mission with a view to developing future legislation, in which emphasis was placed on certain problems and on the need to clarify certain points.
>
> Nevertheless, the Committee notes that the technical assistance mission, commenting on the above rulings of the Constitutional Chamber, "emphasizes the confusion, uncertainty and even legal insecurity existing with regard to the scope of the right to collective bargaining in the public sector in terms of the employees and public servants covered (according to the rulings, the administration of the public institutions or enterprises is responsible for determining which employees have statutory status, and their decision may in turn be appealed to the judicial authorities) and in parallel concerning the validity and effect of certain collective agreements which are in force, as well as the constitutionality of the large number (according to the Government) of de facto negotiations existing, and even of the recent regulations respecting collective bargaining in the public sector of 31 May 2001. The mission also emphasizes that the ruling of 24 May 2000 indicates that it has retroactive effect".
>
> The Committee expresses its deep concern over this situation, which constitutes a serious violation of Convention No. 98 in terms of the right to collective bargaining in the public sector, since the Convention only allows the exclusion from its application of public servants engaged in the administration of the State *(Article 6)*. However, the Committee notes the existence of a Bill which is before the Legislative Assembly and is supported by the social partners and the Government, the President of the Legislative Assembly and the main opposition party, providing for the ratification of ILO Conventions Nos. 151 and 154 (which address, among other matters, the right of collective bargaining in the public administration) and which would make it possible to find solutions to the problems that exist and strengthen the application of Convention No. 98. It expresses the firm hope that it will be adopted in the very near future and requests the Government to provide information in this respect.

520. *The Committee shares the view expressed by the Committee of Experts. It expresses its deep concern at the situation with regard to the right of collective bargaining in the public sector, which constitutes a serious violation of Convention No. 98, and trusts that this situation may be resolved once the Legislative Assembly ratifies Conventions Nos. 151 and 154. The Committee emphasizes the principle that: "It is imperative that the legislation contain specific provisions clearly and explicitly recognizing the right of organizations of public employees and officials who are not acting in the capacity of agents of the state administration to conclude collective agreements. From the point of view of the principles laid down by the supervisory bodies of the ILO in connection with Convention No. 98, this right could only be denied to officials working in the ministries and other comparable government bodies but not, for example, to persons working in public undertakings or*

*autonomous public institutions" [see **Digest of decisions and principles of the Freedom of Association Committee**, 1996, 4th edition, para. 795].*

521. *As regards the allegations of anti-union discrimination by the University of Costa Rica, the Committee notes with interest the Government's statements to the effect that the anti-union actions in question (dismissal procedure against trade union official Mr. Luis Enrique Chacón Solano, pay cuts, blacklists with threats of pay cuts, etc.) have been remedied, and that the University authorities have been urged in future to refrain from taking action of that type. Taking into account the fact that an appeal may be lodged against the administrative resolution confirming the existence of these unfair practices, the Committee requests the Government to keep it informed of any appeal that may be lodged and of any new decision.*

522. *As regards the allegation regarding the failure by the authorities to honour the commitments to ratify certain ILO Conventions, the Committee notes the Government's statements to the effect that the complainant has not specified which instruments it is referring to, or what ratification requires approval of the instruments by the Legislative Assembly, which is separate from and independent of the executive branch. The Committee notes that according to the Government, various ILO instruments, including Conventions Nos. 151 and 154, have been submitted to the Legislative Assembly.*

523. *Lastly, the Committee requests the Government to keep it informed of the outcome of the complaint lodged by the administrative authorities to the courts after finding that the Ministry of Education had committed violations in the matter of trade union leave.*

The Committee's recommendations

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

(a) The Committee expresses its deep concern at the situation with regard to the right of collective bargaining in the public sector, which constitutes a serious violation of Convention No. 98, and trusts that this situation may be resolved once the Legislative Assembly ratifies Conventions Nos. 151 and 154.

(b) The Committee requests the Government, with regard to the matter of unfair labour practices noted by the administrative authorities, to keep it informed of any appeal and any new decision.

(c) The Committee requests the Government to keep it informed of the outcome of the complaint lodged by the administrative authorities to the courts after confirming that the Ministry of Education had committed violations in the matter of trade union leave.

CASE NO. 2138

INTERIM REPORT

Complaint against the Government of Ecuador presented by the Ecuadorian Confederation of Free Trade Union Organizations (CEOSL)

Allegations: Denial of trade union registration, default on a collective agreement, refusal to convene an arbitration tribunal, legislation restricting trade union rights

525. The Ecuadorian Confederation of Free Trade Union Organizations (CEOSL) presented the complaint in communications dated 14 and 29 May and 1 June 2001. The Government forwarded its observations in a communication dated 31 July 2001 (received in the Office on 24 September 2001).

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

A. The complainant's allegations

527. In its communications dated 14 and 29 May 2001, the Ecuadorian Confederation of Free Trade Union Organizations (CEOSL) alleged the following:

(a) denial of registration to the trade union of the COSMAG security company. According to the CEOSL, the registration application was made on 31 October 2000 and to date the Ministry of Labour has not pronounced on it. The CEOSL also alleges that the failure to recognize the union has made it possible for the enterprise to intimidate workers and cause them to renounce union membership;

(b) violation of the collective labour agreement by the Cervecería Andina S.A. enterprise. According to the CEOSL, the enterprise has defaulted on clause 47 of the collective agreement relating to salaries and wages by not paying the difference between the salary increase established by the public authorities and that laid down in the agreement; and

(c) the administrative authority's failure to convene the Conciliation and Arbitration Tribunal in accordance with the request made by the Workers' Committee of the Hotel Chalet Suisse through the submission of a collective agreement.

528. In its communication dated 1 June 2001, the CEOSL objected to certain clauses of the Public Finances Reform Act dated 30 April 1999, the Economic Transformation (Ecuador) Act dated 13 March 2000 and the Promotion of Investment and Citizen Participation Act dated 18 August 2000. Specifically, the CEOSL claims that the following clauses violate the freedom of association Conventions:

I. Public Finances Reform Act (public sector): the CEOSL objects to the establishment of the National Council for the Remuneration of the Public Sector (CONAREM), which is authorized unilaterally to modify the system for setting salary and wage levels, increases and severance pay as established by law or between the parties by collective agreement. According to the CEOSL, this will lead to the demise of the

process of negotiation between employers and workers' organizations, with the maximum value or percentage of pay increases being imposed through CONAREM.

II. Economic Transformation (Ecuador) Act (private sector): the CEOSL objects to article 85, which allows the hiring of workers on an hourly basis, since in its view the purpose of this is to destroy trade unionism and collective bargaining, and also to article 94, which provides for the standardization of salaries.

III. Promotion of Investment and Citizen Participation Act: the CEOSL objects to the provisions of Title 30 concerning the percentage of workers on work probation contracts, which impede workers' exercise of the right to organize and bargain collectively, and to articles 190 and 191, which allow the employer to negotiate a free collective labour agreement with the workers without requiring them to be organized into a trade union.

B. The Government's reply

529. In its communication dated 31 July 2001, the Government states that the Ministry of Labour has not created any obstacle to the registration of the workers of the COSMAG security company, as incorrectly claimed, but that it did, however, find it impossible to grant the request because various legal requirements for its registration had not been met. The Government adds that 46 persons have left the ranks of those petitioning to set up the trade union, which prevents the union from meeting the established minimum legal standards for registration (it does not have the minimum of 30 workers required by law), in addition to a challenge by the employer; in these circumstances, and on the basis of verification of the facts contained in the attached documents (which informed the trade union of the challenge on 1 November 2000), it can be seen that there has been no denial of rights.

530. As to the laws to which the complainants are objecting, the Government finds it most regrettable that there should be a complaint, without proper grounds, about legal instruments that have been in force since 1999. This attempt to obstruct the reorganization of the State is particularly inappropriate given that the provisions of the Public Finances Reform Act have already been implemented in a proper and positive way. The Government also finds it extremely surprising that, some three years later, the CEOSL is complaining about something that has already been accepted by the country, particularly since the present Government is thus being attacked for a law adopted by its predecessor, and a law that in any case never previously met with any opposition.

531. The Government wishes to make it clear that the function of the National Council for the Remuneration of the Public Sector (CONAREM) is to avoid discrimination and inequalities among workers and employees in the public sector. There are enormous disparities in the pay rates for equal work in different state enterprises, which represent a flagrant violation of workers' rights and the international standards established by the ILO. The Government considers that the salary paid to the President of the Republic is an adequate measure for setting a pay scale for state employees and workers. The Government adds that the budget deficit is caused mainly by the excessive burden of the state payroll, which on occasion seems to be out of control. So it is difficult to see what is wrong with a fair and adequate salary scale, especially given that today a worker in the private sector generally has a monthly income of $100 to $180, making the level of $5,000 dollars considered in 1999 seem preposterous. CONAREM made the following announcement in connection with the revision of the $5,000 level: "The National Council for the Remuneration of the Public Sector (CONAREM) may, if conditions justify it, modify this limit, but always universally, and in no case with any exceptions or special regimes." The Government adds that, within CONAREM, state employees and workers are

duly represented by a member appointed by the Workers', Employees' and Craftsmen's Electoral College.

532. As regards the allegation of limitation of compensation payable under article 54 of the Act, it is true that CONAREM is setting an upper limit on the value of compensation, but this is not in any way damaging to workers' interests, since the sums are determined by tripartite representation. The purpose is to ensure that all state employees are treated equally and that equal work is equally paid.

533. As concerns hiring by the hour, the Government is responding to the increasing range of options in the labour market in order to increase productivity and allow a greater number of people to have access to resources that can sustain the economy, including by diversifying personal income. It adds that this type of hiring is overwhelmingly casual and occasional, so it is incorrect to suggest that it in any way undermines or deregulates labour relations. No employer could consider using a worker hired by the hour to represent the enterprise or to provide technical skills, specialized knowledge or other skills for a specific activity, since the operation could incur serious damage by hiring unsuitable people. This type of work is needed in particular circumstances or where additional manpower is needed. There is no unlawful competition between permanent employees and workers hired by the hour, since the latter fulfil different functions for a limited period determined in advance. In other words, this is a completely different activity and way of working, and another way of gaining access to employment. Moreover, the system of hourly hiring does not affect established or permanent staff. The Government finds it naïve to suggest that there is rotation of staff within organizations because the change of activity turns into untimely dismissal and at the same time that organizations are unable to use the system in a reasonable way, given that each person has his or her own skills and knowledge and all tasks cannot be done by all workers.

534. As regards the alleged standardization of salaries, the Government states that there is no conflict with constitutional or international standards and, indeed, it represents a mechanism for regulating pay.

535. Concerning contracts for a probationary period, the Government points out that 15 per cent is the percentage of total workers only in cases where enterprises are setting up operations or broadening or diversifying their production, activities or trade; these are entirely temporary, fortuitous and exceptional circumstances. The figure of 15 per cent is a maximum, the exception being in the case of workers who are hired to develop new activities. It should be emphasized that, where this exception is not observed, those workers will have to be taken on permanently; rather than damaging workers' interests, this increases the number of workers in the enterprise. Such contracts are issued on a fortuitous and special basis. They make it possible to fill posts that may arise as the result of temporary demand, especially in the production of goods and services. Such instances may arise at the height of the tourist season, or during harvesting or periods of unexpected demand for a product or service. It can be seen that the standard in no way hurts the interests of permanent employees, but rather provides support for their work, protecting them from forced labour.

536. In response to the allegations concerning the Cervecería Andina S.A., the Government states that it knows unofficially of a conflict between the employers and the workers, but that it is not possible to provide the relevant information, since the agreements reached by the employers and workers have not been sent to the Ministry.

C. The Committee's conclusions

537. *The Committee notes that in this case the complainant organization alleges: (1) denial of registration to the trade union of the COSMAG security company and intimidation of workers to make them renounce union membership in the context of the delay in the registration process; (2) default on the collective labour agreement by the Cervecería Andina S.A. enterprise; (3) failure to convene the Conciliation and Arbitration Tribunal in accordance with the request made by the Workers' Committee of the Hotel Chalet Suisse through the submission of a collective agreement. The Committee also notes that the complainant organization objects to certain provisions of a number of laws, which, in its view, violate Conventions Nos. 87 and 98.*

538. *As regards the alleged denial of registration to the trade union of the COSMAG security company and intimidation of workers to make them renounce union membership in the context of the delay in the registration process, the Committee takes note of the Government's statement that the registration was not allowed because 46 persons had left the ranks of those petitioning to set up the trade union (the Government attaches a document submitted by the enterprise challenging the registration application, which indicates that 46 workers had left the union) and that the legal requirement (Labour Code) for a minimum of 30 workers had not been met. In this connection, noting that the Government attaches to its reply a document showing that over 20 workers revoke any signature made by them as part of the establishment of the trade union, which states that "we support the activity of our employer, and thus maintain our source of work", the Committee requests the Government to take measures to investigate whether there has been any kind of pressure on the enterprise's workers not to participate in the establishment of the trade union, and, if so, to apply legal sanctions and promptly register the trade union in question. The Committee requests the Government to keep it informed of developments in that respect.*

539. *Moreover, as regards the legal requirement laid down in the Labour Code for a minimum of 30 workers to establish a trade union, invoked as justification for not registering the trade union of the COSMAG company, the Committee recalls that several years ago the Committee of Experts on the Application of Conventions and Recommendations indicated that the minimum number should be reduced in order not to hinder the establishment of trade unions at enterprises, especially taking into account the very significant proportion of small enterprises in the country. This point of view is shared by the Committee, which requests the Government to take the necessary measures to amend the Labour Code accordingly. The Committee draws this aspect of the case to the attention of the Committee of Experts on the Application of Conventions and Recommendations.*

540. *As regards the allegation of default on the collective labour agreement by the Cervecería Andina S.A. enterprise (specifically, it is alleged that the enterprise has defaulted on the clause relating to salaries and wages), the Committee notes that the Government has simply stated that it knows unofficially of a conflict between the employers and the workers, but that it is not possible to provide the relevant information, since the agreements reached by the employers and workers have not been sent to the Ministry of Labour. The Committee recalls "the importance which it attaches to the obligation to negotiate in good faith for the maintenance of the harmonious development of labour relations" and that "agreements should be binding on the parties" [**Digest of decisions and principles of the Freedom of Association Committee**, 1996, paras. 814 and 818]. That being so, the Committee requests the Government to take measures to investigate and, if the allegations are found to be true, to ensure that the relevant collective agreement is observed.*

541. *As regards the allegations concerning the functions of the National Council for the Remuneration of the Public Sector (CONAREM) (imposition of a maximum value or percentage of pay increases or severance pay) established under the Public Finances Reform Act dated 30 April 1999, the Committee takes note of the Government's statement to the effect that: (1) the role and competence of CONAREM is to avoid discrimination and inequalities among workers and employees in the public sector given the enormous disparities in the pay rates for equal work in different state enterprises; (2) the budget deficit is caused mainly by the excessive burden of the state payroll, which on occasion seems to be out of control; and (3) workers are represented by a member appointed by the Workers', Employee' and Craftsmen's Electoral College. The Committee recalls that all public administration workers who are not employed by the state administration should enjoy collective bargaining rights [**Digest,** op. cit., para. 79] and should be able to negotiate, within the framework of their employment conditions, issues relating to salary increases or the value of severance pay, a function currently ascribed to CONAREM. The Committee requests the Government to take measures to amend the relevant law accordingly.*

542. *As regards the allegations in connection with article 85 of the Economic Transformation (Ecuador) Act (private sector), which allows the hiring of workers on an hourly basis, with the purpose of destroying trade unionism and collective bargaining, the Committee takes note of the Government's statement to the effect that: (1) hiring by the hour is a response to the increasing range of options in the labour market in order to increase productivity and allow a greater number of people to have access to resources that can sustain the economy; (2) this type of hiring is casual and occasional, and needed in particular circumstances or where additional manpower is needed; and (3) there is no unlawful competition between permanent employees and workers hired by the hour, since the latter fulfil different functions for a limited period determined in advance. In this respect, the Committee requests the Government to inform it whether workers hired by the hour have the right to establish or join the organizations of their choice and whether they enjoy collective bargaining rights.*

543. *As regards the allegations in connection with article 94 of the Economic Transformation (Ecuador) Act (private sector), which provides for the standardization of salaries, the Committee takes note of the Government's statement that there is no conflict with constitutional or international standards and that it represents a mechanism for regulating pay. The Committee requests the complainant organization and the Government to provide information on the application of this article (specifically whether it implies that salary levels may not be freely set through collective bargaining) and forward a copy of the law.*

544. *As regards the allegations in connection with Title 30 of the Promotion of Investment and Citizen Participation Act, relating to the proportion of workers (15 per cent) that may be employed under work probation contracts and thus may not, in the CEOSL's view, exercise their right to organize and bargain collectively, the Committee takes note of the Government's statement that this percentage is authorized only in cases where enterprises are setting up operations or broadening or diversifying their production, activities or trade, and that, where this exception is not observed, one effect is that those workers will have to be taken on permanently. The Committee reminds the Government that "Workers undergoing a period of work probation should be able to establish and join organizations of their choosing, if they so wish" and "No provision in Convention No. 98 authorizes the exclusion of staff having the status of contract employee from its scope" [**Digest,** op. cit., paras. 237 and 802]. Accordingly, the Committee requests the Government to inform it whether workers on the probationary contracts referred to in the Act enjoy the rights conferred by Conventions Nos. 87 and 98.*

545. *As regards the allegations in connection with articles 190 and 191 of the Promotion of Investment and Citizen Participation Act, which, according to the CEOSL, allow the employer to negotiate a free collective labour agreement with the workers even if they are not organized into a trade union, the Committee regrets that the Government has not communicated its observations on this. The Committee recalls that the Collective Agreements Recommendation, 1951 (No. 91), stresses the role of workers' organizations as one of the parties in collective bargaining; it refers to representatives of unorganized workers only when no organization exists. In these circumstances, direct negotiation between the undertaking and its employees, bypassing representative organizations where these exist, might be detrimental to the principle that negotiation between employers and organizations of workers should be encouraged and promoted [**Digest,** op. cit., para. 785]. Accordingly, the Committee requests the Government promptly to communicate its observations on the issue.*

546. *Finally, the Committee regrets that the Government has not communicated its observations on the alleged failure by the administrative authority to convene the Conciliation and Arbitration Tribunal in accordance with the request made by the Workers' Committee of the Hotel Chalet Suisse through the submission of a collective agreement. The Committee requests the Government to communicate its observations on this issue without delay.*

The Committee's recommendations

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

(a) As regards the alleged denial of registration to the trade union of the COSMAG security company and intimidation of workers to make them renounce union membership in the context of the delay in the registration process, the Committee requests the Government to take measures to investigate whether there has been any kind of pressure on the enterprise's workers not to participate in the establishment of the trade union, and, if so, to apply legal sanctions and promptly register the trade union in question. The Committee requests the Government to keep it informed of developments in that respect.

(b) As regards the legal requirement laid down in the Labour Code for a minimum of 30 workers to establish a trade union, invoked as justification for not registering the trade union of the COSMAG company, the Committee considers that the minimum number should be reduced in order not to hinder the establishment of trade unions at enterprises, especially taking into account the very significant proportion of small enterprises in the country. The Committee requests the Government to take the necessary measures to amend the Labour Code accordingly. Furthermore, the Committee draws this aspect of the case to the attention of the Committee of Experts on the Application of Conventions and Recommendations.

(c) As regards the allegation of default on the collective labour agreement by the Cervecería Andina S.A. enterprise (specifically, it is alleged that the enterprise has defaulted on the clause relating to salaries and wages), the Committee requests the Government to take measures to investigate and, if the allegations are found to be true, to ensure that the relevant collective agreement is observed.

(d) Recalling that all public administration workers who are not employed by the state administration should enjoy collective bargaining rights and should be able to negotiate, within the framework of their employment conditions, issues relating to salaries or the value of severance pay, the Committee requests the Government to take measures to amend the Public Finances Reform Act dated 30 April 1999 in its provisions referring to the functions of the National Council for the Remuneration of the Public Sector (CONAREM) (imposition of maximum salary increases and severance pay).

(e) As regards the allegations in connection with article 85 of the Economic Transformation (Ecuador) Act (private sector), which allows the hiring of workers on an hourly basis, the Committee requests the Government to provide information on the application of the article (specifically, whether workers hired by the hour have the right to establish or join the organizations of their choice and whether they enjoy collective bargaining rights).

(f) As regards the allegations in connection with article 94 of the Economic Transformation (Ecuador) Act (private sector), which provides for the standardization of salaries, the Committee requests the complainant organization and the Government to provide information on the application of this article (specifically whether it implies that salary levels may not be freely set through collective bargaining).

(g) As regards the allegations in connection with Title 30 of the Promotion of Investment and Citizen Participation Act, relating to the proportion of workers (15 per cent) that may be employed under work probation contracts, the Committee requests the Government to inform it whether such workers enjoy the rights conferred by Conventions Nos. 87 and 98.

(h) As regards the allegations in connection with articles 190 and 191 of the Promotion of Investment and Citizen Participation Act, which, according to the CEOSL, allow the employer to negotiate a free collective labour agreement with the workers even if they are not organized into a trade union, the Committee recalls that direct negotiation between the undertaking and its employees, bypassing representative organizations where these exist, might be detrimental to the principle that negotiation between employers and organizations of workers should be encouraged and promoted, and requests the Government promptly to communicate its observations on the issue.

(i) The Committee requests the Government to communicate without delay its observations on the alleged failure by the administrative authority to convene the Conciliation and Arbitration Tribunal in accordance with the request made by the Workers' Committee of the Hotel Chalet Suisse through the submission of a collective agreement.

CASE NO. 2121

DEFINITIVE REPORT

Complaint against the Government of Spain presented by General Union of Workers of Spain (UGT)

Allegations: Denial of the right to organize and strike, freedom of assembly and association, the right to demonstrate and collective bargaining rights to "irregular" foreign workers

548. The General Union of Workers of Spain (UGT) presented the complaint in a communication dated 23 March 2001. The Government sent its observations in a communication dated 26 September 2001.

549. Spain 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

550. In its communication dated 23 March 2001, the General Union of Workers of Spain (UGT) alleges that, in Basic Act No. 8/2000 on the Rights and Freedoms of Foreigners in Spain and their Social Integration (OL 8/2000), which entered into force on 23 January 2001, the Government imposes serious restrictions on the basic rights provided by the Act that it amends (OL 4/2000 of the same title, which had been in force for less than a year). In the complainant's view, the new Act specifically restricts the exercise of right to organize and strike, freedom of assembly, demonstration and association and, by extension, collective bargaining rights, through the clause that foreigners may exercise such rights and freedoms only "when they obtain authorization for their stay or residence in Spain" (OL 8/2000, section 11).

551. The complainant also alleges that the new Act causes legal insecurity by creating a new, unlawful and unjust situation that provokes social and family problems among immigrants living in the country. There are two main reasons for this: the sudden change in the law, which gives rise to fears of administrative, including political persecution; and the lack of clear intermediate regulations that would allow a less traumatic transition for the large immigrant communities in Spain, that consist of hundreds of thousands of families and individuals. With the immediate introduction of new regulations, it would appear that immigrants present in Spain before the new Act came into effect, who enjoyed a more favourable legal status, including certain recognized rights and freedoms, will now be subjected to a much stricter regime, equivalent to that of future immigrants, without any additional advantage deriving to them from their presence in the country. Those who do not yet have the status of residents but are in the process of applying will also be deprived of the rights they enjoyed under the previous Act.

552. The complainant adds that the new law promoted by the Government conflicts openly with articles 10.2 and 13.1 of the current Spanish Constitution, adopted in 1978. These articles establish, respectively, that "norms pertaining to the basic rights and freedoms recognized by the Constitution shall be interpreted in conformity with the Universal Declaration of Human Rights and relevant international treaties and agreements ratified by Spain" and "foreigners in Spain shall enjoy the public freedoms guaranteed by the present title ("On Basic Rights and Responsibilities") in the terms established by treaties and the law". These

provisions, which were faithfully reproduced in the previous Act (OL 4/2000), section 3 of which provides that "foreigners in Spain shall enjoy, on an equal footing with Spanish nationals, the rights and freedoms recognized in Title I of the Constitution", are not upheld by the new Act, which establishes a clearly wrong interpretation in declaring that "as a general criterion of interpretation, it shall be understood that foreigners shall exercise their rights as recognized by this Act on an equal footing with Spanish nationals" (section 3 of OL 8/2000) and removing the broad criterion of interpretation (Universal Declaration of Human Rights) present in OL 4/2000.

553. Moreover, in the complainant's view, this new legal situation was created on the basis of an abuse of power and a policy of dissuasion used by the Government against foreigners present in the country on an irregular basis and future immigrants planning to come to Spain. This is not only a contravention of national and international law (Universal Declaration of Human Rights, European Social Charter, European Union Charter of Fundamental Rights and ILO constitutional principles and Conventions), but is also undesirable from the social point of view. The UGT alleges that this is an abuse of state power using a legal mechanism that could imply a certain repression given many immigrants' simple need to survive. The complainant also considers this conduct to be particularly discriminatory against the so-called "irregular" foreigners living in the country. It should be emphasized in this connection that the volume and level of the waves of immigration into the European Union have been the subject of repeatedly voiced concerns on the part of the European institutions (increasing numbers of immigrants from North Africa, Latin America and certain eastern European countries are entering Spain and this flow is not expected to subside for several years). The complainant considers in this connection that the public authorities have not adopted adequate measures (promotion of economic growth in poorer countries and departure from the purely political measures used to date) in order to protect the legitimate desire on the part of socio-economic migrants to improve their own circumstances and those of their families.

554. Finally, in order to demonstrate the true scope of the present complaint in relation to the group of people affected and their situation, the complainant indicates that, since the ILO Conventions on freedom of association and other labour standards recognize workers as the holders of the rights thereby guaranteed, the affected foreigners in Spain shall thence be understood to hold the status of protected workers, even if their presence in the country is not entirely regular. This is the case because the affected immigrants are, for the most part, de facto workers with the prospect of remaining so, since that is the reason for their presence in Spain. Likewise, the complainant indicates that the interpretation applied to the relevant ILO Conventions makes it possible, given the nature of the rights protected, to include the case under discussion.

B. The Government's reply

555. In its communication dated 26 September 2001, the Government states that OL 8/2000 is based on the fundamental premise that foreigners shall exercise the rights recognized by the given Act on an equal footing with Spanish nationals. This concept is present in the Political Constitution and reflected in the three Acts on the status of foreigners recently adopted in Spain, namely OL 7/1985, OL 4/2000 and OL 8/2000.

556. According to the Government, the issue of the restriction of the rights and freedoms of foreigners in Spain, and particularly freedom of association, has other dimensions, in which the imbalance and inequality in the interpretation of the system of rights and freedoms is between, not nationals and foreigners, but rather "legal immigrants" and "illegal immigrants". The latter are restricted in their exercise of certain rights (as ensues from OL 7/1985, which was not, however, the subject of a complaint to any ILO body). In reality, OL 8/2000 clarifies the status of foreigners legally present in Spain, who are

distinguished from those unlawfully present. This essential distinction was blurred in OL 4/2000, which permits the application of any mechanism that the legal regulations can provide in order to control migratory flows. The Government specifies that, where the rights of illegal foreigners are restricted, it is not because they are foreigners, but precisely because they are illegal. Effectively, an illegal immigrant is in a particular, contradictory legal situation: while, as an individual, he is undeniably the holder of rights and freedoms, his illegal status separates him from the legal regime that, in the societies of today, would allow him to exercise and render effective such rights and freedoms. OL 8/2000 thus establishes a distinction between the rights held and exercised by *all* foreigners, which are basic rights of the individual (for example, the right of foreigners in Spain to seek emergency health care and the continuation of that care until discharge from hospital; the right of pregnant women to medical care during pregnancy, birth and the post-natal period; the right of foreigners to basic social services and benefits whatever their administrative status; the right to free legal aid, if they are unable to pay, in connection with all administrative or legal procedures relating to refusal of entry, repatriation or expulsion), and those which may be exercised only by *those whose presence in the country is legal* (the right to vote in municipal elections on a reciprocal basis; housing assistance; reunion of the family and exercise of the rights of assembly, demonstration and association and the right to organize and strike; the last two are also contingent on the individual having the status of worker).

557. As regards the supposed unconstitutionality of OL 8/2000, the Government emphasizes that the complainant is indicating its conflict with an organic law, which holds the highest place in the hierarchy of national legal instruments and was approved by the General Courts, seat of the democratic sovereignty of the Spanish people. The Act aims to guarantee the integration into Spanish society of all foreigners living in the country, control migratory flows into the national territory, provide the State with instruments to combat the mafias that traffic in human beings and exploit their labour and implement Spain's international commitments, making due use of the powers granted States by those commitments. The reform of OL 4/2000 (which OL 8/2000 effectively replaces) was undertaken in view of the situation and characteristics not only of the current immigrant population in Spain but also that anticipated in the years to come. It deals with immigration as a structural phenomenon that has turned Spain into a recipient of migratory flows and also (because of its situation) into a transit point on the way to other States whose border controls, on routes out of Spain, have been eliminated or substantially scaled down. As regards the legal compatibility of OL 8/2000 with the national Constitution, the Government emphasizes that the State Ombudsman, to whom a new appeal on the unconstitutionality of the Act was submitted, decided to reject the appeal on the basis that, in his judgement, it lacked justificatory grounds. Moreover, the issue of restriction of the exercise of certain rights by illegal immigrants had already been considered in detail by the Constitutional Tribunal in connection with OL 7/1985. The Government adds that, since that Act's treatment of illegal immigrants was not declared unconstitutional (STC115/1987), it may now be affirmed that the provisions of OL 8/2000, which give a more generous interpretation of the legal status of illegal immigrants, are not unconstitutional either.

558. As regards the claim that OL 8/2000 is not compatible with the relevant international norms, the Government declares that the exercise of certain rights under international legal treaties, conventions and declarations remains dependent on the legality of the foreigner's situation, including certain rights under: the Universal Declaration of Human Rights of 10 December 1948; the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights of 1966; and the European Convention for the Protection of Human Rights and Fundamental Freedoms of November 1950. Among those rights are the right of every person to freedom of peaceful assembly and freedom of association, including the right to establish and join trade unions

in order to defend one's interests. The Government emphasizes, however, that, under these international instruments, the exercise of individual rights and freedoms remains subject only to the restrictions established by law, with the sole objective of ensuring recognition and respect for the rights and freedoms of others and meeting the rightful demands of morality, public order and the general well-being of a democratic society. More specifically, the International Covenant on Economic, Social and Cultural Rights provides that countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals. The Government stresses that, overall, the common denominator of these international instruments is that, on the one hand, they recognize these freedoms while, on the other, making it possible for the national legislator to establish, naturally by means of law, restrictions or a basic requirement for legal status in order to exercise those rights, in order to protect the assets of the democratic society. Hence, the Government specifies, 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), cover basic rights pertaining to the subjects and concepts most in need of legal regulation, such as workers and entrepreneurs. However, freedom of association, assembly and demonstration in the occupational sense, as elements of these freedoms in general and part of the vast body of basic human rights and granted to workers' and employers' organizations, must be based on respect for the civil liberties listed in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The requirement for a framework of legality contained in these treaties should be transferable to the exercise of these rights in the field of labour where the holder of the rights is not the person as such but the person in the context of occupation, employment and work.

C. The Committee's conclusions

559. *The Committee notes that in this case the General Union of Workers of Spain (UGT) alleges that the new law on foreigners (Act No. 8/2000 on the Rights of Foreigners in Spain and their Social Integration) restricts foreigners' trade union rights by making their exercise dependent on authorization of their presence or residence in Spain. The complainant also states that the lack of clear intermediate regulations is causing a sudden change in the law, meaning that foreigners are subjected to a much stricter regime and those who are in the process of applying for authorization will be deprived of the rights they enjoyed.*

560. *The Committee also takes note of the Government's statements, in response to the allegations of discrimination, to the effect that the law was amended not so much in order to distinguish the situation of foreigners from that of nationals as to establish a clear distinction between the so-called "legal" foreigners, who enjoy trade union rights on an equal footing with nationals, and "irregular" foreigners. The objective is to control migratory flows and combat the mafias who traffic in human beings and their subsequent exploitation at work by creating a clear distinction, in contrast to the earlier Act, between Spanish nationals and legal foreigners, on the one hand, and irregular foreigners, on the other.*

561. *In the light of the above information, the Committee observes that the issue in this case consists of determining whether it is appropriate, as the complainant requests, to interpret broadly the concept of "workers" used in the ILO Conventions on freedom of association. In this context, the Committee recalls that Article 2 of Convention No. 87 recognizes the right of workers, without distinction whatsoever, to establish and join organizations of their own choosing without previous authorization. The only permissible exception to Convention No. 87 is that set out in Article 9 concerning the armed forces and the police. Thus, in the Committee's opinion, Convention No. 87 covers all workers, with only this*

exception. Consequently, as concerns the legislation in question, the Committee requests the Government to take the terms of Article 2 of Convention No. 87 into account. It also emphasizes that unions must have the right to represent and assist workers covered by the Convention with the aim of furthering and defending their interests.

The Committee's recommendation

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

The Committee requests the Government, as concerns the legislation in cause, to take into account the terms of Article 2 of Convention No. 87 according to which workers, without distinction whatsoever, have the right to join organizations of their own choosing.

CASE NO. 1888

INTERIM REPORT

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

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

563. The Committee previously examined the substance of this case at its November 1997, June 1998, June 1999, May-June 2000, November 2000 and June 2001 meetings, presenting an interim report to the Governing Body in all these instances [see 308th Report, paras. 327-347; 310th Report, paras. 368-392; 316th Report, paras. 465-504; 321st Report, paras. 220-236; 323rd Report, paras. 176-200; and 325th Report, paras. 368-401].

564. The Government provided further information in a communication dated 9 October 2001.

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

A. Previous examination of the case

566. This case, which dates back to June 1996, concerns very serious allegations of violations of freedom of association: the Government's interference in the functioning and administration of the Ethiopian Teachers' Association (ETA), its refusal to continue to recognize it, the freezing of its assets and the killing (including that of Mr. Assefa Maru, one of the ETA leaders), arrest, detention (notably the trial, sentencing and detention of Dr. Taye Woldesmiate, Chairman of the ETA), harassment, dismissal and transfer of ETA members and officials. The Committee expressed on several occasions its grave concern with respect to the extreme seriousness of the case and urged the Government to cooperate in providing a detailed response to all the questions posed by the Committee.

567. At its June 2001 session, in the light of the Committee's interim conclusions, the Governing Body approved the following recommendations [325th Report, para. 401]:

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

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

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

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

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

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

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

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

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

B. The Government's new observations

568. In its communication of 9 October 2001, the Government states that the new allegations made by the complainants [see 325th Report, paras. 379-390] are unfounded in many respects. Before answering those, the Government explains the current legal framework as regards freedom of association and its application in practice, in order to refute the complainants' sweeping allegations that there is no freedom of association in Ethiopia.

569. The principle of freedom of association is recognized in articles 31 and 42 of the Constitution. Article 113(1) of Labour Proclamation No. 42/1993 provides that workers and employers have the right to establish organizations. Article 114 of the Proclamation gives workers the right to establish trade unions at enterprise, federation and confederation levels. Article 125 of the Proclamation guarantees the right to bargain collectively on matters concerning employment relationships and conditions of work.

570. The Government has undertaken a study on the need to amend the labour legislation. The matter has been discussed in the Tripartite Labour Advisory Board. Amendments to the

Labour Proclamation on trade union diversity at enterprise level on dissolution of trade unions and other subjects are before the Council of Ministers. The Law on Civil Service Reform including the labour rights of civil servants is before the House of People's Representatives.

571. Ethiopia has been a member of the ILO since 1923, and has remained an active member of the organization. It has contributed its share in promoting and implementing the principles and activities of the ILO and has benefited from the technical assistance provided by the Office. At present, Ethiopia is serving as a titular member of the ILO Governing Body. Ethiopia has ratified 18 Conventions, six of which are fundamental Conventions, including Convention No. 87 and Convention No. 98. The Government of Ethiopia has continued to ensure the implementation of these Conventions, including by incorporating them into the national laws and practices of the country.

572. Workers and employers freely exercise the right of freedom of association; they draw up their associations' constitution on their own through free discussion and expression of views among association members. Moreover, workers' and employers' organizations freely participate in the country's political, economic and social affairs. Their representatives participate at the different levels of the political system. There exist many workers' organizations, which are legally established and operate freely, including the Confederation of the Ethiopian Trade Unions, and various associations which operate separately from the Confederation. The Ethiopian Employers' Federation, which had been banned in 1978 by the military regime, was re-established in May 1997. Trade unions and employers' associations are represented by two members in the National Labour Advisory Board. According to the Government, this shows that freedom of association is widely enjoyed by various groups in the country.

573. With regard to the trial and conviction of Dr. Taye Woldesmiate, the Government of Ethiopia had clearly established that the legal process in this case from its very inception has been conducted in accordance with the laws of the country. Information was forwarded on the judicial procedures in which all the defendants have been represented by lawyers of their own choice and all guarantees of due process of law observed throughout the trial. Hence, since the fact that the trial has been conducted by a court duly constituted on the principles of rule of law and independent judiciary, doubts expressed with regard to the fairness of the trial process is not warranted. It should also be noted that there is no room in the Ethiopian legal system of the executive branch of the Government to interfere in the functioning of the judiciary. After examining the case, the court decided on the criminal responsibility of the accused and the co-defendants without undue delay.

574. Dr. Taye Woldesmiate appealed to the Supreme Court after the lapse of the prescribed period of appeal. The Court nevertheless accepted to hear the appeal. Some of the adjournments in the case related only to the receivability of the appeal. As such, there was no undue delay in the judicial process both at the trial and appeal stages. Currently, the appeal lodged by Dr. Taye Woldesmiate against his conviction is pending before the Supreme Court, which is set to continue examining the appeal on 23 October 2001.

575. The allegation that Dr. Taye Woldesmiate's prison conditions are severe is false. His conditions are no different from any other detainee in the country. His physical and mental well-being are fully guaranteed, including access to medical services and visits by his relatives, acquaintances and international connections including representatives of EI and other organizations.

576. Hence, the Government considers that the conclusions of the Committee with regard to the matter are not founded on the applicable laws and facts and respectfully requests the Committee to examine carefully the replies of the Government on the case and the fact that

the defendant is still pursuing the appeal process before formulating its recommendations. The judicial process of a country should be respected. Any suggested measure other than the exhaustion of the legal process would be seriously undermining the independence of the courts and rule of law in the country. The Government will keep the Committee informed of developments concerning the ongoing appeal process.

577. As regards the alleged interference in the functioning of the ETA, the Government once again assures the Committee that it has never interfered in the functioning of any association in the country. The election of the new Executive Committee as well as any matter related to the work of the organization has been done on the basis of the decision and choosing of its members. The Government never accords favourable or unfavourable treatment to an organization as compared to another except registering an organization duly established in compliance with the law. As far as judicial procedures are concerned, all measures are being taken in line with the court decision. Hence, the allegation regarding Government interference is without any foundation whatsoever.

578. Regarding the assets of ETA, the new Executive Committee of the Ethiopian Teachers' Association has secured a right on the property of the association through a decision of the High Court. The Government as such cannot apportion or reduce the property of the association as it may amount to serious violation of the constitutional right to property. It is only the association which has a right to apportion or dispose otherwise its property.

579. With regard to the allegations of arbitrary transfer or dismissal of ETA members, the Government reiterates once again that the allegations are without any foundation whatsoever. In its previous submissions the Government has provided a detailed response as to the whereabouts of persons allegedly aggrieved by government actions, including those retired because of age, or still working as teachers, or duly compensated. Hence, the Government has no further reply to this matter as the complainants have failed to come up with any update of new specific information on the matter. The new education policy, which is wrongly taken as a cause for the alleged measures, is rather a significant progressive instrument intended to create better conditions for the learning-teaching process including teaching in one's own mother tongue. Hence, the allegation in this regard is far from reality. The new allegations of the complainant lack substance and are designed to create a negative image by a politically motivated fabrication.

580. With respect to the teachers' evaluation system, as repeatedly indicated in the country's responses, the major aim of the teachers' evaluation system is to promote academic efficiency and capability with a significant involvement of the teacher as a prime mover in obtaining quality education. The system enables teachers, while securing their rights and benefits, to undertake their professional responsibilities and to be accountable to both students and communities. So the functioning of the system has no relation with union membership or non-membership of its users and it has never been used as a pretext for anti-union discrimination.

C. The Committee's conclusions

581. *The Committee r**e**calls that this case concerns very serious allegations of violations of freedom of association, which it has examined no less than six times on the merits, without being able to note much progress so far.*

582. *As regards the trial and conviction of Dr. Taye Woldesmiate, the Committee notes that the appeal against his conviction is pending before the Supreme Court, where it was supposed to be examined on 23 October 2001. Reiterating its previous comments on the need for due process, for trade unionists and other citizens alike [see **Digest of decisions and principles of the Freedom of Association Committee,** 4th edition, 1996, para. 102], the Committee*

requests the Government to ensure that Dr. Taye Woldesmiate be afforded all guarantees to present his defence, and to transmit the decision of the Supreme Court as soon as it is issued. The Committee further requests the Government to keep it informed of developments in the situation, in particular as regards any measure taken to release Dr. Taye Woldesmiate and his co-accused.

583. *As regards the Government's argument on respect for the national judicial process, the Committee recalls that when it requests a government to provide records of judicial proceedings, such a request does not reflect in any way on the integrity or independence of the judiciary. The essence of judicial procedure is that results are known, and confidence in its impartiality rests on their being known [**Digest**, ibid., para. 23]. Furthermore, although the use of internal legal procedures, whatever the outcome, is undoubtedly a factor to be taken into consideration, the Committee has always considered that, in view of its responsibilities, its competence to examine allegations is not subject to the exhaustion of national procedures [para. 33 of the Procedure of the Committee].*

584. *The Committee notes with regret that, despite repeated requests to that effect, the Government has not provided any information as regards the killing of Mr. Assefa Maru. It requests it once again to hold an independent inquiry into this serious matter and to keep it informed of developments.*

585. *In its previous recommendations, the Committee had recalled that teachers, like other workers, should have the right to form organizations of their own choosing and to negotiate collectively; it requested the Government to amend its legislation accordingly and to keep it informed of developments. The Committee notes in this respect that the Government has undertaken a study on the need to amend the labour legislation, which has been discussed in the Tripartite Labour Advisory Board, that amendments relating to trade union pluralism and other subjects are before the Council of Ministers, and that the Law on Civil Service Reform, including the labour rights of civil servants, is before the House of People's Representatives. Whilst noting this information, the Committee suggests that the Government avails itself of the technical assistance of the Office, as offered on many occasions before, with a view to ensuring the compatibility of new provisions with freedom of association principles. It requests the Government to keep it informed on developments in this respect.*

586. *In its previous recommendations, the Committee had requested both the Government and the complainants to provide updated information on ETA leaders and members still aggrieved by the Government's actions as regards charges, detention or harassment due to trade union membership or activities [325th Report, para. 401(c)] and transfers and dismissals [ibid., para. 401(d)]. The Committee is not in a position to examine these allegations as no such information was provided. It requests once again the Government and the complainants to provide updated information on these aspects of the case.*

587. *From a more general point of view, but germane to the issues raised in the immediately preceding paragraph, the Committee notes the information provided by the Government on the legal framework of freedom of association in the country and its application in practice, and cannot but observe that it is at considerable variance with the latest allegations submitted by the complainants [see 325th Report, paras. 379-390]. These contradictions relate practically to all the remaining substantive issues: interference in the functioning of the ETA, the assets of the ETA, and the use of the evaluation system as a pretext for anti-union discrimination. The Committee will not repeat here the comments it has already made, at some length, in all its previous conclusions and recommendations. Suffice it to say that these are not innocuous issues, and that the Government should seriously consider initiating some positive steps to resolve the deadlock, and ensure that not only the letter of freedom of association is respected, but also that freedom of*

association principles are applied in practice. This implies the existence of true workers' organizations, freely chosen by their members, able to function legally and freely without any hindrance from the authorities, and real tripartite dialogue. Noting that, according to the Government, legislative amendments to the Labour Proclamation are before the Council of Ministers and expecting that the legislative amendments considered by the Government will be in conformity with Conventions Nos. 87 and 98, the Committee, once again, suggests that the Government avail itself of the technical assistance of the Office on the matters examined in the present case.

The Committee's recommendations

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

(a) The Committee requests the Government to ensure that Dr. Taye Woldesmiate be afforded all guarantees of due process, and to transmit the decision of the Supreme Court as soon as it is issued; noting that the matter was due to be heard on 23 October 2001, the Committee further requests the Government to keep it informed of developments in this respect, in particular as regards any measure taken to release Dr. Taye Woldesmiate and his co-accused.

(b) Noting with regret that, despite repeated requests to that effect, the Government has not provided any information on the killing of Mr. Assefa Maru, the Committee requests it once again to hold an independent inquiry into this matter and to keep it informed of developments.

(c) The Committee requests the Government to amend its legislation so that teachers, like other workers, have the right to form organizations of their own choosing and to negotiate collectively, and to keep it informed of developments in this respect, including the various steps currently pending before the legislative and executive bodies as regards trade union pluralism and the labour rights of civil servants.

(d) The Committee, once again, requests both the Government and the complainants to provide updated information on ETA leaders and members still aggrieved by the Government's actions as regards detention, harassment, transfers and dismissals due to trade union membership or activities.

(e) The Committee, once again, suggests that the Government avail itself of the technical assistance of the Office on the matters raised in the present case.

CASES NOS. 2017 AND 2050

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

Complaints 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; cancellation of registration of a trade union's officers; acts of violence against trade unionists; violation of a collective agreement

589. The Committee examined these cases at its meeting in November 2000 and November 2001 and on those occasions presented an interim report to the Governing Body [see the Committee's 323rd Report, paras. 285-309, and 326th Report, paras. 269-287, approved by the Governing Body at its 279th and 282nd Sessions (November 2000 and November 2001)].

590. The ICFTU transmitted new allegations in a communication of 14 February 2002.

591. The Government sent its observations in communications dated 9 November and 7 December 2001 and 7 January 2002.

592. 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

593. In its previous examination of the case in November 2001, the Committee made the following recommendations on the allegations that remained pending [see 326th Report, para. 287]:

(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 Tanport 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 secretary-general, 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; and

(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 relating to the death threats received by members of the Workers' Union of Banana Plantations of Izabal (SITRABI); the threats by the Bandegua company to leave the country if the workers do not agree to a reduction of their rights under the collective agreement and the dismissals carried out by that company; and the raid on the premises of the Trade Union of Electricity Workers of Guatemala, with destruction and theft of property.

B. New allegations

594. In its communication of 14 February 2002, the ICFTU states that Mr. Baudillo Arnado Cermeño Ramírez, Organization Secretary of the Trade Union of Electricity Workers, was murdered on 21 December 2001. The ICFTU further alleges that, in spite of its request that the authorities take the necessary measures to protect trade union activities, they have not adopted any measures in that respect.

C. The Government's reply

595. In its communications dated 9 November and 7 December 2001 and 7 January 2002, the Government sent the following information:

(a) *Tanport S.A.:* The Government states that closure of the enterprise was announced on 27 February 2001 and, despite considerable efforts by the Inspection in support of the dismissed workers, only those who were not union members were paid. The union members took their cases to court and, after some procrastination, a precautionary restriction order was placed on the company's owner; a meeting was arranged with her representative and it was decided to sell the machinery in order to pay the wages due. According to UNSITRAGUA, the new labour representative has yet to clarify the position in such a way that the state of the machinery and the payment of wages due to the union's members might be verified. The Government emphasizes that the Ministry of Labour continues to support the workers and that this case is being examined in the courts.

(b) *Ace International company:* The Government states that, although no relevant resolution has been passed, the Ministry of Labour continues to protect the jobs of the workers employed at the enterprise. It adds that it will keep the Committee informed of the progress of the 16 cases currently awaiting judgement by the Constitutional Court.

(c) *Municipality of Tecún Umán:* Concerning the negotiation of a collective agreement by the municipality, San Marcos and the workers, the Ministry of Labour has succeeded, on the basis of good faith and goodwill, in reconciling the parties, but the date of the negotiations has not yet been set.

(d) *Cardiz S.A. company:* The Government states that the General Labour Inspection has declared illegal the collective suspension of individual labour contracts, announced by the company after a trade union was set up by its workforce. The relevant authorities examined the workers' case and advised them; a commission was then set up to resolve the dispute, but the employer the abandoned negotiations. The Ministry of Labour, for its part, defended the workers' rights, appointing counsel from the Office of the Attorney for Labour Protection (a unit of the General Labour Inspection) to defend them; the collective cases are awaiting judgement by the relevant tribunals.

(e) *La Exacta company:* The Government states that, before the possible dismissal of the case involving this company, whose real name is San Juan del Horizonte, the organized workers decided to apply for the case to be reopened, and it is being examined by the courts of Coatepeque, Quetzaltenango. The Government will keep the Committee informed of developments.

(f) *María de Lourdes de Génova Farm:* The Government states that the resolution dated 8 November 2000 (attached to its reply) cancelled the registration of the officers of the trade union of the María de Lourdes de Génova Farm, Costa Cuca, Quetzaltenango, because their position was not lawful (for example, one of them was the farm's director, in flagrant violation of the law and statutes).

(g) *Workers' Union of Banana Plantations of Izabal (SITRABI), Bandegua company and Trade Union of Electricity Workers of Guatemala:* The Government states that the General Labour Inspection has intervened in the follow-up to SITRABI's allegations and that the parties have reached agreement. As to the criminal events, the Attorney-General needs to arrange the necessary investigations to ascertain what happened and who were the perpetrators. Finally, concerning the other cases, the Ministry of Labour is working towards their resolution by administrative means.

D. The Committee's conclusions

596. *Regarding the three trade unionists who were given new jobs at the Tanport S.A. company after being dismissed for anti-union reasons, the Committee notes with concern that, according to the Government, the company has closed and accordingly only those workers who were not members of UNSITRAGUA were paid. The Committee also notes that the case is being examined by the courts and that protective measures have been taken to safeguard the payments due to the union members. In the circumstances, recalling that no person shall be prejudiced in his employment by reason of his trade union membership or legitimate trade union activities [**Digest of decisions and principles of the Freedom of Association Committee**, 1996, para. 690], the Committee requests the Government to inform it of the result of the legal proceedings under way to protect the money owed to the UNSITRAGUA members who were dismissed because of the closure of Tanport S.A. and expects that the continuing discrimination will be ended without delay.*

597. *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 Ace International S.A., the Committee notes that the allegations dated 1999 and regrets that the Government did not keep it informed of the results of the investigation carried out at the administrative centre but merely stated that it continues to protect the jobs of the workers employed at the enterprise and will keep the Committee informed of the progress of the 16 cases currently awaiting judgement by the Constitutional Court. In these circumstances, the Committee emphasizes the importance that it attaches to a rapid conclusion of the proceedings, since justice delayed is justice denied. Accordingly, the Committee requests the Government urgently to inform it of any court ruling that is handed down in relation to these serious allegations.*

598. *As regards the refusal by the authorities of Tecún Umán, San Marcos, to negotiate a collective agreement with the municipality's trade union, the Committee notes that, according to the Government, the Ministry of Labour has only managed to bring about reconciliation between the parties. The Committee again emphasizes the importance which it attaches to the obligation to negotiate in good faith for the maintenance of the harmonious development of labour relations [**Digest**, op. cit., para. 814]. It once again requests the parties to negotiate with this principle in mind and do everything possible to reach agreement; in particular, it requests the Government to actively promote the negotiation.*

599. *As regards the closure of Cardiz S.A. company following the establishment of a trade union in the company and the detention of the workers who remained on company premises to prevent the removal of company equipment, the Committee regrets to note that, according to the Government, the establishment of the trade union led the company collectively to suspend the individual labour contracts. The Committee notes that the labour inspection declared the suspension illegal. It also notes that, after the high-level commission had failed in its attempt to resolve the dispute through its inability to prevent the employer from abandoning negotiations, the Ministry of Labour appointed counsel from the Office of the Attorney for Labour Protection in order to defend the employees' interests in the collective cases that are now awaiting judgement by the relevant courts. The Committee deplores the facts mentioned in the allegations and expresses the hope that the judicial authority will pronounce on this case without delay; it requests the Government to keep it informed of developments in that regard. The Committee also requests the Government to ensure that no worker be detained for anti-union reasons. Finally, the Committee recalls that no person shall be dismissed or prejudiced in his employment by reason of his trade union activities. More generally, the Committee would like to have more information from the Government about these allegations and, more precisely, about the reasons for closing the Cardiz S.A. company.*

600. *As regards the impossibility of registering the union officers at the María de Lourdes de Génova Farm, Costa Cuca, Quetzaltenango, the Committee observes that, according to the Government, the said officers' registration was cancelled because one of the officers was the farm administrator, in flagrant violation of the law and trade union statutes. The Committee recalls that workers' and employers' organizations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration (Convention No. 98, Article 2.1). The Committee requests the Government to indicate which legislative provision was applied to cancel the registration of all the union's officers. It emphasizes that it would have been adequate to have maintained the union officers with the exception of the farm administrator.*

601. *As regards the allegations relating to the death threats against the secretary-general of the union at the María de Lourdes de Génova Farm, Mr. Otto Rolando Sacuqui García, 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 of Tecún Umán, and the dismissal of the founders of the trade union at Hidrotecnica S.A., established in 1997, the Committee deeply regrets the Government's failure to reply and urges it to organize without delay an investigation into these allegations and keep it informed of developments. In this connection, the Committee recalls that the rights of workers' organizations can only be exercised in a climate that is free of 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 [**Digest**, op. cit., para. 47]. It also recalls that the necessary measures should be taken so that trade unionists who have been dismissed for activities related to the establishment of a trade union are reinstated in their functions, if they so wish [**Digest**, op. cit., para. 703] and particularly emphasizes that a situation that gives rise to de facto impunity of the guilty parties reinforces the climate of violence and insecurity, which is extremely damaging to the exercise of trade union rights [**Digest**, op. cit., para. 55]. Finally, in connection with the cases of threats, the Committee urges the Government promptly to take the necessary measures to guarantee the trade unionists' physical safety.*

602. *As regards the allegations relating to: (1) the death threats received by members of the Workers' Union of Banana Plantations of Izabal (SITRABI); (2) the threats by the Bandegua company to leave the country if the workers do not agree to a reduction of their rights under the collective agreement; (3) the dismissals threatened and carried out by that company (25 dismissals at five farms); and (4) the raid on the premises of the Trade Union of Electricity Workers of Guatemala, with destruction and theft of property, the Committee regrets that the Government limits itself to indicating that the General Labour Inspection has intervened in the follow-up to SITRABI's allegations and that the parties have reached an agreement (which was not attached), that the criminal cases need to be submitted to the Attorney-General, who needs to arrange the necessary investigations, and that the Ministry of Labour is working towards their resolution by administrative means. The Committee urges the Government immediately to take the necessary measures to protect the security of the threatened trade unionists, refer the cases of the alleged death threats and raid to the Attorney-General without delay and keep it informed of the penal sanctions applied. The Committee also requests the Government to ensure that anti-union dismissals do not take place and investigate the motives for the dismissals that have occurred. Finally, as regards the pressure exerted by the Bandegua company to restrict its workers' rights under the collective agreement, the Committee recalls that, under Recommendation No. 91, "collective agreements should bind the signatories thereto and those on whose behalf the agreement is concluded", so that the provisions of labour contracts may not be abandoned without the mutual agreement of the parties. The Committee urges the Government to ensure respect for the collective agreement and keep it informed of developments in the situation. As regards the recent allegation concerning the murder of Mr. Baudillo Arnado Cermeño Ramírez, Organization Secretary of the Trade Union of Electricity Workers, the Committee requests the Government to undertake urgently the necessary independent judicial inquiry in order to ascertain the facts and their circumstances, identify those responsible and punish the guilty parties, with a view to preventing the repetition of such acts. The Committee requests the Government to keep it informed of developments in this respect.*

603. *The Committee deplores that the Government has still not communicated its observations on other serious allegations that remain pending (in respect of the failure to comply with the order for the dismissed workers at La Exacta company to be reinstated, it merely observes that the workers decided to apply for the case to be reopened). In these circumstances, the Committee strongly reiterates once more 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) strongly insists that the Government ensure compliance with the court orders to reinstate the workers dismissed at the La Exacta company 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. The Committee also urges the Government to take the necessary measures (legislative and other) to ensure that the reinstatement orders are complied with.

The Committee's recommendations

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

(a) Regarding the Tanport S.A. company, the Committee expects that the continuing discrimination will be ended without delay and requests the Government to inform it of the result of the legal proceedings under way to protect the money owed to the UNSITRAGUA members who were dismissed because of the company's closure.

(b) As regards the Ace International S.A. assembly plant, the Committee requests the Government urgently to communicate the court rulings handed down on the serious allegations of discrimination and intimidation.

(c) As regards the refusal by the authorities of Tecún Umán, San Marcos, to negotiate a collective agreement with the municipality's trade union, the Committee once again requests the parties, in negotiating, to do everything possible to reach agreement; in particular, it requests the Government to continue actively promoting the negotiation.

(d) As regards the closure of Cardiz S.A., the Committee expresses the hope that the judicial authority will pronounce on this case without delay and requests the Government to keep it informed of developments in that regard. The Committee also requests the Government to ensure that no worker be detained for anti-union reasons. More generally, the Committee would like to have more information from the Government about these allegations and, more precisely, about the reasons for closing the Cardiz S.A. company.

(e) The Committee requests the Government to indicate which legislative provision was applied to cancel the registration of all the union officers at the María de Lourdes de Génova Farm. It emphasizes that it would have been adequate to have maintained the union officers with the exception of the farm administrator.

(f) As regards the allegations relating to the death threats against the secretary-general of the union at the María de Lourdes de Génova Farm, Mr. Otto Rolando Sacuqui García, 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 of Tecún Umán, and the

dismissal of the founders of the trade union at Hidrotecnica S.A., established in 1997, the Committee:

– *urges the Government to organize without delay an investigation into these allegations and keep it informed of developments;*

– *notes that the necessary measures should be taken so that trade unionists who have been dismissed for activities related to the establishment of a trade union are reinstated in their functions, if they so wish; and*

– *urges the Government promptly to take the necessary measures to guarantee the trade unionists' physical safety.*

(g) As regards the allegations relating to the death threats received by members of the Workers' Union of Banana Plantations of Izabal (SITRABI), the threats by the Bandegua company to leave the country if the workers do not agree to a reduction of their rights under the collective agreement, the dismissals threatened and carried out by that company (25 dismissals at five farms), and the raid on the premises of the Trade Union of Electricity Workers of Guatemala, with destruction and theft of property, the Committee urges the Government:

– *immediately to take the necessary measures to protect the security of the threatened trade unionists, place the cases of the alleged death threats and raid before the Attorney-General without delay and keep it informed of the penal sanctions applied;*

– *to ensure that anti-union dismissals do not take place and investigate the motives for the dismissals that have occurred; and*

– *to ensure respect for the collective agreement and keep it informed of developments in the situation.*

(h) As regards the other serious allegations that remain pending, the Committee strongly reiterates its recommendation that the Government should:

– *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;*

– *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; and*

– *take the necessary measures (legislative and other) to ensure that the reinstatement orders are complied with.*

(i) As regards the recent allegations concerning the murder of trade union leader Baudillo Arnado Cermeño Ramírez, the Committee requests the Government to undertake urgently the necessary independent judicial inquiry to ascertain the facts and their circumstances, to identify those responsible and punish the guilty parties, with a view to preventing the repetition of such acts, and to keep it informed in this respect.

CASE NO. 2118

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

Complaint against the Government of Hungary presented by the Trade Union of Hungarian Railwaymen

Allegations: hindrance to trade union activities and violation of the right to bargain collectively

605. In a communication dated 28 February 2001, the trade union of Hungarian Railwaymen filed a complaint of violations of freedom of association against the Government of Hungary.

606. The Government forwarded its observations in communications dated 15 November 2001 and 9 January 2002.

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

A. The complainant's allegations

608. The complainant is a sector union formed by nearly 300 local organizations with a membership of approximately 30,000 members coming from the Hungarian State Railways Co. and 105 other companies. The complainant alleges violations of the right to strike, acts of anti-union discrimination, violations of collective bargaining and acts of interference by the employer in the trade union's affairs.

609. Concerning the Hungarian Act on Strike (hereafter "the Act"), the complainant alleges that the courts, in various cases, have declared strikes unlawful in contradiction with the Act and without hearing the trade union's arguments. The Act qualifies a strike to be unlawful if "it has been declared during the term of a collective agreement for the purpose of altering the provisions fixed in that agreement" (section 3(d)) but the judicial interpretation of that legal provision was that a strike was lawful if it was for the renewal of a collective agreement. According to the complainant, the judicial interpretation of the Act has changed following alleged interventions of the Government and pressure on the judicial authorities and consequently, such strikes are now considered unlawful. To support this allegation, the complainant cites three cases in which strikes have been declared illegal. In two of these cases, both appeal and re-examination courts have maintained the decisions. With regard to the third case in connection with the February 2000 strike, the re-examination decision has not yet been rendered.

610. Concerning the amendments to the Labour Code, the complainant is opposed to certain amendments regarding namely the duty list, the working hours and the remuneration because they would allow an employer to conclude agreements on these conditions directly with the employees and without the participation of the trade union. According to the complainant, these amendments entail that less importance will be given to collective bargaining and therefore, would diminish the influence of the employees' representative organizations.

611. Concerning the procedure of conciliation of interests, the complainant alleges that no conciliation of interests at sector level has taken place during recent years. It repeatedly proposed to the Ministry of Transport and Water Conservancy (KöViM) to hold discussions but its initiatives remained unanswered by the KöViM. The complainant refers more specifically to the absence of communication and transmission of information concerning the restructuring of the Hungarian State Railways Co. following the governmental Decree No. 2258/1999 (X.16) and the reform of the railways.

612. Concerning the acts of anti-union discrimination, the complainant explains that various acts of anti-union discrimination were committed by the Hungarian State Railway Co. Ltd. Firstly, following the 14-day strike that took place between 1 and 14 February 2000, the complainant alleges that the employer made hostile statements to the employees who participated in the strike and that the employer's disapproval was also expressed in the assignment of tasks.

613. The complainant also alleges a succession of violations of collective bargaining and acts of interference. Firstly, on 20 January 2000, the Hungarian State Railway Co. Ltd. issued order No. Gy. 26-46/2000 regarding the management of labour affairs without prior notice to the trade unions contrary to paragraph 21(2) of the Labour Code.

614. Secondly, the employer decided to implement the new Instructions for Clothing No. K-6441/2000 retroactive to 1 July, 2000 although, at that time, the collective agreement between the employer and the complainant was still in force. Such implementation of the new rules has been done without consulting the complainant.

615. Thirdly, on 9 April 1999, an agreement took place between the Directorate of Rolling Stock of the Hungarian State Railways and the Free Trade Union of the Railway Employees of Hungary. However, at the Northern Mechanical Office of Traffic-Manager of MÁV Rt., the employer, pursuant to Decree No. 1508/1999, did not implement the work order provided for in the collective agreement. Such non-implementation of the collective agreement was done without consulting the trade union.

616. Also, on 28 November 2000, the Traffic Department of the MÁV Rt. Regional Directorate Pécs issued Measure 754 modifying the working schedule. The station management Zalaszentgrót applied immediately the new working schedule without prior modification of the collective agreement's annex and notwithstanding section 24 of the collective agreement which indicates that the schedule must be defined in the annex.

617. Moreover, according to the Deputy General Manager for Public and Labour Relations' instructions, the trade unions' activities should continuously be monitored, conversations at the workplace have to be reported and the employer has to be informed about any programme and events organized by the employees' representative organization.

618. Also, on 12 January 2000, MÁV Rt. began to occupy and use for its own purpose the complainant's office without the complainant's approval. The complainant alleges that the employer followed instructions of the Deputy General Manager for General Affairs. The complainant has filed a protest and the status quo was later on restored. However, on the

same day and according to the same instructions, the electronic access card of the trade union's representative was invalidated.

619. Finally, MÁV Rt. has offered the premises occupied by the complainant and formerly by its legal aid service to the law firm which used to carry out the Legal Aid Service in contravention with the decision of the complainant to stop carrying out business with that firm and despite the fact that these premises were for the use of the trade union.

B. The Government's replies

620. In its communication dated 15 November 2001, concerning the change in the judicial practice and in the interpretation of the Hungarian Act on Strike, the Government considers the law to be in conformity with ILO Conventions. Furthermore, the Government insists on the separation between the legislative and judicial powers in Hungary as provided for by the Hungarian Constitution and denies any attempt on its part to put pressure on the judicial authorities in order to change the judicial interpretation of the labour legislation. It also explains the organization and structure of the Hungarian judicial system and, in particular, the role of the Supreme Court in charge of assuring the uniform enforcement of law.

621. Concerning the amendments to the Labour Code, the Government states that the amendments mentioned in the complaint will be drafted differently in the final version of the text. According to the Government, should the collective agreement not contain any regulation on the duty list, the employer has the right to determine it. The draft proposal on the amendment of the Labour Code defines, as a general decree, that the duty list, the average number of working hours and the daily working hours are to be defined in the collective agreement. It is only when this is not the case that the employer has the right to determine the said conditions. The Government justifies this amendment in light of the existing contradictory interpretation of the right of the employer to define the general duty list when a collective agreement has failed to settle this issue.

622. Concerning the procedure of conciliation of interests, the Government indicates that, the concerned partners in this regard are the representative bodies of the employees and employers in the different sectors. Furthermore, the Government insists on the fact that during consultations about the regulatory and economic issues of the sector, the presence of the affected representative trade unions is allowed. According to the Government, the trade unions have always been consulted. In fact, in 2001, the trade unions were consulted regarding various proposals. The Government also emphasizes on the fact that the Ministry of Transport and Water Management (KöViM) conducted tripartite conciliation of interests at the railway subsector when the Labour Code was amended. Furthermore, the Consultation and Interest Reconciliatory Forum of Transport, in addition to giving written opinions, provides consultations and has its own rules of procedure.

623. Moreover, the Government refutes all allegations concerning the lack of transmission of information to the complainant. It states that its Decree No. 2258/1999 (X.16) was directly transmitted to the trade unions of the railway employees the day after it was promulgated. Concerning the reform of the railways, following the approval of the "Railway Package" by the European Union in March 2001, the Hungarian guidelines on railways have to be amended accordingly. The Ministry of Transport and Water Management (KöViM) will discuss these issues with the relevant trade unions of railway employees. Finally, regarding conciliation of interests at the sector level, the Government is presently developing a more efficient structure. However, the discussions and study of such structure have just begun and the railway sector was not part of the first phase of discussions. The Government will provide further information in the future on this matter.

624. The Government denies all allegations of acts of anti-union discrimination and insists on the legal remedies contained in the Labour Code to guarantee the protection of the employees' rights.

625. Concerning the various allegations of violations of collective bargaining and acts of interference, the Government states that it is the role of the national courts of justice to judge these cases. However, the Government enquired with the employer in order to obtain information on the various facts contained in the complaint. According to the Government, the grievances regarding the violation of section 21(2) of the Labour Code by the Hungarian State Railway Co. Ltd. following the entry into force of Order No. Gy. 26-46/2000 on the management of labour affairs were considered to be unfounded by the court. The court also concluded to the legality of the Instructions for Clothing No. K-6441/2000. According to the Government, one of the three trade unions disagreed with the reform of clothing. Consequently, the employer decided to go ahead with the reform through the individual labour contracts and not through the collective bargaining process.

626. Regarding the non-implementation of the annex of the collective agreement between the Directorate of Rolling Stock of the Hungarian State Railways and the Free Trade Union of the Railway Employees of Hungary at the Northern Mechanical Office of Traffic-Manager of MÁV Rt., the Government indicates that the work order was changed following the reorganization of the accident-prevention service and that such agreement was concluded between the employer and the trade unions. The Trade Union of Railway Employees (VSz) did not accept such an agreement and filed a legal suit.

627. According to the Government, the new working schedule system implemented by the station management Zalaszentgrót was only temporarily and due to lack of staff. This explains why the new schedule was never defined in the annex of the collective agreement. According to the Government, such measure is no longer applied and the work order contained in the annex of the collective agreement has been restored.

628. Concerning the Deputy General Manager for Public and Labour Relations' instructions of monitoring the trade unions, the Government justifies it as a measure aimed to facilitate and improve the efficiency of conciliation of interests between the employer and the trade unions.

629. Concerning the use of the complainant's premises by the employer, a reconciliation procedure was filed. Following this reconciliation procedure, the trade union regained possession of the office. The Government justifies the invalidation of the officer's access card by the fact that it is a normal procedure in case of retirement.

630. Concerning the alleged violation by the employer of the trade union's right to use the premises formerly occupied by the Legal Aid Service, the Government indicates that the employer simply presumed that the trade union did not intend to use the office-room any longer.

631. In conclusion, the Government insists on the fact that the system of keeping regular contacts between the Ministry representing the sector and the complainant, is in conformity with ILO conventions and Hungarian legal regulations. The trade unions have the opportunity to represent the interests of their members and to exercise their rights in the course of their negotiations both at the share company level and in commenting on the draft proposals prepared by the Ministry of the sector.

632. In a communication dated 9 January 2002, the Government wishes to bring to the Committee's attention the fact that, on 7 April 2002, general elections will take place in

Hungary. According to the Government, regardless of what the Committee's conclusions might be, they will become an issue in the election campaign and may, as such, bear on the outcome of the elections. Furthermore, the Government insists on the fact that the complainant organization belongs to a trade union confederation whose leaders are candidates, members of one of the major political parties. Without denying the legitimate right of trade unions to concentrate in a political party to improve the situation of workers, the Government considers that there is a danger of misinterpreting the ILO's statements and that, because of the relationship between the trade union and the given party, it could have an impact on domestic policy. Consequently, the Government wishes to request that the examination of the case be postponed until June 2002.

C. The Committee's conclusions

633. *The Committee notes that this case relates to several allegations, namely violations of the right to strike, acts of anti-union discrimination, violations of collective bargaining, and acts of interference by the employer in the trade union's affairs.*

634. *The Committee takes due note of the Government's request to postpone the examination of this case until June 2002. However, given that the original complaint was submitted as far back as February 2001 and was the subject of an urgent appeal in November 2001, and in light of the general nature of the allegations, the Committee decided to proceed with its examination.*

635. *Concerning the change in the judicial practice and in the interpretation of the Hungarian Act on strike, the Committee notes the information provided by the Government regarding the independence of the judicial system as well as the fact that, according to the complainant, out of three cases on the interpretation of the legal character of a strike by a court, two have been subjected to revision by a second instance court and to re-examination proceedings by a third one. However, the Committee recalls that workers' and employers' organizations should be able to be heard and to present their arguments before a decision that affects them is taken. Furthermore, the Committee has always recognized the right to strike by workers and their organizations as a legitimate means of defending their economic and social interests [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 474] and the interpretation of the Act should not impede the workers from exercising their right to strike for the renewal of a collective agreement. The Committee recalls that the conditions that have to be fulfilled under the law in order to render a strike lawful should be reasonable and in any event not such as to place a substantial limitation on the means of action open to trade union organizations [see* ***Digest****, op. cit., para. 498]. The Committee notes that in the case of the February 2000 strike, the decision following the re-examination proceedings has not yet been rendered and requests the Government to keep it informed of the latest developments in this case and to provide copy of the re-examination decision.*

636. *Concerning the amendments to the Labour Code, the Committee takes note of the Government's reply that the collective agreement shall define various working conditions such as the duty list and the average number of working hours and that it is only when the collective agreement does not define these conditions that the employer has the right to determine them in the individual employment contracts.*

637. *Concerning the lack of use of the conciliation procedure at sector level, the Committee notes a certain contradiction between the complainant's allegations and the Government's reply. However, 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****, op. cit., para. 931]. Consequently, the Committee requests the Government to ensure that*

the trade unions are involved in the discussions proceedings prior to the adoption of new labour legislation.

638. *Concerning the alleged violation of paragraph 21(2) of the Labour Code by Order No. Gy. 26-46/2000 on the management of labour affairs and the implementation of Instructions for Clothing No. K-6441/2000 by the Hungarian State Railway Co. Ltd., the Committee notes that such grievances were considered to be unfounded by the court. The Committee requests the Government to transmit a copy of all relevant judicial decisions concerning this aspect of the case.*

639. *Regarding the change of the working schedule in the annex of the collective agreement by the station management Zalaszentgrót, the Committee notes the Government's indication that such measure was only temporary and due to a lack of staff and that the work order included in the annex of the collective agreement has been restored. Nevertheless, the Committee recalls that such non-implementation of the collective agreement, even on a temporary basis, does violate the right to bargain collectively as well as the principle of bargaining in good faith. The Committee further recalls that agreements should be binding on the parties [see **Digest**, op. cit., para. 818]. The Committee is of the opinion that in case of necessity, when the collective agreement cannot be applied, the employer should consult the trade unions before undertaking such measures. It trusts that the Government will fully respect these principles in the future.*

640. *With regard to the allegation of the non-implementation of the annex of the collective agreement between the Directorate of Rolling Stock of the Hungarian State Railways and the Free Trade Union of the Railway Employees of Hungary at the Northern Mechanical Office of Traffic-Manager of MÁV Rt. following Decree No. 1508/1999, the Committee reiterates its previous remarks on the non-implementation of a collective agreement by the employer and requests the Government to transmit a copy of the judicial decision regarding this matter.*

641. *The Committee expresses its strong concern in relation to the instructions from the Deputy General Manager for Public and Labour Relations according to which trade union activities should be continuously monitored, formal and informal conversations reported and any programme or events organized by the trade union brought to the employer's knowledge. The Committee recalls that respect for the principle 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 [see **Digest**, op. cit., para. 761]. The Committee urges the Government to take the necessary measures to ensure that the Deputy General Manager withdraws his instructions.*

642. *As concerns the Deputy General Manager for General Affairs' instruction to give use of the Trade Union's office-room to the employer, the Committee notes the Government's indication that a judicial decision has since been rendered in favour of the complainant and that the status quo has been restored.*

643. *With regard to the premises which belong to the complainant and that are presently occupied by the law firm, the Committee takes note of the Government's indication that it was the employer's mistake. The Committee asks the Government to ensure that the complainant regains its premises. The Committee draws attention to the importance of the principle that the property of trade unions should enjoy adequate protection [see **Digest**, op. cit., para. 184].*

The Committee's recommendations

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

(a) Concerning the legal interpretation of the Hungarian Act on Strike, the Committee notes that in the case of the February 2000 strike, the decision following the re-examination proceedings has not yet been rendered and requests the Government to keep it informed of the latest developments in this case and to provide a copy of the re-examination decision.

(b) Recalling 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, the Committee requests the Government to ensure that these organizations are involved in the discussion proceedings prior to the adoption of new labour legislation.

(c) The Committee requests the Government to keep it informed of all developments and provide copies of the judicial decisions regarding the alleged violation of paragraph 21(2) of the Labour Code by Order No. Gy. 26-46/2000 on the management of labour affairs and the decision on the implementation of the Instructions for Clothing No. K-6441/2000.

(d) With regard to the allegation of the non-implementation of the annex of the collective agreement between the Directorate of Rolling Stock of the Hungarian State Railways and the Free Trade Union of the Railway Employees of Hungary at the Northern Mechanical Office of Traffic-Manager of MÁV Rt. following Decree No. 1508/1999, the Committee recalls that such non-implementation of the collective agreement, even on a temporary basis, does violate the right to bargain collectively as well as the principle of bargaining in good faith and that agreements should be binding on the parties. The Committee requests the Government to transmit a copy of the judicial decision regarding this matter.

(e) The Committee urges the Government to take the necessary measures to ensure that the instructions from the Deputy General Manager for Public and Labour Relations are repealed and to keep it informed in this regard.

(f) Regarding the complainant's premises presently occupied by the law firm, the Committee asks the Government to ensure that the complainant regains its premises.

CASE NO. 2132

INTERIM REPORT

Complaint against the Government of Madagascar presented by
— the Federation of Workers' Trade Unions of Madagascar (FISEMA)
— the Confederation of Christian Trade Unions of Madagascar (SEKRIMA)
— the Independent Trade Unions of Madagascar (USAM)
— the Federation of Health Workers' Unions (FSMF)
— the Federation of Informal Sector Workers' Unions (SEMPTIF TOMAVA) and various other Malagasy trade unions

Allegations: Interference by the Government in the internal affairs of trade unions; suspension of social dialogue

645. The Federation of Workers' Trade Unions of Madagascar (FISEMA), the Confederation of Christian Trade Unions of Madagascar (SEKRIMA), the Independent Trade Unions of Madagascar (USAM), the Federation of Health Workers' Unions (FSMF), the Federation of Informal Sector Workers' Unions (SEMPIF TOMAVA), and various other Malagasy trade unions, presented the complaint in the present case in communications dated 2 and 28 May and 18 July 2001. The Government sent its observations in communications dated 13 September 2001 and 29 January 2002.

646. Madagascar 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

647. In their communications of 2 and 28 May 2001, the complainants allege that the Government has decided unilaterally to begin interfering in the management of social funds, including the National Social Security Fund (CNaPS), by adopting Decree No. 99-673 of 20 August 1999. Before the Decree in question, the Governing Board of the CNaPS consisted of four government representatives, eight employers' representatives and eight workers' representatives, and the presidency alternated between the workers' and employers' groups. The new decision to restructure the Board altered its composition, so that it now consists each of six workers', employers' and government representatives, with a new rotation system which allows the Government a turn in the presidency. In the light of the agreements which have always existed with the Ministry of the Public Service, Labour and Social Law, the social partners consider that the principle of tripartism is the basis of social dialogue and that it is for them, under state supervision, to manage social institutions. Social dialogue was accordingly suspended following the promulgation of the Decree.

648. The complainants state further that the Decree was subsequently declared unconstitutional by the High Constitutional Court of Justice in a ruling of 23 August 2000 (the ruling in question is attached).

649. The complainants maintain that, in the light of the Ministry's position and in the absence of any response to the request for dialogue by the social partners, the latter decided not to participate in the discussions of the National Employment Council (a body which examines texts as a basis for a revised Labour Code).

650. Furthermore, the complainants draw attention to numerous acts of interference by the Ministry in the internal affairs of the trade unions. These include: interference by the Ministry in elections of worker representatives to serve on various tripartite bodies; organization of missions involving workers' and employers' delegates without the knowledge of their confederations for the purpose of appointing them to regional tripartite bodies; and requests for proposals for candidates other than those already put forward by the confederations for membership of these bodies.

651. The complainants also alleged that there have been infringements of the right of collective bargaining. According to them, Act No. 94-029 respecting the Labour Code has been superseded by Decree No. 97-1355, under the terms of which the social partners may not engage in collective talks on conditions of employment without the authorization of the Ministry for the Development of the Private Sector and Privatization.

652. Lastly, although the complainants acknowledge that a tripartite memorandum of understanding was concluded on 8 May 2000 and instituted, among other things, mechanisms for the resumption of social dialogue, they also consider that the Government, despite the ruling that Decree No. 99-673 was unconstitutional, has thus far failed to make the changes needed to allow the resumption of social dialogue, since it continues to interfere in the prerogatives of the trade unions, including their right to decide the number of their representatives within the CNaPS.

653. In a subsequent communication dated 18 July 2001, the complainants state that the Ministry of the Public Service, Labour and Social Law interferes in trade union affairs by virtue of section 1(3) (new) of Decree No. 2000-291 of 31 May 2000, which requires trade unions to provide a list of their members, a copy of their by-laws and the names of their serving officers.

654. Furthermore, the complainants state that, following two meetings with the Ministry on 22 June and 5 July 2001, the Ministry presented the trade unions with a proposed decree concerning the number and nomination of trade union representatives to the CNaPS Board. According to the complainants, the proposed decree, which assigns six workers' representatives from the most representative multisector trade unions and rescinds Decree No. 99-673, must also be regarded as unconstitutional in that it deprives the trade unions of the right to appoint the sixth representative; the Ministry itself reserves the right to appoint that representative, on the grounds that a number of staff delegates elected mostly on non-union lists (often at the instigation of the employers) must have a representative on the CNaPS Board.

B. The Government's reply

655. In its communication of 13 September 2001, the Government states that the consultations initiated by the Government following the suspension of social dialogue by the social partners on 28 September 1999 is clear evidence of the willingness of the state authorities to resolve the problem of social dialogue in Madagascar in a manner acceptable to all parties. Following the signature of the tripartite memorandum of 8 May 2000, an ad hoc commission was set up and has held nine tripartite meetings with a view to carrying out its specific mandate, namely, to consider solutions to the problem of the CNaPS, to determine representative organizations and to express opinions on the Labour Code.

656. The Government states that the ad hoc commission discussions have produced some points of consensus, except with regard to the problem of the CNaPS. Considering that the nomination of representatives of the social partners to the CNaPS Board depends on the representativity of the employers' and workers' organizations concerned, the ad hoc commission at its meeting on 2 June 2000 agreed that the representativity of trade union

organizations would be assessed by collating data obtained from labour inspections and data provided by the trade unions. It therefore asked the trade union organizations to provide the Ministry with information regarding the criteria of representativity applied by their regional unions. However, on 25 July, the worker co-president of the ad hoc commission admitted that no information had been received and that the trade unions were unable to obtain all the necessary information for the time being. The Government adds that the employers' organizations for their part have supplied the information requested. Finally, concerning section 1(3) (new) of Decree No. 2000-291 of 31 May 2000, the Government indicates that it was only trying to assess the real representativity of trade unions by applying to them the objective criteria of number of affiliates.

657. The Government also states that the Ministry invited the social partners to send their written proposals on the CNaPS Board by 4 May 2000 for submission to the competent authorities. The workers' organizations did not respond favourably.

658. Lastly, the Government maintains that a number of the Ministry's activities which require tripartite consultation have been held up by the attitude of the social partners. According to the Government, the conduct of the trade unions has been the cause of recent delays, and the unions have used delaying or political tactics to block the smooth running of State affairs.

C. The Committee's conclusions

659. *The Committee notes that this case concerns allegations of government interference in the internal affairs of trade unions, which is claimed to have led to a suspension of social dialogue in 1999. In particular, the Committee notes that the main cause of that suspension is said to have been the adoption by the Government of Decree No. 99-673 of 20 August 1999. The Decree, which purports to restructure the Board of the National Social Security Fund (CNaPS), alters the Board's composition (reducing the number of workers' representatives from eight to six) as well as its mode of operation (by allowing the Government a turn in the presidency). The Decree was subsequently declared unconstitutional by the High Constitutional Court of Justice on 23 August 2000. In addition, the Committee notes that a new draft decree presented by the Government provides that the Ministry itself would have the right to appoint one of the six workers' representatives.*

660. *Since the Decree was adopted, the Committee notes that the Government and the social partners signed a tripartite memorandum of understanding on 8 May 2000 and an ad hoc tripartite commission was set up. The commission, whose aims include that of resolving the problem of the composition of the CNaPS Board, has, according to the Government, held nine meetings since it was established. The Committee nevertheless notes that, according to the complainants, no solution responding to their requirements has been found to date. In the light of the available information, the Committee is bound to note that the parties blame one another for the failure to resolve the problem of the composition of the CNaPS Board. At the same time, with regard to the adoption of the Decree altering the Board's structure, the Committee feels obliged to remind the Government of the importance that should be attached to full and frank consultation taking place on any questions or proposed legislation affecting trade union rights. Thus, the Committee recalls that any decisions concerning the participation of workers' organizations in a tripartite body should be taken in full consultation with the trade unions whose representativity has been objectively proved [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 1996, 4th edition, paras. 927 and 943]. In addition, concerning the new draft decree which would grant to the Ministry the right to appoint one of the six workers' representatives, the Committee recalls that it is for workers' organizations, not for the authorities, to choose in full freedom all their representatives in tripartite bodies. The*

Committee requests the parties to spare no effort in achieving an agreement on the composition of the CNaPS Board and requests the Government to keep it informed in this regard.

661. *As regards the representativity of the trade union organizations concerned, the Committee notes that the Government in reply to the allegations made by the complainants with regard to section 1, paragraph 3 (new), of Decree No. 2000-291 of 3 May 2000, which allegedly requires trade unions to provide a list of their members, a copy of their by-laws and the names of their officers, states that it was only trying to assess the real representativity of trade unions by determining the actual number of members. The Committee also notes that during a meeting of the ad hoc commission in June 2000, it was agreed that the representativity of trade union organizations would be assessed by collating data obtained from labour inspections and data provided by the trade unions. The Committee notes that the latter were asked to provide the Ministry of the Public Service, Labour and Social Law with information regarding the criteria of representativity applied by their regional unions, but were unable to supply that information. In this regard, the Committee recalls that it has in the past considered that certain advantages, especially with regard to representation, might be accorded to trade unions by reason of the extent of their representative nature. The determination of the most representative organization must be based on objective, pre-established and precise criteria so as to avoid any possibility of bias or abuse. In the case in question, the Committee considers that it is unnecessary to draw up a list of trade union members in order to determine the number of members; this will be evident from the record of trade union membership dues, and there is no need for a list of names which could make acts of anti-union discrimination easier. Consequently, the Committee requests the Government to amend section 1, paragraph 3, of Decree No. 2000-291 to allow the representativity of trade unions to be determined without making it a requirement to provide the authorities with members' names. The Committee requests the Government to keep it informed in this regard.*

662. *Lastly, the Committee notes that the Government has not replied to allegations concerning interference by the Ministry of the Public Service, Labour and Social Law in the internal affairs of trade unions, such as organizing missions of workers' delegates without the knowledge of their confederations for the purpose of nominating them for membership of regional tripartite bodies, or requiring proposals for candidates other than those put forward by the confederations for membership of the tripartite bodies in question. Furthermore, the Government has also failed to provide any observation regarding the allegations of infringement of the right of collective bargaining resulting from Decree No 97-1355. The Committee requests the Government to send its observations on these allegations without delay.*

The Committee's recommendations

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

(a) The Committee reminds the Government that in future, any decision concerning participation by a workers' organization in a tripartite body should be taken in full consultation with all trade union organizations of a given representativity determined according to objective criteria. The Committee requests the parties concerned to spare no effort to reach an agreement on the composition of the CNaPS Board, and requests the Government to keep it informed in this regard.

(b) As concerns the new draft decree concerning the composition of the CNaPS Board, the Committee recalls that it is for the workers' organizations, and not for the authorities, to choose in full freedom all their representatives in tripartite bodies.

(c) The Committee requests the Government to amend section 1, paragraph 3, of Decree No. 2000-291 to allow the representativity of trade unions to be determined without making it a requirement that members' names be communicated to the authorities. The Committee requests the Government to keep it informed in this regard.

(d) The Committee requests the Government to send without delay its observations concerning allegations of interference in internal trade union affairs by the Ministry of the Public Service, Labour and Social Law, and concerning the allegations of infringements of the right of collective bargaining resulting from Decree No. 97-1355.

CASE NO. 2115

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

Complaint against the Government of Mexico presented by the Progressive Trade Union of Workers of the Construction Industry of the Mexican Republic (SPTICRM)

Allegations: Refusal to register amendments to a constitution

664. The Progressive Trade Union of Workers of the Construction Industry of the Mexican Republic presented the complaint in communications dated 8 February and 25 March 2001. The Government sent its observations in communications dated 30 May and 30 October 2001, and 27 February 2002.

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

A. The complainant's allegations

666. In its communications dated 8 February and 25 March 2001, the Progressive Trade Union of Workers of the Construction Industry of the Mexican Republic states that it is a national industrial trade union, which complies with the requirements of the Mexican federal labour legislation, has a legally approved constitution and is registered as No. 2000 by the Ministry of Labour and Social Security of the Federal Government of the United Mexican States.

667. The complainant organization states that, on 26 August 2000, it held a special general assembly, which conducted a comprehensive reform of the organization's constitution. This included, on the basis of an absolute majority vote by the organization's members, the reform of article 8 of the constitution, which provided for a broadening of the trade union's objective. The amended article 8 was drafted in the following terms:

Membership of the trade union is open to plant workers and temporary, casual or aspiring workers who provide, wish to provide or have provided their services to any enterprise, company, factory, works or establishment that forms part of the construction industry and/or sector in its various forms, including those involved in calculation, design, planning, analysis, supervision, control, development, installation of gas and pipelines, electricals and electricity, including the generation, transformation and transmission of electrical energy and, in general, any infrastructure works, as well as any type of construction work, be it civil, private or public, whether it involves terracing, breaking, demolition, compression, excavation, foundations, cementing, navigation, topography, siting, localization, decoration, maintenance, cartography, modelling, assembly, reinforcement, prestressing, prefabrication, scaffolding, staging, domes, vaults, panelling, moulding, extraction, dredging, perforation, asphalt flooring, asphalt, grinding, processing and manufacture of all types of construction materials, including sand, stone, gravel, granite, marble, quarrystone, lime, silicates, cement, concretes, additives and colorants or studies into the ground's resistance, seismological materials or any other similar activity.

668. However, the Government, through the Ministry of Labour and Social Security acting through its Directorate-General for the Registration of Associations, promulgated, in violation of the abovementioned laws and agreement, a resolution stating that it "declines to register the amendment to article 8 of the constitution of the Progressive Trade Union of Workers of the Construction Industry of the Mexican Republic relating to its scope of activity in the terms agreed at the General Assembly held on 26 August last".

669. The complainant organization alleges that this involves interference in its internal affairs and that the Government resolution violates the provisions of articles 357 and 359 of the Mexican Labour Law, which state that workers and employers shall have the right to establish trade unions without being required to obtain prior authorization and that trade unions shall have the right to draw up their constitutions and rules, freely elect their representatives, organize their administration and activities and formulate their programme of action. The abovementioned resolution also violates the provisions of ILO Convention No. 87.

670. The complainant organization adds that the constitution was amended because it is now possible to generate electrical energy using portable equipment, which is manufactured, managed and operated by enterprises in the construction sector, such as the Maquinaria Diesel SA company, as was made clear to the relevant government agencies.

671. Finally, the complainant organization states that it has appealed for revision of the resolution promulgated by the Directorate-General for the Registration of Associations and that this should be resolved by the Office of the Under-Secretary for Labour of the Ministry of Labour and Social Security within four months. However, although the time frame has already expired and there have been two requests submitted for settlement, no settlement has been reached to date. This clearly damages the interests of the trade union, which is thus deprived of the possibility of recourse to higher authorities such as the Court of Appeal.

B. The Government's reply

672. In its communications dated 30 May and 30 October 2001, the Government states that the Progressive Trade Union of Workers of the Construction Industry of the Mexican Republic requested the Directorate-General for the Registration of Associations of the Ministry of Labour and Social Security to register the amendments to its constitution agreed at the special general assembly held on 26 August 2000. The amendments included amendment of article 8 to broaden the scope of action.

673. It adds that resolution No. 211224642, issued by the Directorate-General for the Registration of Associations, declines to register the amendment to article 8 of the constitution of the Progressive Trade Union of Workers of the Construction Industry of the Mexican Republic but does not affect the other articles amended. The trade union appealed against the resolution to the Office of the Under-Secretary for Labour of the Ministry of Labour and Social Security on 17 November 2000. The Office of the Under-Secretary for Labour responded to the appeal by confirming each and every part of the resolution by the Directorate-General for the Registration of Associations in Official Letter No. 1137 dated 29 March 2001. The Progressive Trade Union of Workers of the Construction Industry of the Mexican Republic submitted an appeal against the decision of the Office of the Under-Secretary for Labour, which is still pending settlement by the First District Labour Court of the Federal District, Case No. 604/2001.

674. The Government states that article 357 of the Federal Labour Law stipulates that workers and employers shall have the right to establish trade unions without being required to obtain prior authorization. The Progressive Trade Union of Workers of the Construction Industry of the Mexican Republic exercised that right in being established as a trade union and undergoing registration by the Directorate-General for the Registration of Associations under the number 2000 as an industrial trade union. As regards article 359 of the Federal Labour Law and Article 3 of ILO Convention No. 87, which state that trade unions shall have the right to draw up their constitutions, the Progressive Trade Union of Workers of the Construction Industry of the Mexican Republic possesses a legally registered constitution that was amended at the special general assembly of 26 August 2000.

675. The Government adds that the authority is required to monitor compliance with and application of the provisions of the labour standards (article 40, section I, of the Organic Law of the Public Federal Administration). The Directorate-General for the Registration of Associations declined to register the amendments to article 8 of the constitution exclusively inasmuch as they refer to the broadening of the objectives of the union, because it considers inappropriate any amendment that would detract from the original nature of the union in question. The enterprises in which its members work have construction as their social objective. The Federal Labour Law is clear on the classification of trade unions and does not recognize groups covering two or more industries, as the Progressive Trade Union of Workers of the Construction Industry of the Mexican Republic has attempted to do. As an industrial trade union, it should consist of workers who provide their services within one or several enterprises of the same industry, as established by law.

676. As regards the supposed failure to pronounce on the application for revision submitted by the Progressive Trade Union of Workers of the Construction Industry of the Mexican Republic and the damage it is suffering as a result of the delay, the Government states that the Office of the Under-Secretary for Labour pronounced in Official Letter No. 1137 dated 29 March 2001. The Progressive Trade Union of Workers of the Construction Industry of the Mexican Republic, in its appeal, expressly admits that it was notified both of the resolution to decline to register the amendment to article 8 and of the decision on the application for revision.

677. In conclusion, the Government emphasizes that the Directorate-General for the Registration of Associations, as the competent authority, has ensured compliance with the law: where trade unions need to register amendments to their constitutions, the amendments must be in line with the union's social objective, in accordance with articles 360 and 365 of the Federal Labour Law and article 18, Part III, of the internal regulations of the Ministry of Labour and Social Security. The Progressive Trade Union of Workers of the Construction Industry of the Mexican Republic has been able to exercise its rights under the law and has recourse to remedies against the resolutions by which it considered itself affected. Finally, in its communication of 27 February 2002, the

Government states that the district judge of first instance, in charge of labour matters issued, on 31 December 2001, an *amparo* decision in favour of the trade union, which the Under-Secretary for Labour and Social Welfare has appealed.

678. The Government draws attention to the fact that the issue that has been brought before the ILO is still sub judice before the national judicial bodies and this could affect the process before the Mexican courts issue their decision. It also states that, until they pronounce, there can be no claim of any violation of the rights of the Progressive Trade Union of Workers of the Construction Industry of the Mexican Republic. Finally, in its communication of 27 February 2002, the Government states that the district judge of first instance in charge of labour matters issued, on 31 December 2001, an *amparo* decision in favour of the trade union, which the Under-Secretary for Labour and Social Welfare has appealed.

C. The Committee's conclusions

679. *The Committee notes that in this case the Progressive Trade Union of Workers of the Construction Industry of the Mexican Republic objects to resolution No. 211224642, issued by the Directorate-General for the Registration of Associations, which declined to register the amendment to article 8 of the union's constitution. The refusal is on the grounds that it is an industrial trade union and the amendment would allow it to include any industrial establishment and/or branch of construction involved in gas installations, gas pipelines, electricals and electricity, including the generation, transformation and transmission of electrical energy and other activities. The Committee takes note of the complainant's claim that the amendment is needed because it is now possible to generate electrical energy using portable equipment, which was manufactured, managed and operated by enterprises in the construction sector. The Committee notes that, according to the complainant, an application was made to the administrative authority for revision, that it was denied and that the First District Labour Court is now processing the appeal.*

680. *The Committee also takes note of the Government's statement that the complainant organization was free to draw up and amend its constitution and that registration of the amended article 8 was denied because the Federal Labour Law does not recognize groups covering two or more industries. It states that the Progressive Trade Union of Workers of the Construction Industry of the Mexican Republic is attempting to alter its objective, extending it to gas installations, gas pipelines, electricals and electricity, including the generation, transformation and transmission of electrical energy and other activities. However, under the legislation, it should consist of workers who provide their services within one or several enterprises of the same industry; through the amendment, it has departed from its social objective. The Committee takes note of the Government's observation that, until the judicial bodies pronounce on the appeal, there is no violation of the trade union's rights.*

681. *The Committee notes that the present case involves the possibility of a trade union amending its constitution in order to offer membership to workers in an activity that, at first glance, appears distinct from the union's initial objective. The Committee observes that the amendment is based on the fact that the construction industry can now operate electrical generating plants. The Committee recalls in this connection that the free exercise of the right to establish and join trade unions implies the free determination of the structure and composition of unions, the national legislation should only lay down formal requirements as regards trade union constitutions, and the constitutions and rules should not be subject to prior approval by the public authorities [**Digest of decisions and principles of the Freedom of Association Committee**, 1996, paras. 275 and 333]. The Committee urges the Government to take measures so that the legislation is modified so as to ensure that the abovementioned principle is fully respected. The Committee notes that,*

according to the Government, the district judge of first instance in charge of labour matters, issued an amparo *decision in favour of the complainant trade union, and that the Under-Secretary for Labour has filed revision proceedings in this respect. The Committee expresses the hope that the competent judicial authorities will take this principle into account when examining the issue raised in the present case.*

682. *Moreover, the Committee recalls that it is not essential for domestic remedies to be exhausted before complaints are presented to it and that it may make recommendations even where the national judicial bodies have not yet pronounced on the complainant's case.*

The Committee's recommendations

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

(a) As regards the refusal by the Directorate-General for the Registration of Associations to register the amendments to an organization's by-laws, the Committee expresses the hope that when examining the issue raised in the present case the competent judicial authorities will take into account the principle according to which the free exercise of the right to establish and join trade unions implies the free determination of the structure and composition of unions, that the national legislation should only lay down formal requirements as regards trade union constitutions, and the constitutions and rules should not be subject to prior approval by the public authorities, and requests the Government to keep it informed of developments.

(b) The Committee urges the Government to take measures to modify the legislation so as to ensure full respect of the abovementioned principle.

CASE NO. 2155

DEFINITIVE REPORT

Complaint against the Government of Mexico presented by the Public Employees' Trade Union for the Collective Transport System for the Metropolitan Zone (SESESTCZM)

Allegations: Discrimination against a trade union following the establishment of another trade union in the same enterprise

684. The complaint in this case is contained in communications dated 23 May and 10 June 2001 from the Public Employees' Trade Union for the Collective Transport System for the Metropolitan Zone (SESESTCZM). The Government sent its observations in a communication dated 9 January 2002.

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

A. The complainant's allegations

686. In its communications dated 23 May and 10 June 2001, the Public Employees' Trade Union for the Collective Transport System for the Metropolitan Zone (hereinafter referred to as the Employees' Trade Union of SISTECOZOME) alleges that by virtue of the recognition of the position of Secretary-General of the other trade union in December 1999 (the Workers' Trade Union for Collective Transport in the Metropolitan Zone), SISTECOZOME has carried out a series of measures against it:

(a) an illegal order for five members of the trade union's executive committee who were on union leave (Hernán Sierra Vega, Jesús Castillo Rodríguez, Gerardo de Anda Arámbula, Francisco Javier Cisneros Carboneros and Francisco Díaz Flores), to present themselves at the SISTECOZOME facilities, was issued by the general management (copies of the orders to return to work were sent, referring in at least two of the cases to previous union leave);

(b) illegal eviction (12 March 2001) from the building in which the executive committee has had its offices since 1987 in order to give this to the Workers' Trade Union for Collective Transport in the Metropolitan Zone;

(c) no reply to a request (16 May 2001) to transfer the trade union dues and mutual income that belongs to its members;

(d) disregard for the legal personality of the Employees' Trade Union of SISTECOZOME and its executive committee;

(e) harassment of the employees of the enterprise not to belong to the Employees' Trade Union of SISTECOZOME, forcing them to join the Workers' Trade Union for Collective Transport in the Metropolitan Zone; and

(f) disregard for the legal personality of Francisco Díaz Flores as Secretary-General of the Employees' Trade Union of SISTECOZOME, as the enterprise held a meeting of the administrative council without his presence.

B. The Government's reply

687. In its reply dated 9 January 2002, the Government stated that the Collective Transport System for the Metropolitan Zone (SISTECOZOME), is a decentralized public body with its own legal personality and patrimony. This enterprise has two trade unions: the Employees' Trade Union of SISTECOZOME, led by Mr. Francisco Díaz Flores, and the Workers' Trade Union for Collective Transport in the Metropolitan Zone, led by Mr. Toribio Lucero García.

688. It should be emphasized that the issues referred to by the Employees' Trade Union of SISTECOZOME arise solely from the coexistence of these two trade unions, as the enterprise has always strictly complied with labour legislation governing employer-employee relationships and this has never been a reason for conflict with the trade union.

689. Regarding the request for Hernán Sierra Vega, Jesús Castillo Rodríguez, Gerardo de Anda Arámbula, Francisco Javier Cisneros Carboneros and Francisco Díaz Flores to present themselves at the SISTECOZOME facilities, it should be emphasized that these workers do not have and have not had union leave and neither have they requested it.

690. To this effect, it is important to quote the jurisprudence that the Supreme Court of Justice has upheld, which reads as follows:

Workers, leave of, for trade union reasons. Fifth Epoca. Proceedings: Court Four. Source: Judicial Seminar of the Federation. Volume LXXII. Page 6431.

Just because a collective labour contract may lay down in one of its clauses that an employer has an obligation to grant trade union leave to employees does not mean that an employee cannot be dismissed for missing work without a valid reason, simply because he/she has requested the relative leave from his/her trade union. This Supreme Court has established that effectively there exists an obligation on the part of the employer to grant workers leave in order to carry out trade union activities, in agreement with Part XI of article 111 of the Federal Labour Law, but that this leave must be requested in any case and it is not enough to justify missing work by notifying the trade union and having it grant the leave as, in accordance with the law, the trade union is not the body responsible for granting leave but merely the channel through which leave is requested by the person concerned.

691. As such, the request for the members of the executive committee of the Employees' Trade Union of SISTECOZOME to present themselves at the SISTECOZOME facilities is, in law, a request to them to return to work in their capacity as workers who had not requested union leave from the enterprise.

692. Relating to the alleged eviction of the Employees' Trade Union of SISTECOZOME from the building from which it carries out its activities, legislation does not require SISTECOZOME to provide trade unions with a workplace in which to carry out their trade union activities. However, since 1992 the enterprise has provided the Employees' Trade Union of SISTECOZOME with its facilities.

693. It is incorrect that any eviction has taken place. Now that another trade union has been established, SISTECOZOME believes it fair and equitable that both trade union organizations enjoy the same privileges, for which reason Mr. Toribio Lucero García, the Secretary-General of the Workers' Trade Union for Collective Transport in the Metropolitan Zone, was notified that he should share this space with the Employees' Trade Union of SISTECOZOME. On 12 March 2001, Mr. Toribio Lucero García and other members of the executive committee went to the offices provided to both trade unions by SISTECOZOME in order to share the facilities, but they were met with resistance from representatives of the Employees' Trade Union of SISTECOZOME. Owing to the lack of readiness on the part of both trade unions to share the building, SISTECOZOME decided to close the office, and the situation remains current. The Employees' Trade Union of SISTECOZOME continued to occupy the building, as was certified before a public notary. For this reason, none of the criminal proceedings for eviction lodged by the Employees' Trade Union of SISTECOZOME have been successful.

694. Regarding the alleged withholding of the trade union dues (February to June) and mutual income which is owing to the members of the Employees' Trade Union of SISTECOZOME, it should be mentioned that on 25 July 2001, the enterprise handed Francisco Díaz Flores a check for 19,389.08 pesos (nineteen thousand three hundred eighty-nine pesos and eight centavos), which amount is consistent with the trade union dues and mutual income in favour of the trade union. The receipt for this amount can be found under DG/362/2001 (copy attached).

695. Relating to the alleged disregard of the legal personality of the Employees' Trade Union of SISTECOZOME and its executive committee, this trade union is recognized as a legally established organization, as is the legal personality of each and every one of the members of its executive committee. This is corroborated by their participation in the joint commissions on accidents of electrically powered vehicles and hereditary damages, which are regularly held at the enterprise.

696. Likewise, the Employees' Trade Union of SISTECOZOME continues to receive regularly the trade union contributions and mutual income of its members. Attached are copies of

documents that, over the past year, have been sent to the Secretary-General and to various members of the executive committee of the Employees' Trade Union of SISTECOZOME.

697. Regarding the alleged harassment by the authorities of employees at the enterprise not to belong to the Employees' Trade Union of SISTECOZOME, forcing them to join the Workers' Trade Union for Collective Transport in the Metropolitan Zone, it should be pointed out that at no time has SISTECOZOME undertaken in any way to restrict the freedom of association of its workers and it has always allowed open competition arising from the presence of the two trade unions, who have freely exercised their rights of association and, where appropriate, petition. Workers at SISTECOZOME are free to join any one of the trade unions that represent them. The enterprise plays no part in this process as the request for income is provided by the trade unions themselves.

698. Regarding the participation of Mr. Francisco Díaz Flores in the administrative council of SISTECOZOME, legislation does not require the enterprise to include one or the other trade union in particular.

699. The enterprise indicates that it considers that the Workers' Trade Union for Collective Transport in the Metropolitan Zone has the majority representation as it administers the collective labour agreement and represents the greatest number of workers at the enterprise. Because of this, the administrative council decided to invite its Secretary-General to participate.

700. Finally, the alleged violations referred to in the communications sent to the International Labour Organization by the Employees' Trade Union of SISTECOZOME have been the subject of five legal proceedings, not one of which has succeeded.

C. The Committee's conclusions

701. *The Committee notes that in this case, the complainant organization (the Employees' Trade Union of SISTECOZOME) has alleged that by virtue of the recognition of legal personality of the Secretary-General of the other trade union in December 1999 (the Workers' Trade Union for Collective Transport in the Metropolitan Zone), SISTECOZOME has carried out a series of measures against it:*

(a) an illegal order for five members of the trade union's executive committee who were on union leave to present themselves at the SISTECOZOME facilities;

(b) the illegal eviction (12 March 2001) from the building in which the executive committee has had its offices since 1987 in order to cede this to the Workers' Trade Union for Collective Transport in the Metropolitan Zone;

(c) the lack of reply to the request (since 16 May 2001) to transfer the trade union dues and mutual income belonging to its members;

(d) the disregard for the legal personality of the Employees' Trade Union of SISTECOZOME and its executive committee;

(e) the harassment of employees at the enterprise who do not belong to the Employees' Trade Union of SISTECOZOME, forcing them to join the Workers' Trade Union for Collective Transport in the Metropolitan Zone; and

(f) the disregard for the legal personality of Francisco Díaz Flores as Secretary-General of the Employees' Trade Union of SISTECOZOME, as the enterprise held a meeting of the administrative council without his presence.

702. *The Committee notes that according to the Government: (1) the present case arises from the coexistence of the two trade union organizations mentioned; (2) the five workers allegedly deprived of their union leave do not have and have not had union leave and neither have they requested this (there is a legal obligation to grant leave but this must be requested of the employer, which was not the case for these employees); (3) the Employees' Trade Union of SISTECOZOME – which was at no time evicted – opposed the shared use of the installations with the Workers' Trade Union for Collective Transport in the Metropolitan Zone, which was decided upon by the enterprise and for which reason it was decided to close the office; (4) on 25 July 2001, the Employees' Trade Union of SISTECOZOME was given a check for the trade union dues and mutual income corresponding to the period February-June; (5) the enterprise recognizes the complainant organization and the members of its executive committee and they take part in joint commissions; (6) at no time has SISTECOZOME issued instructions or taken part in the membership process of workers to one or the other trade union; (7) the administrative council of SISTECOZOME decided to invite the Secretary-General of the Workers' Trade Union for Collective Transport in the Metropolitan Zone (and not the Secretary-General of the complainant organization) as this trade union is responsible for the collective agreement and represents a greater number of workers; furthermore, legislation does not require one or the other trade union in particular to be included; and (8) in none of the legal proceedings presented by the complainant organization have these allegations been substantiated.*

703. *Having taken into account the Government's statements, the Committee calls upon the officials of the complainant organization to make the requests for union leave, which is their right, directly to the enterprise. The Committee, however, points out that the documentation of the enterprise provided by the Government indicates that a number of the trade union members of the complainant organization already had union leave before the new trade union was established. The Committee invites the Government to take steps to bring the two trade unions of SISTECOZOME together in order to find the most satisfactory solution to the problem of the use of the facilities placed at the disposal of the trade union organizations by SISTECOZOME. The Committee notes that the complainant organization has provided no proof that SISTECOZOME may have forced workers to join the other trade union. The Committee considers that, having taken into account the Government's statements, the remaining issues presented by the complainant organization do not call for further examination.*

The Committee's recommendations

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

(a) The Committee invites the officials of the complainant organization to request the trade union leave to which they are entitled directly from the enterprise.

(b) The Committee requests the Government to take steps to bring the two trade unions of SISTECOZOME together in order to find the most satisfactory solution possible to the problem of the use of the facilities put at their disposal by the enterprise.

CASE NO. 2134

INTERIM REPORT

Complaint against the Government of Panama presented by the National Federation of Associations and Organizations of Public Servants (FENASEP)

Allegations: Dismissal of trade union leaders from public service, refusal by the authorities to negotiate and restrictions on trade union activity

705. The National Federation of Associations and Organizations of Public Servants (FENASEP) presented the complaint in a communication dated 24 May 2001. The organization sent additional information in a communication dated 11 July 2001. Public Services International (PSI) supported FENASEP's complaint in a communication dated 25 June 2001. The Government replied in a communication dated 31 October 2001.

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

A. The complainant's allegations

707. In its communications dated 24 May and 11 July 2001, the National Federation of Associations and Organizations of Public Servants (FENASEP) alleges that, since 1 September 1999 (when the new President of the Republic came to power), the Government, for partisan political reasons, has dismissed 19,000 public servants and excluded a further 2,000 from permanent appointments. FENASEP adds that it took a number of actions as a trade union and the Government decided to dismiss trade union leaders of associations of public employees (a list of 44 dismissed public servants was annexed).

708. FENASEP challenged the Government's actions by contesting the constitutionality of resolution No. 122 dated 27 October 1999, but it was not declared unconstitutional because it had been rescinded. No administrative or judicial organ pronounced itself in favour of the trade union leaders.

709. FENASEP criticized the Government's refusal to negotiate with it at the bipartite level (it has been able to participate in discussions only as a part of the National Council of Unionized Workers (CONATO)) and refers in general terms to measures to prevent union leaders acting freely, limit their actions or prevent protests.

710. FENASEP alleges that acts have been committed against its Secretary-General (threats of dismissal and discussion for the purpose of the continuation of unpaid leave), though the individual concerned withdrew the allegations after experiencing an improvement in the situation and enjoying "full freedom of association", according to a communication signed by him on 4 October 2001.

711. Finally, FENASEP encloses a copy of the ruling against Mr. Alberto Ibarra, a member of the FENASEP executive committee, for offences against honour (slander and insults) committed against representatives of the public administration (INAC) in public statements

made by Mr. Ibarra on 4 October 1999, which implied that the INAC, through its representatives, had committed unlawful acts.

B. The Government's reply

712. In its communication dated 31 October 2001, the Government states that not all public servants are part of the permanent appointments system. It does not include those appointed by public election, free nomination and transfer, nomination under the Constitution and selection, as well as those still in the probationary period, those in office and some contingencies.

713. Under Law No. 9, article 2, free nomination and transfer applies to public servants "who provide secretarial, consulting, assistance or other services directly in the service of public servants, who are not part of any permanent appointments system and, by the nature of their functions, are appointed on the basis of the confidence of their superiors, the loss of that confidence entailing the transfer of the post that they occupy".

714. Article 2 adds that public servants in office "are those who, at the entry into force of this Act and its provisions, occupied a public post classified as permanent, until such time as they obtain, through the established procedures, the status of permanently appointed public servants, or are discharged from public service".

715. Moreover, articles 24 and 25 of Executive Decree No. 222 establish the requirements for a public servant to be included in the permanent appointments system (assessment of past achievements demonstrating fulfilment of the minimum post requirements according to the Post Classification Manual, minimum education qualifications and required length of service in the post).

716. In compliance with Executive Decree No. 222, article 24, the Directorate-General of Appointments has produced a Post Classification Manual laying down the minimum requirements for accreditation as a permanently appointed public servant.

717. A permanently appointed public servant is a public servant with security of tenure, who may not be dismissed without just cause and application of the established procedures, as laid down by Executive Decree No. 222, article 118.

718. The Post Classification Manual and the provisions governing access to the permanent appointments system have been applied in a formal and effective manner since Mr. Mireya Moscoso was elected to the post of President on 2 May 1999. For this reason, the outgoing Government took steps during the transition period from May to 31 August 1999 to appoint public servants in indiscriminate, arbitrary and unlawful manner, without fulfilling the necessary procedures.

719. This situation affected in particular the performance of governmental bodies, leading to a loss of confidence and damaging the credibility of the procedure used in the permanent appointments system.

720. Between June 1994 and the general elections on 2 May 1999, a total of 4,512 public servants had been accredited, while a further 5,634 were accredited in the transition period from June to August 1999 before the new Government took over. It is clear from this that in the latter case, the procedures were not properly observed.

721. Consequently, the Government took responsible steps to correct the situation in order to ensure that the newly accredited public servants met the minimum requirements contained in the relevant legal provisions.

722. It thus issued resolution No. 122 dated 27 October 1999, temporarily suspending access to permanent appointments, and ordered an overhaul of the system. It transpired that a large proportion of accreditations had been made wrongfully.

723. Following investigations and measures to clean up the system, the Government issued resolution No. 50 dated 6 July 2001, which rendered null and void the decision adopted in resolution No. 122 to the effect that public servants who met the minimum requirements could be accredited as permanently appointed public servants.

724. The only people excluded from permanent appointments were those who had obtained them unlawfully, thus undermining their colleagues' credibility and rights. However, the removal of their accreditation does not imply their dismissal (many public servants whose permanent accreditation was removed continued to work in the government departments).

725. Where public servants wish to take action in cases of dismissal, removal of accreditation or disciplinary sanctions, the law grants them access to review and appeal procedures and, where the outcome is unfavourable, they may, as a last resort, appeal to the high court. All government departments have taken care to follow this procedure properly, and there have been many rulings in favour of public servants who have appealed. The Government has provided a long list of the relevant decisions.

726. The Government of Panama has made every effort to allow FENASEP to participate in cooperation and social dialogue, notably in the agreement on public transport in the metropolitan area.

727. As regards FENASEP's activities, the Government states that, in accordance with the basic guarantees established by the Constitution, including freedom of assembly and freedom of expression and association, it has always allowed protests in the form of marches and pickets in all industries, believing that such activities where conducted with full respect for the law and the rights of third parties and contribute to strengthening national democracy.

728. The Government emphasizes that it has not carried out unlawful dismissals of leaders of public servants' associations and has complied with Conventions Nos. 87 and 98.

729. In resolution No. 122 dated 27 October 1999, the Cabinet Council granted the Directorate-General of Appointments the powers to revise the records of accredited public servants in order to ensure that they met the current legal criteria of the permanent appointments system, identifying cases that fall short, particularly where the appointment was made in the transition period between Governments.

730. The Government has had ongoing communication with FENASEP, ensuring its involvement in government activities (reports have been sent of meetings of the Secretary-General of FENASEP with the Minister for Labour, the Vice-Minister for Labour and the Vice-President of the Republic). Likewise, the Secretary-General of FENASEP was encouraged to participate in the national tripartite delegation to the 89th Session of the International Labour Conference. FENASEP was also a party to the negotiations on public transport: it has been present at periodic meetings of CONATO and the Ministry of Labour and Development; and it has received very significant State subsidies (US$201,281 for the period 1999-2001) through the educational insurance fund.

731. According to the Government, FENASEP also refers to the communication by the State with teachers' and other public servants' organizations, which demonstrates clearly that the Government has striven to uphold social accord and good governance by maintaining open channels of communication with all social organizations and public servants' associations, as well as with FENASEP, which is not the only public servants' organization in Panama.

C. The Committee's conclusions

732. *The Committee notes that in this case the complainant organization alleges that 44 trade union leaders have been dismissed in the context of the mass dismissal of thousands of public servants for partisan political reasons following the change of government in September 1999.*

733. *The Committee takes note of the Government's statements to the effect that: (1) the outgoing Government had improperly granted permanent appointments to 5,634 public servants during the transition period; (2) it had therefore issued resolution No. 122 dated 27 October 1999, temporarily suspending access to permanent appointments, and ordered an overhaul of the system; once that had been attained, it then issued resolution No. 50 dated 6 July 2001, which rendered null and void the decision adopted in resolution No. 122 to the effect that public servants who met the minimum requirements could be accredited as permanently appointed public servants; (3) those subjected to dismissal or "removal of accreditation" (i.e. whose permanent appointment was cancelled even though they remained in their posts) had remedies at their disposal and many had obtained rulings in their favour; and (4) the Government had needed to take corrective action in order to ensure that those who were accredited met the minimum legal requirements (length of service, educational qualifications, etc.) and in fact it had transpired that a large number of accreditations had been made improperly.*

734. *Although it has taken note of the Government's statements, the Committee must draw attention to the danger of unfairness inherent in mass dismissals of public servants and regrets that 44 trade union leaders have been dismissed without any preliminary procedures being followed, which is contrary to the provisions of section 118 of Decree No. 222 which requires that a dismissal be done on fair motives, that a preliminary procedure is respected and that a rapid investigation be undertaken with the possibility for the dismissed worker to defend himself. Given the serious impact of these decisions on the exercise of trade union rights, the Committee requests the Government to promote the reinstatement of the trade union leaders in their posts inasmuch as they meet the legal requirements for permanent appointment and inform it of procedures undertaken since the dismissals.*

735. *The Committee also notes that the Government denies having refused to enter into dialogue, negotiate or take steps to prevent trade union activities, or measures against FENASEP. The Committee notes that the allegations were made in very general terms and therefore it is not in a position to examine them more thoroughly.*

736. *Lastly, the Committee requests the Government to send its observations on the allegations relating to the criminal charges against the trade union leader, Mr. Alberto Ibarra.*

The Committee's recommendations

737. ***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 promote the reinstatement in their posts of the 44 trade union leaders dismissed without any preliminary procedures inasmuch as they meet the legal requirements for permanent appointment and inform it of procedures undertaken since the dismissals.

(b) The Committee requests the Government to send its observations on the allegations relating to the criminal charges against the trade union leader Mr. Alberto Ibarra.

CASE NO. 2098

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

Complaint against the Government of Peru presented by — the General Confederation of Workers of Peru (CGTP) and — the Graphics Federation of Peru (FGP)

Allegations: Dismissal of a trade union official, request for the cancellation of the registration of a trade union and refusal to bargain collectively, non-observance of a collective agreement

738. The Committee examined this case at its June 2001 meeting and presented an interim report [see 325th Report, paras. 524-546, approved by the Governing Body at its 281st Session (June 2001)].

739. The Graphics Federation of Peru (FGP) submitted allegations in a communication dated 11 May 2001. The General Confederation of Workers of Peru (CGTP) submitted new allegations in communications dated 12 and 25 June 2001.

740. The Government sent its observations in communications dated 23 July, 31 August, 3 September and 3 October 2001 and 28 January 2002.

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

A. Previous examination of the case

742. At its June 2001 meeting, the Committee made the following recommendations on the allegations that remained pending [see 325th Report, para. 546]:

> The Committee requests the Government to keep it informed about the ruling handed down by the Supreme Court concerning the dismissal of the trade union official, Mr. Amílcar Zelada.
>
> The Committee requests the Government to take measures to amend the legislation with a view to reducing the minimum number of workers established by law to constitute non-enterprise trade unions, and urges the Government not to cancel the registration of the Trade Union of Ticket Sellers and Ushers in Cinematographic Enterprises and clearly to recognize the right to collective bargaining of this trade union with cinematographic enterprises, at least on behalf of its members. The Committee requests the Government to keep it informed in this regard.
>
> The Committee requests the Government to provide its observations concerning the recent communications of the CGTP, dated 23 and 27 April 2001.

743. In its communication dated 23 April 2001, the CGTP alleges that, under the protection of Legislative Decree No. 854, the Minera Milpo SA enterprise has amended the rules for working hours and the working day (14 consecutive days of 12 hours each followed by seven consecutive days of rest) in violation of the provisions of the collective agreement, which provides for an eight-hour day and a 48-hour week with Sundays off.

744. In its communication dated 27 April 2001, the CGTP alleges that the Editora El Comercio, Compañía Peruana de Radiodifusión del Perú and Empresas Cinematográficas del Perú companies have directly requested the Ministry of Labour to cancel the registration of their enterprise trade unions (Single Trade Union of Workers of the Editora El Comercio Enterprise and the Union of Workers of the Broadcasting Corporation) on the basis that they have supposedly ceased to fulfil one of the conditions for their existence and that the Ministry has processed these applications [the Graphics Federation of Peru supported the CGTP's complaint in a communication dated 11 May 2001].

B. The complainants' new allegations

745. In its communication dated 12 June 2001, the CGTP alleges that the Agroindustrial San Jacinto SA enterprise dismissed Mr. Timoteo Hipólito Luna Melgarejo, Secretary-General of the enterprise's Single Trade Union of Workers, on 10 March 2001 because of his position in the trade union. In addition, it alleges that the Agroindustrial Laredo SA enterprise dismissed the Secretary-General and seven leaders of the enterprise's Single Trade Union of Workers (Dionisio Cruz Ramos, Pablo Rojas Valderrama, Maximaliano Perez Fernandez, José Alfaro Alvarado, Jesús Castillo Reyes, William Cruz Prada and Henri Mendoza Ramirez) in March 2001 because of their positions in the trade union.

746. In its communication dated 25 July 2001, the CGTP alleges the dismissal of Mr. Carlos Alberto Paico and Mr. Alfredo Guillermo de la Cruz Barrientos (members of the Board of the Trade Union of Workers of the Industrial Nuevo Mundo Company) and that of the union members (and former leaders) Mr. Alfonso Terrones Rojas and Mr. Zósimo Riveros Villa.

C. The Government's reply

747. In its communications dated 23 July, 31 August, 3 September and 3 October 2001 and 28 January 2002, the Government states that, according to the Minera Milpo SA company, no international labour standards have been violated and the implementation of the atypical accumulative working shifts was conducted in accordance with Peruvian labour legislation and the ILO Conventions ratified by Peru. It also states that the atypical accumulative working shifts complies with the voluntary agreements signed at the individual level with workers within the framework of the constitutional and legal standards and those contained in the Conventions, since at the time of implementation of the current working hours there was no collective agreement in existence between the company and the workers.

748. The company adds that the atypical working shifts of 14 actual days of work, with a ten-hour working day and seven days' rest is in compliance with the Constitution, the legislation and the Conventions, since it corresponds to productive working hours and complies proportionally with the maximum working time permitted under the labour legislation in force; hence, it does not represent a violation of freedom of association.

749. The Government, after detailing the constitutional and legal norms relating to working hours and the norms contained in the collective agreement dated 10 July 2001 (which entered into force on 28 October 2000 and remained in force until 27 October 2001), explained its position on the problem described by the trade union. It stated that there was

a problem with the interpretation of the relevant clauses of the collective agreement and that in its view the issue should be resolved through the judiciary if the party that considered itself injured so wished. The basic issue should be the subject of a special judicial review to provide an appropriate solution. The relevant clauses of the collective agreement are as follows:

1.1 Productivity

The parties agree that they shall continue to make every effort to increase productivity, which will assist the company's survival and hence preserve our source of work, making it competitive domestically and internationally. The company shall for its part continue and maintain efforts to improve: working conditions, technology, staff training and worker motivation.

1.2 The working day

In order to facilitate the above-mentioned increase in productivity, the parties reaffirm that the working day shall consist of eight hours, in accordance with the established schedules and the relevant legal norms. The parties also agree that the working day shall be used productively.

750. With regard to the dismissals at the Industrial Nuevo Mundo Company, the Government states that the individual labour contracts were concluded under Decree No. 728 (Productivity and Labour Competitiveness Act) for purely administrative and production reasons. The Government refers extensively to legal provisions, including penalties, that protect against discrimination (including on the inadmissibility of dismissal based on trade union membership or activities and the procedures and remedies available, which can lead to reinstatement), the measures adopted to strengthen the judiciary and the new general act on labour inspection and the defence of workers. The Government takes the view that, given the existence of the abovementioned labour legislation and its applicability to the case in point, and given that the dismissals are being contested before the Peruvian judiciary, it should be possible to resolve the problem this way. Even if this is not a usual remedy under ILO procedures, the Government considers that the judiciary could provide an adequate solution to the problem.

751. In connection with the dismissals at the Agroindustrial Laredo SA (seven trade union leaders) and Agroindustrial San Jacinto enterprises (one union leader), the Government states that these dismissals were challenged in the courts and the Minister of Labour cannot intervene. The Government indicates that it will keep the Committee informed of the relevant judgements and recalls that Supreme Decree No. 003-97-TR offers protection against anti-union discrimination since it nullifies all dismissals due to trade union membership or activities. The Agroindustrial San Jacinto SA enterprise stated that the trade union leader Timoteo Hipolito Luna Melgarejo was dismissed by virtue of section 25(f) of Legislative Decree No. 728 (according to the enterprise, this leader had written a letter containing serious accusations against the majority shareholders and the company directors, using disrespectful and offensive expressions). On the other hand, the Government sent the text of a judgement ordering the reinstatement in his job of the trade union leader of the Agroindustrial Laredo SA enterprise, Dionisio Cruz Ramos.

752. As regards the allegations concerning the employers' request that the Ministry of Labour cancel the registration of their respective trade unions, the Government states that article 14 of Legislative Decree No. 25593 on Collective Labour Relations provides that trade unions, in order to be established and remain in existence, must have at least 20 members if they are enterprise trade unions or 100 if they are another type of trade union. Under article 24 of the same Act, endorsed by Supreme Decree No. 011-92 TR, any physical or legal person with a legitimate interest may ask the administrative authority on labour to cancel a union's registration if it no longer satisfies the necessary criteria. Article 4 of the Act stipulates that the State, the employers and their representatives shall

refrain from any acts liable to obstruct, restrict or impair in any way workers' right to organize and interfere in any way in the establishment, administration or maintenance of trade unions created by workers. According to the allegations, it appears the employer did not have the authority under article 24 to request cancellation of the registration of the trade union established by its own workers.

753. The Government takes the view that such a criterion is incorrect in the sense that it should not be regarded as interference when the employer seeks to verify the conditions that form the basis of the union's capacity to act as representative of the workers. It should be remembered that the union's capacity to act as a legitimate participant in collective bargaining and all other acts of representation is based on its meeting the requirements established by law. Hence, the employer's request that a trade union's registration be cancelled cannot be regarded as an act of interference, since the employer has a legitimate interest in the existence of the trade union that was registered initially.

754. Article 20 of Legislative Decree No. 25593 stipulates that the labour authorities may only cancel a registration in the case of dissolution, amalgamation or takeover, or where one of the legal requirements for establishment or continued existence is no longer met. The Act states that it is for the labour authorities to determine, through the appropriate departments, whether the trade union has ceased to meet one of those requirements and registration should consequently be cancelled.

755. Moreover, the executive authority has submitted to Congress a draft amendment to Legislative Decree No. 25593 incorporating the Committee on Freedom of Association's observation to the effect that the registration of trade unions may be cancelled only on the basis of a relevant resolution by the judiciary. Until the draft amendment is approved by the legislative authority, the labour authority finds itself obliged to cancel the registration of trade unions that have ceased to meet one of the conditions for establishment or continued existence if it receives a communication from any person with a legitimate interest in requesting the aforementioned cancellation.

C. The Committee's conclusions

756. *The Committee notes that in this case the complainant organizations allege anti-union dismissals, the non-observance of a collective agreement and the processing of requests for the cancellation of trade unions' registration.*

757. *As regards the alleged dismissals, the Committee notes that the Government has not informed it of the ruling handed down concerning the dismissal of the trade union official Mr. Amílcar Zelada and asks the Government to promptly keep it informed of developments. As regards the dismissal of the trade union leaders Mr. Timoteo Hipólito Luna Melgarejo, of the trade union of the Agroindustrial San Jacinto SA enterprise, the Secretary-General and seven leaders of the Single Trade Union of Workers of the Agroindustrial Laredo SA enterprise, the Committee notes the Government's indication that the union leader Dionisio Cruz Ramos (Agroindustrial Laredo SA enterprise) has benefited from a judicial order for reinstatement in his job. It further notes that the Government will keep it informed of the judgements to be handed down in respect of the dismissals of the other trade union leaders. As concerns the dismissals of Mr. Carlos Alberto Paico and Mr. Alfredo Guillermo de la Cruz Barrientos (members of the board of the Trade Union of Workers of the Industrial Nuevo Mundo Company) and that of the union members and former leaders Mr. Alfonso Terrones Rojas and Mr. Zósimo Riveros Villa, the Committee regrets that the Government refers in general terms, without going into detail, to administrative and production issues in the case of the dismissals at the Industrial Nuevo Mundo Company and merely points to the legal provisions that provide protection from anti-union discrimination (nullifying anti-union dismissals) and the*

*procedures and remedies available, in addition to stating that the challenge to the dismissals should be brought before the judiciary. The Committee draws the Government's attention to the fact that "no person shall be prejudiced in his employment by reason of his trade union membership or legitimate trade union activities, whether past or present" and that "protection against anti-union discrimination applies equally to trade unions members and former trade union officials as to current trade union leaders" [**Digest of decisions and principles of the Freedom of Association Committee**, 1996, paras. 690 and 691]. Additionally, "respect for the principles of freedom of association clearly requires that workers who consider that they have been prejudiced because of their trade union activities should have access to means of redress which are expeditious, inexpensive and fully impartial" [**Digest**, op. cit., para. 741]. The Committee requests the Government to investigate without delay the dismissals and, if it finds that the persons in question were indeed dismissed because of their trade union activities, take measures to ensure their reinstatement in their posts. The Committee requests the Government to keep it informed of the development of all legal proceedings connected with the dismissals.*

758. *As regards the allegation of non-compliance with the clauses on the working day contained in the collective agreement concluded between the Minera Milpo SA company and its workers, the Committee took note of the company's observations and those of the Government to the effect that there was a problem with the interpretation of the relevant clauses of the collective agreement and that the basic issue should be the subject of a special judicial review to provide an appropriate solution. In response to the company's argument that voluntary agreements were concluded on an individual basis with the workers when there was no collective agreement yet in force, the Committee emphasized that, under the Collective Agreements Recommendation, 1951 (No. 91), Paragraph 3(2), "stipulations in such contracts of employment which are contrary to a collective agreement should be regarded as null and void and automatically replaced by the corresponding stipulations of the collective agreement". Noting that the collective agreement states expressly that the working day shall consist of eight hours, the Committee requests the Government to ensure the effective implementation of the provisions on the working day contained in the collective agreement of the Minera Milpo SA company.*

759. *As regards the allegations concerning the employers' request to the Ministry of Labour to cancel the registration of the Single Trade Union of Workers of the Editora El Comercio Enterprise and the Union of Workers of the Broadcasting Corporation, the Committee notes that the Government contends that an application by an employer for the cancellation of trade union registration where the trade union no longer has the minimum legal number of workers cannot be considered as an act of interference since the employer has a legitimate interest in the issue of the union's ceasing to meet one of the requirements (minimum legal number of members) for its continued existence. The Committee notes that, according to the Government, the executive authority has submitted to Congress a draft amendment to Legislative Decree No. 25593 incorporating the Committee on Freedom of Association's observation to the effect that the registration of trade unions may be cancelled only on the basis of a relevant resolution by the judiciary. The Committee draws the Government's attention to Article 4 of Convention No. 87, according to which "workers' and employers' organizations shall not be liable to be dissolved or suspended by administrative authority", and emphasizes that the cancellation of a trade union's registration, in the alleged cases, is equivalent to its dissolution by administrative authority. In these circumstances, the Committee urges the Government not to cancel the registration of the Single Trade Union of Workers of the Editora El Comercio Enterprise and the Union of Workers of the Broadcasting Corporation. The Committee once again urges the Government, in accordance with the recommendation made at the previous meeting, not to cancel the registration of the Trade Union of Ticket Sellers and Ushers in Cinematographic Enterprises.*

760. *In the absence of observations on one of the recommendations made at the previous examination of the case, the Committee repeats its previous observation on the need for the Government to take measures to amend the legislation with a view to reducing the minimum number of workers required by law to constitute non-enterprise trade unions.*

The Committee's recommendations

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

(a) The Committee once again requests the Government to promptly keep it informed of the ruling handed down concerning the dismissal of the trade union official Mr. Amílcar Zelada.

(b) As regards the dismissal of the trade union leaders Mr. Timoteo Hipólito Luna Melgarejo (of the trade union of the Agroindustrial San Jacinto SA enterprise), the Secretary-General and seven leaders of the Single Trade Union of Workers of the Agroindustrial Laredo SA enterprise, the Committee notes the Government's indication that the union leader Dionisio Cruz Ramos (Agroindustrial Laredo SA enterprise) has benefited from a judicial order for reinstatement in his job and that it will keep the Committee informed of the judgements to be handed down in respect of the dismissals of the other trade union leaders. As concerns the dismissals of Mr. Carlos Alberto Paico and Mr. Alfredo Guillermo de la Cruz Barrientos (members of the Board of the Trade Union of Workers of the Industrial Nuevo Mundo Company) and that of the union members and former leaders Mr. Alfonso Terrones Rojas and Mr. Zósimo Riveros Villa, the Committee requests the Government to investigate without delay the dismissals and, if it finds that the persons in question were indeed dismissed because of their trade union activities, take measures to ensure their reinstatement in their posts. The Committee requests the Government to keep it informed of the development of all legal proceedings connected with the dismissals.

(c) As regards the allegation of non-compliance with the clauses on the working day contained in the collective agreement concluded between the Minera Milpo SA company and its workers, the Committee requests the Government to ensure the effective implementation of the provisions on the working day contained in the collective agreement of the Minera Milpo SA company.

(d) The Committee urges the Government not to cancel the registration of the Single Trade Union of Workers of the Editora El Comercio Enterprise and the Union of Workers of the Broadcasting Corporation. The Committee once again urges the Government, in accordance with the recommendation made at the previous meeting, not to cancel the registration of the Trade Union of Ticket Sellers and Ushers in Cinematographic Enterprises.

(e) The Committee repeats its previous observation on the need for the Government to take measures to amend the legislation with a view to reducing the minimum number of workers required by law to constitute non-enterprise trade unions.

CASE NO. 2125

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

Complaint against the Government of Thailand presented by the ITV Labour Union

Allegations: Anti-union dismissals

762. In communications dated 3 May and 7 July 2001, the ITV Labour Union presented a complaint of violations of freedom of association against the Government of Thailand.

763. The Government furnished its observations in a communication dated 19 September 2001.

764. Thailand has ratified neither the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), nor the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

765. In its communication dated 3 May 2001, the complainant states that the management of ITV – Shin Corporation Limited, issued an order for the dismissal of 21 employees of ITV on 6 February 2001. The complainant indicates that the company gave two reasons for the terminations: first, it alleged that the employees had circulated false news about the company, and secondly, it claimed that there needed to be a reduction in the workforce at the company. According to the complainant, however, the management of ITV carried out the dismissals with the objective of destroying the labour union that had just been formed by the employees of ITV. The complainant explains that it was officially registered with the Ministry of Labour and Social Welfare on 5 January 2001 (registration number GT 746). The complainant firmly believes that its establishment was the real reason for the dismissals rather than the reasons cited by the management of ITV. This is clearly illustrated by the fact that the dismissals of the 21 employees occurred on 6 February 2001, just one day after the first general meeting of the union. This meeting was attended by officials of the Ministry of Labour and Social Welfare who acknowledged the election of the union board members.

766. Furthermore, the complainant emphasizes that all 21 employees who were dismissed were union members and nine of those dismissed were elected board members. Amongst the nine board members were persons who all held important positions in the union including president, vice-president and secretary-general. The complainant contends that before the dismissals, there were announcements made and actions undertaken by management that clearly indicated that management was not happy that a labour union had been organized at ITV. This was despite the fact that the complainant was organized fully in accordance with Thai law, and was recognized by the authorities as legally registered. Moreover, the board members who were dismissed received the certificate certifying their positions, issued by the Ministry of Labour and Social Welfare on 22 February 2001. The complainant then proceeds to outline the series of events that took place leading to the termination of the 21 employees.

767. It points out that events started in the middle of 2000, when there was a purchase of 39 per cent of the stock of ITV by Shin Corporation Limited, which is owned by the son of Thaksin Shinawatra, the leader of the Thai Rak Thai Party. According to the complainant,

editorial interference in the news section by the new management often occurred, especially in the period before the national election held on 6 January 2001, which saw Thaksin Shinawatra elected as the Prime Minister. Before that, on 8 December 2000, Thaksin Shinawatra testified in his defence for the first time about the case of the transfer of his assets to the National Counter-Corruption Commission. At 23.30 hours that night, when news is not usually broadcast, the tape of Mr. Thaksin's testimony (which had been shown earlier) was shown again on ITV. At the end of December 2000, the Director of the News Division was dismissed and a committee of Shin Corporation executives was created to oversee the post temporarily. On 3 January 2001, ITV directors ordered that a news item relating to Mr. Thaksin not be broadcast; this order was made without the approval of the Editorial Division which normally screens news items. On the evening of that very same day, about 15 employees from the News Division publicly broadcast news and urged the ITV management to refrain from interfering in news coverage in the future.

768. In the meantime, during the month of December 2000 and pursuant to discussions between ITV staff, a decision to form a union was made. Union organizing took place and a group of employees from the News Division applied to form the ITV Labour Union, and on 5 January 2001, official registration of the union was received from the Central Registration Division of the Ministry of Labour and Social Welfare according to the relevant law (Labour Relations Act of 1975). The registration number, *Gor Tor* 746, was issued on 5 January 2001 and signed by Ms. Saowalak Aapornrattanan of the Central Registration Division. On 9 January 2001, ITV management representatives were informed by the employees concerned that the ITV union had been formed. Management representatives indicated that they did not see the need for a union at ITV and that the formation of the union might have a negative impact on listing ITV shares in the stock market in the future. From 10 to 11 January 2001, the management tried to collect signed statements from employees indicating that they did not want a union at ITV. At the same time, the management indicated to employees that anyone who became a union member would not receive a pay bonus at the end of January. On 12 January 2001, the ITV Director pressured the News Director to resign. Additionally, the technical and studio staff (who had previously worked with the News staff) were moved to the Reporting Division. According to the complainant, this move was intended to reduce the strength of the News Division. Moreover, the management announced that a committee would be appointed to investigate the matter of employees circulating false news about ITV to outside organizations. Consequently, from 23 to 25 January 2001, an investigation was carried out into the behaviour of approximately 20 employees. On 2 February 2001, there was an ITV news release according to which the ITV Management Board had received the report of the investigation committee.

769. On 5 February 2001, the ITV Labour Union held its first general meeting, with a total of 41 members attending the meeting. Fifteen members were elected to the executive committee of the labour union, in accordance with union regulations and the law. Certain officials of the Ministry of Labour and Social Welfare who had attended the meeting indicated that it had proceeded in accordance with the law. The officials took notes of the meeting and the names of the union members who were elected to the executive committee of the union. The union agreed by vote to put forward collective bargaining demands to the management. However, on 7 February 2001 ITV management officially informed 21 ITV employees that they were dismissed by a letter dated 6 February 2001. On 22 February 2001, the 15 union members who were elected to the executive committee of the ITV Labour Union received a letter from the Ministry of Labour and Social Welfare indicating that they were union executive board officials from 5 February 2001 until 4 February 2003 under the provisions of the Labour Relations Act of 1975. The complainant firmly believes that the rights of ITV employees to form a union have been violated by ITV management, and that the reason the 21 ITV employees were dismissed was related to the formation of the ITV union.

770. In its communication dated 7 July 2001, the complainant states that in a decision rendered on 1 June 2001, the Labour Relations Committee (LRC) unanimously ordered the reinstatement of the 21 dismissed ITV Labour Union executives and members. It points out nevertheless that in newspaper reports in the Thai press, Shin Corporation executives had indicated that they would appeal this decision to the labour courts since they believed that they had the right to dismiss the employees concerned under the law. In the complainant's view, this demonstrated that the Labour Relations Act of 1975 was deficient in protecting workers' right to freedom of association.

B. The Government's reply

771. In a communication dated 19 September 2001, the Government first of all describes the sequence of events surrounding this case. At the end of 2000, news on internal conflict within the ITV Company Limited (Public) concerning the ITV news presentation was widely spread. There was a movement by ITV staff to stop any interference in ITV news coverage. The situation led to the to the termination of the Director of the News Division.

772. On 5 January 2001, 14 employees of the ITV News Division, led by Ms. Orapin Lilitwisitwong, submitted an application for the registration of a labour union to the Registrar under the Labour Relations Act of 1975. The Registrar approved the registration of the ITV Labour Union on the same day (5 January 2001). The ITV Labour Union held its first general meeting on 5 February 2001, with a total of 41 union members attending the meeting. During the meeting, 15 executive committee members were elected.

773. On 7 February 2001, the ITV Company Limited (Public) laid off 21 employees. Nine of them were committee members of the ITV Labour Union, including its President, Ms. Orapin Lilitwisitwong. The management gave the following reasons for the lay-offs: (1) some employees had committed a wrongful act which was liable to penalty under the working regulations of the company; and (2) some employees were made redundant due to the necessity of workforce downsizing. The ITV Labour Union was of the opinion that the real reason behind the lay-offs of the 21 employees was an effort to destroy it. Therefore, on 9 March 2001, it filed a complaint to the Labour Relations Committee (LRC), a tripartite body established under the Labour Relations Act of 1975, in order to consider the case.

774. On 29 June 2001, the LRC ruled that seven laid-off ITV reporters who had given press interviews criticizing the television station, had the right to do so to protect their independence. In a 16-page ruling, the LRC said ITV must offer the seven reporters, and another 14 who were made redundant, positions as journalists at the television station. The LRC stated that the reporters had the constitutional right to do so in accordance with article 41 of the Thai Constitution to protect the integrity of their profession. The LRC also rejected as groundless ITV's reason that it was in financial difficulty for laying off the other 14 reporters. It ruled that ITV had violated section 121 of the Labour Relations Act of 1975 by laying off 21 reporters, and it ordered ITV to reinstate them at their last salary and in their last position and give them back pay for the past four months as compensation. On 10 July 2001, ITV appealed the ruling of the LRC to the Central Labour Court. The case is sub judice. The Government indicates that it is willing to update the Committee on all forthcoming developments relating to this case.

775. The Government then contends that protection of the right to organize is guaranteed under the Labour Relations Act of 1975, contrary to what is alleged by the complainant. The protection of the right to form a labour union without fear of discrimination, and particularly of dismissal, is prescribed in sections 121 to 127 of the Labour Relations Act of 1975 under Chapter 9 concerning unfair labour practices. The Government adds that in case of a violation of any of these provisions, the injured party may file a complaint with

the LRC within 60 days of such violation. Upon receipt of the complaint, the LRC shall issue an order, if it believes the complaint is well founded, within 90 days from the date of such receipt. In cases where the party against which the complaint is brought fails to comply with that order, a criminal prosecution may be instituted.

C. The Committee's conclusions

776. *The Committee notes that the allegations in this case relate to the dismissals of 21 employees of ITV-Shin Corporation, all of whom were either members or elected union officials of the ITV Labour Union. According to the complainant, before the dismissals there were announcements made and actions undertaken by the management that clearly indicated that the latter was not happy that a union had been organized at ITV. Hence, in the complainant's view, the management of ITV carried out the dismissals with the objective of destroying the union that had been formed by the employees of ITV one month ago. The Committee notes that the Government does not refute these allegations. Rather, it indicates that the two reasons given by ITV management for carrying out the dismissals, namely that (1) some employees had committed a wrongful act which was liable to penalty under the working regulations of the company, and (2) some employees were made redundant due to the necessity of workforce downsizing, were rejected as groundless by the tripartite Labour Relations Committee (LRC) to which the ITV Labour Union had filed a complaint. The Committee notes that in its ruling of 29 June 2001, the LRC found that ITV had violated section 121 of the Labour Relations Act of 1975 by laying off the 21 employees and ordered ITV to reinstate them at their last salary and in their last position and give them back pay for the past four months as compensation.*

777. *As regards the 21 employees of ITV who were dismissed, the Committee notes that all of them were members of the recently formed ITV Labour Union. The Committee further notes that, while seven of them were laid off by management for having committed a wrongful act in violation of the working regulations of the company, it is the Committee's understanding that this "wrongful act" apparently related to these seven employees broadcasting news about ITV management interfering in news coverage. The Committee notes, however, that the other 14 employees were not laid off for "circulating false news about ITV to outside organizations" but because the company was in financial difficulty. Moreover, the Committee notes with serious concern that upon being informed that a union had been formed at ITV, the management resorted to various tactics to discourage other employees from joining the ITV Labour Union, such as attempting to collect signed statements from them to the effect that they did not want a union at ITV or threatening them with the non-payment of bonuses if they joined the union. Finally, the Committee observes that the Government does not deny the anti-union attitude of the management but confines itself to affirming that the Labour Relations Act of 1975 provides adequate protection against acts of anti-union discrimination, including dismissal.*

778. *The above elements lead the Committee to conclude that the 21 former employees of ITV were dismissed on account of their membership of the ITV Labour Union. In this regard, the Committee recalls that no person should be dismissed or prejudiced in his or her employment by reason of trade union membership or legitimate trade union activities, and it is important to forbid and penalize in practice all acts of anti-union discrimination in respect of employment [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 696]. The Committee also notes that out of the 21 dismissed employees, nine were elected union officials including the president, vice-president and secretary-general. In these circumstances, the Committee must emphasize that one of the principles of freedom of association is that workers should enjoy adequate protection against all acts of anti-union discrimination in their employment, such as dismissal, demotion, transfer or other prejudicial measures. This protection is particularly needed in the case of trade union officials because, in order to be able to*

perform their trade union duties in full independence, they should have a guarantee that they will not be prejudiced on account of the mandate which they hold from their trade unions. The Committee considers that the guarantee of such protection in the case of trade union officials is also necessary in order to ensure that effect is given to the fundamental principle that workers' organizations shall have the right to elect their representatives in full freedom [see ***Digest****, op. cit., para. 724]. Recalling that the Government is responsible for preventing all acts of anti-union discrimination, the Committee accordingly requests the Government to take steps to ensure the reinstatement of these 21 members and officials of the ITV Labour Union in their jobs, with the payment of back wages. It further requests the Government to keep it informed of any developments in this regard.*

779. *The Committee notes that the ITV Labour Union filed a complaint over the dismissals to the tripartite LRC which, on 29 June 2001, found that ITV had violated section 121 of the Labour Relations Act of 1975 and unanimously ordered the reinstatement of the 21 dismissed ITV union officials and members. The Committee observes that section 121 of the Labour Relations Act of 1975 prohibits the employer from discriminating against employees on account of their trade union membership, activities or functions, both at the time of recruitment as well as during the employment relationship; this provision further prohibits the employer from interfering in the formation and functioning of trade unions. The Committee notes however that, on 10 July 2001, ITV appealed against the ruling of the LRC to the Central Labour Court and that the case is sub judice. The Committee would request the Government to keep it informed of the outcome of the judgement of the Central Labour Court in this regard.*

The Committee's recommendations

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

(a) Recalling that the Government is responsible for preventing all acts of anti-union discrimination, the Committee requests the Government to take steps to ensure the reinstatement of the 21 dismissed members and officials of the ITV Labour Union in their jobs, with the payment of back wages. It asks the Government to keep it informed of developments in this regard.

(b) The Committee requests the Government to keep it informed of the outcome of the judgement of the Central Labour Court over the dismissals of the 21 ITV Labour Union members and officials.

CASE NO. 2148

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

Complaint against the Government of Togo presented by the National Union of Independent Trade Unions of Togo (UNSIT)

Allegations: Violation of the right to strike; arrests of trade unionists during strikes and demonstrations; acts of violence against trade unionists

781. The National Union of Independent Trade Unions of Togo (UNSIT) presented the complaint against the Government of Togo in a communication dated 30 September 2000, received by the ILO on 11 June 2001. The Government sent its observations in a communication dated 7 January 2002.

782. Togo has ratified the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), and the Right to Organize and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

783. In its communication dated 30 September 2000, the National Union of Independent Trade Unions of Togo (UNSIT) states that the violations of trade union rights to which the present complaint refers, which affect UNSIT and its teaching federation (FETREN/UNSIT), are taking place in a context of an endemic crisis in the schools sector that has continued for many years. The crisis has deepened since 1998, with regular teachers experiencing an erosion of their purchasing power and considerable delays in payment of their salaries; many have not received their salaries at all, while the situation is even worse for assistant teachers.

784. The deepening of the crisis in 1998-99 and the delays and non-payment of salaries led to a strike of three and a half to four months. The school year was thus reduced to four and a half months of teaching. The Ministry of Education insisted on keeping to the appointed dates for the end-of-year examinations, despite a warning from FETREN/UNSIT, which wrote to the national education authorities on 4 June 1999 to protest against the working conditions experienced by teaching staff and their repercussions for students and demanding, inter alia, that the salary and social allowances arrears be paid. Since there was no reaction, the union issued a strike warning on 9 June and on 12 June announced a boycott of examination invigilation and marking. The examinations did, however, take place, in what the complainant organizations describe as utter chaos. In an attempt to draw lessons from the events of 1998-99 and ensure a proper start to the following school year, the complainant organization met with the Minister for Education on 5 September 1999 and presented a list of grievances. The only tangible result was that the start of the school year was postponed from 4 to 18 October. On 1 October, the union's General Assembly voted to issue a strike warning and on 8 October announced a boycott of the beginning of the school year. Over the next ten days, the complainant and other teachers' organizations met with the Prime Minister, ministers for education, the civil service ministers and technical education and heads of ministry.

785. Since no tangible result was forthcoming from the meetings, the strike began on 18 October 2000, the first day of the school year. Since the authorities were insisting on

maintaining the status quo, the complainant organizations organized demonstrations and press conferences to raise public opinion at home and abroad, much to the Government's displeasure. An initial march planned for 8 November was banned one day in advance by the Minister for the Interior on the false pretext that it was part of an "international plot against the Togolese State". The demonstration, which involved some 4,000 participants, nevertheless took place and was peaceful. The complainant organizations also brought a legal case against the Minister for the Interior for the false accusations that he made publicly against the union; however, the proceedings ended in deadlock, largely because of the 10 million CFA francs in security demanded by the court on the orders of the authorities (the usual sum for such cases is 25,000 francs).

786. A second march, planned for 8 December, was not only banned, but was forcibly prevented from beginning. Large numbers of police and militia attacked the participants as they gathered. Several teachers (Mr. Nouwossan, Mr. Zekpa, Mr. Toffa and Mr. Atisso) and students (Mr. Nyaledome and Mr. Anthony) were arrested, beaten and taken to the central police station, where they were subjected to drubbing and other degrading treatment. The previous day, a school superintendent, Mr. Bouame, had been attacked as he was distributing leaflets advertising the demonstration; he was held for 24 hours and once again severely beaten. The secretary-general of UNSIT, Mr. Gbikpi-Benissan, and the secretary-general of FETREN, Mr. Allagua-Kodegui, were arrested and held for eight hours at Lomé Central Prison. Together with a third teacher, Mr. Comlan, they were accused of spreading false information, though the accusation was subsequently withdrawn after a national and international public awareness campaign. Other demonstrations, previously planned for 16 December 1999 and 8 and 16 January 2000, were also banned.

787. Since the first term of the 1999-2000 school year was over before lessons had really been able to begin, the National Assembly requested the Government to resume negotiations with teachers. The Government chose, instead, to issue an ultimatum to return work first on 4 and then on 8 January or resign. At a meeting with the complainant organizations on 18 January, the Minister for Education made any resumption of negotiations conditional on the return to work. On 7 February, the Minister for the Civil Service announced a "census" of teachers on 10 February, for which teachers would have to produce a certificate of attendance at work. The real purpose was to identify and dismiss strikers. The complainant organizations met with the Minister on 9 February to express their concerns in connection with the census, but there was no result. Despite their reservations about the true nature of the operation, they called on all members to go to work and participate in the procedure. However, a number were sent away since the census officials claimed that they were formally prohibited from registering strikers. During the operation, the Government ensured that each teacher registered received a month's salary. Since the census officially ended, the counting has continued; hundreds of teachers who were not registered or paid are still waiting for their salaries, and there is total chaos.

788. To justify the operation, the Civil Service Ministry issued several Decrees (No. 057/MFTPE on the absence without leave of 81 teachers; No. 093/MFTPE on the absence without leave of a further 22 teachers; No. 229/MFTPE on a further 16 teachers and No. 965/MFTPE on six more), which ordered that no salary be paid for the period of absence. As of the date of this complaint, 126 teachers remained arbitrarily deprived, since October 1999, of their scant and irregularly paid salaries; for some, this represents eight months of salary and for others over 15 months of salary.

789. The complainant organizations emphasize that they have followed the procedure established for the settlement of labour disputes and continually called for a return to negotiations, for which they remain ready. As to the substance, the strike was a legal form of action in view of the grievances concerning rank and the payment of many months of salary arrears, family allowances and subsidies. Instead of proceeding to genuine

negotiations, the Government has used intimidation and repressive measures that violate, in particular, the right to strike, which is guaranteed by the national Constitution, the Civil Service Charter and the Labour Code, as well as by ILO Conventions Nos. 87 and 98, which Togo has ratified. The Decrees issued by the authorities have no legal foundation and are additional violations of that right. The situation of assistant teachers is even worse than that of regular teachers and the complainant organizations propose to submit an additional complaint to the Committee on that issue.

790. Finally, the complainant organizations call for condemnation of the Government's violations of freedom of association, the rescinding of the decrees violating the rights of the 126 teachers and the restoration of the rights of all assistant teachers until a ruling is made on their case.

B. The Government's reply

791. In its communication dated 27 December 2001, the Government states that, in implementation of Conventions Nos. 87 and 98, ratified by Togo, the Constitution in articles 30 and 39 guarantees the exercise of freedom of association, assembly and peaceful demonstration. Article 39 recognizes workers' right to strike in accordance with the relevant laws, including Decree No. 91-167 on the right to strike for public servants.

792. Article 2 of that Decree defines a strike as a collective stoppage of work preceded by a warning issued by representative organizations of the relevant occupational group. While the legislator, in adopting the Decree, did not impose majority or quorum requirements for strikes, it was nevertheless intended that a strike be the act of a relatively significant number of workers. The documents submitted by the complainants themselves (the five lists noting the absence of teachers without leave) demonstrate that the number involved is relatively small in the context of the national school system and that they were encouraged by UNSIT to strike in order to demand the immediate payment of six months' salary in some cases and a change of rank in other cases.

793. While recognizing the substance of the strikers' salary claims, the Government recalls that these are entirely the consequence of the "general, unlimited and non-negotiable" strike in 1992, led by the current secretary-general of UNSIT on behalf of a groups of unions and in concert with political parties, to force the Head of State to resign. The Government has the greatest difficulty in honouring its commitments to the workforce as a whole since public revenues barely cover the payroll. It is unrealistic for UNSIT to demand that all teachers receive all back pay before the return to work.

794. In fact, UNSIT is conducting a tug-of-war with the authorities and has no compunction in involving students' associations. This begs the question as to the real motive for this strike, which is not supported by the majority of teachers. The movement is thus acting unlawfully, in contravention of article 2 of Decree 91-167. The Government was forced to act by invoking article 5 of the same Decree, which provides that failure to comply with article 2 shall lead to the application of the appropriate penalties under the statutes governing the relevant workers. The regular teachers' absence without leave was recorded on the basis of these provisions. As regards assistant teachers, their refusal to retain their current legal status represents a substantial modification of their public service contract.

795. Despite the irregularities associated with the strike movement and the legality of the penalties that could have been imposed on the strikers, the Government did not take measures as severe as would have been appropriate to this type of case. It took a lenient line because of its ongoing commitment to social dialogue. Hence, all teachers who returned to work or applied to return have had the sanctions against them lifted: the Government attaches a list of 48 of the strikers who returned to work. The Government

respects workers' rights and freedoms but also has to protect the public interest. Thus, it was obliged to take action against the isolated acts of a handful of teachers, which were in contrast to the vast majority of their colleagues who realized the harmful and illegal nature of strikes based on political motivations or unrealistic objectives.

796. The Government states that it finds surprising and illogical the allegation that the census was directed against strikers. Why would the State use its limited resources to do that when it only had to ask the regional inspectors to go out and obtain a list of strikers? The truth is quite different. It was not a single-profession census; it covered all State agents and public servants, be they permanent, temporary or contractual.

797. As regards the strike bans, the Government states that, on the basis of the information in its possession, the Ministry of the Interior had to intervene to prevent a repetition of the destruction of public and private property that had occurred in the past.

798. In connection with the detention of Mr. Gbikpi-Benissan and Mr. Allagua-Kodegui in the context of the events at the Agbalepedogan Lycée in Lomé, the Government makes reference to the explanations provided in response to the complaint previously submitted to the Committee by the World Confederation of Labour [Case No. 2071].

C. The Committee's conclusions

799. *The Committee notes that in this case the allegations concern acts of violence and arrests of trade unionists during a strike organized by a teachers' union to protest at salary payment delays and non-payment and the adoption of decrees stripping certain teachers of their rights. The Committee also notes that the Government recognizes the substance of these salary claims, but explains that it cannot honour them because of the state of public finances; it also states that the strike was the action of only a minority of workers and that the forces of order had to intervene to prevent the destruction of public and private property.*

800. *As regards the central issue, namely the strike by teachers in support of their grievances, the Committee recalls that the right to strike is one of the essential means through which workers and their organizations may promote and defend their economic and social interests [**Digest of decisions and principles of the Freedom of Association Committee**, 1996, para. 175] and that the education sector does not constitute an essential service in respect of limitations of the right to strike [**Digest**, op. cit., para. 545]. The Committee notes that, in the case in point, the dispute appears to have been lengthy and that, after only four and a half months of lessons in the 1998-99 school year, lessons were not really resumed in the first term of the 1999-2000 school year. However, the Committee must view the events in context and recalls, in relation to the substance, the recommendations that it made in connection with the situation in Togo when it expressed (in June 2000) the firm hope that the problems of a social nature, including those caused by delayed payment of salaries, confronted by the workers of Togo might be settled within the framework of a dialogue between the Government and the trade union organizations [Case No. 2071, 321st Report, G.B., Series B, No. 2, Vol. LXXXIII, 2000, paras. 435-436]. While taking into account the financial difficulties referred to by the Government, the Committee emphasizes that social problems of this order and breadth can only move towards a solution through social dialogue and reiterates this appeal to the Government.*

801. *As regards the legality of the nationwide strike, the Committee notes that the complainants claim to have complied with the conditions of form and substance, while the Government considers that FETREN/UNSIT acted unlawfully in that the strike was decided and conducted only by a minority of workers. While taking note of the Government's arguments, the Committee observes that article 2 of Decree No. 91-167 only stipulates in*

this connection that a warning shall be issued ten days in advance by the representative organization – two obligations met by the complainants – and does not lay down any requirement for a quorum or majority. Since the strike was legal, the Government was not entitled to use decrees to take measures of retribution against workers who were merely exercising their right to strike within the law. The Committee therefore invites the Government rapidly to revoke the decrees in question and restore the rights of all teachers still affected by them and to keep it informed of developments in this regard.

802. *As regards the arrests of the secretary-general of UNSIT and the secretary-general of FETREN, the Committee recalls that it has already dealt with precisely this question and refers to its conclusions and recommendations on the matter [Case No. 2071, op. cit., paras. 428-436]. The Committee also recalls the comments made on that occasion with reference to the acts of violence and arrests that accompanied the events. While persons engaged in trade union activities or holding trade union office cannot claim immunity in respect of the ordinary criminal law, trade union activities should not in themselves be used by the public authorities as a pretext for the arbitrary arrest or detention of trade unionists [**Digest**, op. cit., para. 83]. Moreover, the Committee emphasizes that trade union rights include the right to organize public demonstrations [**Digest**, op. cit., para. 136] and that, while trade unions must conform to the general provisions applicable to all public meetings and must respect the reasonable limits which may be fixed by the authorities to avoid disturbances in public places, the use of the forces of order during trade union demonstrations should be limited to cases of genuine necessity [**Digest**, op. cit., paras. 141 and 146]. While the Committee will not pursue investigation of this aspect of the case, as the persons concerned have been freed, it requests the Government, in future, to refrain from intervening in the demonstrations held in such circumstances and from detaining trade unionists in such cases.*

803. *As regards assistant teachers, UNSIT states in general terms that their situation is worse than that of regular teachers and that it proposes to make a detailed complaint on the matter, which will be examined by the Committee in the context of the evidence provided if the complainant organization follows up its intention.*

The Committee's recommendations

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

(a) The Committee requests the Government rapidly to rescind the decrees declaring the teachers absent without leave and to restore the rights of all teachers still affected by these decrees; the Committee requests the Government to keep it informed of developments in this regard.

(b) The Committee once again expresses the firm hope that the problems of a social nature, including those caused by delayed payment of salaries, confronted by the workers of Togo would be settled through dialogue between the Government and the trade union organizations.

(c) The Committee requests the Government, in future, to refrain from intervening in demonstrations held by workers in accordance with freedom of association principles and from detaining trade unionists in such cases.

CASE NO. 2126

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

Complaint against the Government of Turkey presented by — the International Metalworkers' Federation (IMF) and — Dok Gemi-Iş

Allegations: Violations of representational and collective bargaining rights

805. In a communication dated 17 April 2001, the International Metalworkers' Federation (IMF) and Dok Gemi-Iş submitted a complaint of violations of freedom of association and of collective bargaining rights against the Government of Turkey.

806. The Government sent its observations in a communication dated 26 October 2001.

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

A. The complainants' allegations

808. In a communication dated 17 April 2001, the International Metalworkers' Federation (IMF) and Dok Gemi-Iş jointly submitted a complaint for the denial of fundamental trade union rights in Turkey. The complainants state that the earthquake which devastated much of northern Turkey in August 1999 caused considerable damage to the main naval shipyard at Golcuk. As a result, the work previously undertaken at the Golcuk shipyard, to maintain and service naval vessels, was partially transferred to the Pendik shipyard and the rest was transferred to the Alaybey shipyard, which previously operated in the commercial sector. Thus part of the workforce from the Golcuk shipyard, many of whom were members of the Harb-Iş union (which under current Turkish law had sole representation rights in the naval shipyards), was subsequently transferred to the Pendik shipyard.

809. The management of the Pendik and Alaybey shipyards, pressed by the Ministry of National Defence, disputed the right of Dok Gemi-Iş (the trade union with almost 100 per cent membership amongst the workforce in the commercial operations at the Alaybey shipyard and over two-thirds of the workforce at the Pendik shipyard), to continue to represent their members in these two shipyards. Meanwhile, the management of these two shipyards and officials of the Harb-Iş union, pressed Dok Gemi-Iş members to transfer their membership to Harb-Iş.

810. Dok Gemi-Iş appealed to the Minister of Labour in November 1999 to uphold its right to represent its members in the Pendik and Alaybey shipyards. Initially the Minister agreed that Dok Gemi-Iş should continue to represent the interests of its members at these two shipyards, at least until the current collective agreement expired on 31 December 2000. However, the complainant alleges that the management of the two shipyards and the Minister for National Defence refused to accept this decision and, in collusion with Harb-Iş, continued to pressure the members of Dok Gemi-Iş to resign from their union and join Harb-Iş. Furthermore, they jointly pressed the Government to pass a special decree in order to transfer the two shipyards into the Ministry of National Defence sector which, under

Turkish law, would preclude Dok Gemi-Iş from representing the workers at these two shipyards.

811. The complainants further allege that Dok Gemi-Iş was subsequently threatened by the Privatization High Committee established by the Prime Minister that the Haliç and Camialti shipyards could also be transferred to the Ministry of National Defence sector. It has been suggested that this was in retaliation to Dok Gemi-Iş' opposition to the attempt to wrest control over the Pendik and Alaybey shipyards.

812. The Turkish Government subsequently passed a Special Decree in October 1999, transferring the Pendik and Alaybey shipyards to the Ministry of National Defence sector. Furthermore, the management of the two shipyards and the naval authorities continued to refuse to recognize either the full-time or local Dok Gemi-Iş officials, despite the fact that they continued to be the democratically elected and legally appointed spokespersons for the workers in these two shipyards.

813. Faced with the challenge to its right to represent its members, Dok Gemi-Iş submitted an appeal to the First Ankara Labour Court in November 1999, claiming that:

(a) the labour contract concluded between the parties continued to be valid until its expiry date December 2000;

(b) there had been no change in the type of activities operated in the shipyards after the takeover and the sector should still be considered to be in the shipbuilding sector, as listed by the Ministry of Labour.

814. At the first hearing in May 2000, the union's right to continue to represent its members was upheld until a final decision was taken. It was decided that a second hearing would take place on 30 May 2000, at which an expert mission of scholars with the appropriate academic background would be established to provide advice and guidance to the court.

815. In the period of time between the first and second hearings, the Turkish Government, without any prior notification or consultation with the workers or their union, suddenly announced the closure of both the Haliç and Camialti shipyards, resulting in the impending dismissal of some 1,100 workers, virtually all of whom were Dok Gemi-Iş members. Apart from the Pendik and Alaybey shipyards, the Haliç and Camialti shipyards were the only remaining shipyards where Dok Gemi-Iş had membership. Consequently the threatened closure of the Haliç and Camialti shipyards, following the transfer of the Pendik and Alaybey shipyards to the Ministry of National Defence sector would, if upheld, result in the dissolution of Dok Gemi-Iş, given that this would constitute the virtual loss of the union's entire membership base.

816. Furthermore, during the intervening period, those Dok Gemi-Iş members who had refused to transfer to Harb-Iş were subjected to ongoing harassment and intimidation, with management dismissing the maximum number of workers (nine per month) allowed under Turkish law. In the meantime, Harb-Iş has been encouraged by the employers and the naval authorities to continue to poach Dok Gemi-Iş members unchecked.

817. At the second hearing, on 30 May 2000, the judge, contrary to what was expected, did not establish an expert mission, but simply dismissed Dok Gemi-Iş' claim without providing any reason or explanation for his decision at that time. It was stated that his reasoning would be made available at a later date and it has subsequently been suggested that his decision was the result of intense political pressure from both government and military authorities. It should be noted in this regard that the Minister of Defence in the current Government is a member of the Nationalist Movement Party (NMP), which is the second

largest political group within the current coalition Government, and Harb-Iş strongly supports and has very close ties with the NMP.

818. The published reason for dismissing the case merely stated that the Special Decree had transferred the two shipyards into the military service sector and, as a result, Dok Gemi-Iş was no longer able to represent the workers in the Pendik and Alaybey shipyards.

819. Dok Gemi-Iş lodged an appeal with the Turkish Supreme Court to contest the legality of this decision in July 2000, including a strong plea to allow a full hearing to take place, in order to ensure that all necessary evidence was made available to the Court of Appeal. In this submission it was argued that in determining the appropriate sectoral classification, instead of the name and or the title of the plants being seen as the decisive factor, it is the type of activities that are operated in the plant which should be taken into account, as stated in Turkish Labour Law (Act No. 2821). Mindful of the international implications of this case, the International Metalworkers' Federation presented an independent submission to the Supreme Court of Appeal.

820. The Supreme Court of Appeal met to consider Dok Gemi-Iş' appeal for a full hearing. Despite the fact that both Dok Gemi-Iş and the IMF submitted strong grounds for ensuring that all the necessary evidence was made available, the five-judge panel rejected the request. Instead the appeal was restricted to simply review the evidence presented to, and the decision reached by the lower Court. The five-judge panel then voted, by a majority of three to two, to uphold the earlier decision. The two dissenting judges, however, explained that the majority decision was contrary to Turkish law and ignored the requirement to take cognizance of accepted international norms in establishing various economic or industrial sectors.

821. The complainants point out that the artificial and unnecessary separation of the commercial and naval shipyards in Turkey is without precedent in any other democratic country and results in a deliberate denial of Turkish shipyard workers' freedom of association. Furthermore, the refusal to recognize Dok Gemi-Iş officials as legitimate representatives of the workers at the Pendik and Alaybey shipyards constitutes a denial of the right to collective bargaining. The infringements of freedom of association in Turkey have had, and will continue to have, significant and lasting implications for industrial relations in the country, while the actions of the Turkish Government and military authorities will, if allowed to proceed unchecked, likely result in the dissolution of Dok Gemi-Iş.

822. Further proof of the Turkish Government's failure to observe and ensure that their citizens were able to enjoy the right of freedom of association, was evident in their refusal to intervene when requested to by Dok Gemi-Iş, following the dismissal of some 200 workers at the ship-scrapping site at Aliaga, the day after they had agreed to join Dok Gemi-Iş. When Dok Gemi-Iş appealed to the Government for assistance to ensure the right to trade union membership was not denied to the workers at Aliaga, the Government refused their request, informing them that as ship-scrapping activities were in the private sector they were unable to intervene. At the present time none of the workers at the Aliaga ship-scrapping site are members of a trade union.

823. The complainant adds that before a trade union can obtain official representation rights under Turkish law, they have to be able to prove that they have organized a majority of the workforce at each and every plant or workplace, that is: 50 per cent plus one, as well as representing 10 per cent of the entire workforce in that particular sector. Furthermore, a trade union is not allowed to receive any financial subscriptions from its members unless or until they have negotiated a collective agreement on their members' behalf. Such stringent restrictions constitute a severe restriction on the right to freedom of association.

824. As noted above, the Turkish economy is divided into various industrial or economic sectors, and trade unions are restricted from recruiting or accepting members from sectors other than those for which they have been granted specific representation rights. As a result, reflecting the impending loss of membership and thus income, Dok Gemi-Iş was required to issue termination notices to its employees in June 2000, in order to provide the required period of notice. Finally, the complainant asserts that a further difficulty arises from the fact that those trade unions with membership in the Ministry of National Defence sector have to rely, for the settlement of any disputes, on a government-provided arbitration service.

B. The Government's reply

825. In a communication dated 26 October 2001, the Government observes that in the wake of the massive earthquake, Golcuk Naval Shipyard, which belongs to the Turkish Navy, had been damaged so heavily as not to continue functioning properly. As the reconstruction was considered to be very difficult and costly, the decision was taken to transfer the Pendik and Alaybey shipyards, both of which belonged to the Turkish Ship Industry A.Ş., to the Ministry of National Defence, with a protocol signed in October 1999 between the contracting parties.

826. Within the framework of the restructuring activities of the newly transferred units, many workers from other units of the Ministry of National Defence were transferred to these shipyards in order to increase the efficiency of the workplaces according to the needs of the new employer. Neither the transfer of the two shipyards nor the transfer of workers has anything to do with the trade union affairs. These are solely the requirements of the current conditions indispensable for the Turkish Navy after the damages of the earthquake.

827. As regards the allegations of pressure on the members of Dok Gemi-Iş to join another trade union, previously organized in the branch of national defence, the Government states that upon the transfer of the shipyards some of the workers may have joined another trade union but adds that this only depicts the exercise of free choice by the workers. The Government asserts that it did not and does not interfere with the free choice of workers. Existing laws and regulations stipulate that the workers have the right to join organizations of their own choosing in accordance with Conventions Nos. 87 and 98.

828. In relation to the allegations on the administrative procedure followed during and after the transfer, the Government asserts that before the transfer there existed a collective agreement concluded between the Public Employers' Association of Turkish Heavy Industry and Service Sector (TÜHIS) and Dok Gemi-Iş, which had a validity period from 1 January 1999 to 31 January 2000. At the date of the transfer this agreement maintained its validity. The Ministry of National Defence applied to the Ministry of Labour and Social Security in November 1999 demanding its opinion whether the collective agreement, concluded previously in the newly transferred shipyards, was applicable when the change in the branch of activity was taken into consideration. In its response, the Ministry of Labour and Social Security informed the applicant that the collective agreement should continue until the end of its expiry date 31 December 2000. Having examined Dok Gemi-Iş' application, the First Ankara Labour Court also decided that the collective agreement should continue to be valid until the end of its expiry date.

829. Dok Gemi-Iş later appealed to the Ministry of Labour and Social Security demanding the determination of branch of activity for the two newly transferred workplaces in accordance with section 4, of Trade Unions Act No. 2821. Having examined the situation, the Ministry of Labour and Social Security decided that activities carried out in both shipyards fell into the Branch of National Defence and a formal decision of the Ministry of Labour and Social Security was published in the *Official Gazette* dated 25 February 2000.

830. Dok Gemi-Iş appealed the decision to the First Ankara Labour Court which rejected the complainant's application and approved the decision of the Ministry of Labour and Social Security. The decision was upheld by the Court of Appeal in July 2000.

831. After the transfer of the Alaybey and Pendik Shipyards came into effect, Dok Gemi-Iş appealed to the Ministry of Labour and Social Security for the determination of the branch of activity covering nine naval shipyards in the activity branch No. 26 (national defence) in which the Harb-Iş (trade union) was competent to conclude collective labour agreements. Having examined the case, the Ministry of Labour and Social Security decided that military workplaces (including the disputed two) fell into the branch of national defence, enumerated in Row No. 26 of section 60 of the Trade Unions Act. Dok Gemi-Iş once again objected to this decision, appealing to the Fourth Ankara Labour Court which rejected the applicants demand and approved the decision of the Ministry of Labour and Social Security. This verdict was also approved by the Court of Appeal in November 2000.

832. Regarding the branch of activity, section 3 of Act No. 2821 reads as follows: "Workers' trade unions shall be constituted on an industrial basis by workers employed in establishments in the same branch of activity with the purpose of their activity widespread throughout Turkey. ... More than one trade union may be constituted in the same branch of activity." On the issue, section 4 of the same Act reads: "The branch of activity covering an establishment shall be determined by the Ministry of Labour and Social Security. This decision of the Ministry of Labour and Social Security shall be published in the *Official Gazette*. The parties concerned may lodge an appeal against this decision with the local court having jurisdiction in labour matters within 15 days of the publication. The Court shall give a ruling on the appeal within two months. Where this ruling is appealed, a final ruling shall be given by the Court of Appeal within two months." So, all the abovementioned administrative procedures during and after the transfer of the two shipyards were in conformity with the stipulations of the Trade Unions Act No. 2821 and the Collective Labour Agreement, Strike and Lockout Act No. 2822 and further supported by the Court decisions.

833. As regards the allegation about Haliç and Camialti shipyards, no evidence could be found supporting the complainants allegations. On the contrary, Dok Gemi-Iş has been considered to be competent to conclude collective labour agreements in the workplaces which belong to the Turkish Ship Industry A.Ş General Directorate (including Haliç and Camialti shipyards). The decision of the Ministry of Labour and Social Security related to competency was communicated to Dok Gemi-Iş in February 2001. Another trade union, Limter-Iş, organized in the same branch of activity, contested the decision of the Ministry of Labour and Social Security, appealing to the Istanbul Second Labour Court. The Court dismissed the demand of Limter-Iş and the competency certificate for Dok Gemi-Iş was issued by the Ministry of Labour and Social Security in July 2001 and communicated to Dok Gemi-Iş. According to the records of the Ministry of Labour and Social Security, the total number of workers employed in these workplaces is 803 (not 1,100 as claimed by Dok Gemi-Iş) and 467 of them are members of Dok Gemi-Iş. The Ministry of Labour and Social Security is not aware of any information concerning the closing down of the workplaces. On the other hand, it is the reality of Turkey that some of the workplaces may be closed down because of the economic situation, leaving their workforce jobless and hence resulting in large-scale lay-offs. It is not reasonable to attribute all these occurrences to trade union activities. Furthermore, there is no information or document which substantiates any prevailing pressure on the workers or on the trade unions. On the contrary the decision of the Ministry of Labour and Social Security and the court decision are in favour of the complainant and Dok Gemi-Iş continues to represent its members in these two workplaces. This development itself reflects the supremacy of the judiciary in Turkey.

834. Regarding the allegations of pressure on the courts, it should be emphasized that the Turkish Constitution, as confirmed once again by the abovementioned fact, recognizes the supremacy of the judiciary, the independence of the courts and the separation of powers. Independence and impartiality of the courts and judges are ensured by law, so all the allegations about the decisions of the courts are not substantiated. It should also be added that the decisions of the courts do not contradict the objectives and provisions of Conventions Nos. 11, 87, 98, 100, 105, 111 and 135, which Turkey has ratified. Furthermore, dissenting opinions are a common practice of courts while giving their decisions. It should be taken as the concrete proof of the independence of judges rather than the indication of the pressure on the judges, as was alleged by the complainant.

835. As for the allegation about the dismissal of 200 workers when they became members of Dok Gemi-Iş, the Government states that no such complaint has yet been lodged with the Ministry of Labour and Social Security. The complainant makes allegations without any proof. However, whenever any complaint reaches the Ministry of Labour and Social Security on this matter, it will be examined thoroughly by the relevant institutions, in accordance with the legislative and administrative procedure.

836. With respect to the issue of dual criteria for determining the representative status of trade unions for collective bargaining purposes, the Government has proposed to the social partners in two draft bills the lifting of the 10 per cent membership requirement of the union in the relevant branch of industry. The work on two draft bills proposing amendments mainly to the Trade Unions Act and the Collective Labour Agreement, Strike and Lockout Act has not been finalized yet due to continuing consultations with the social partners to reach a consensus on the question of dual criteria in particular. If the proposal is accepted by the social partners, a trade union that has the majority of the workers at the workplace will have representative status as the bargaining agent. Further information can be obtained from the reports of the Government concerning Conventions Nos. 87 and 98.

837. Consequently, the Government considers that the allegations are unfounded and lacking of evidence. It is obvious that there is a dispute and challenge between two trade unions. The Government stands impartial and would like to stress again that no efforts will be spared in catching up with the standards set forth in the ILO Conventions to which Turkey is a party.

C. The Committee's conclusions

838. *The Committee notes that the allegations in this case concern the classification of certain shipyards as falling within the purview of the Ministry of National Defence sector resulting in the loss of representation rights for the Dok Gemi-Iş trade union on behalf of workers involved in what were previously considered as commercial operations at the various shipyards. The complainants further allege threats, harassment and intimidation of Dok Gemi-Iş members, as well as numerous anti-union dismissals in several shipyards.*

839. *The Committee notes that the facts presented by the complainants and the Government in respect of the transfer of operations from the Golcuk shipyard to the Pendik and Alaybey shipyards and the corresponding representation rights at that time for the Harb-Iş and the Dok Gemi-Iş trade unions do not present any contradictions. The complainants' main contention concerns the fact that, following the transfer of the Golcuk shipyard operations, the Government used its powers under the relevant national law to change the branch of activity classification of the Pendik and Alaybey shipyards from "shipbuilding" to "national defence". This decision was subsequently upheld by the relevant appeals courts and resulted in the loss of representation rights for Dok Gemi-Iş, which asserts that it had almost 100 per cent of the membership of the workforce in the commercial sector at the Alaybey shipyard and over two-thirds of the workforce at the Pendik shipyard.*

840. *The Committee notes the Government's indication that the decision to classify these two shipyards under the national defence sector was not based on trade union concerns but rather on a need to restructure the shipyards due to the earthquake damage which had occurred at the Golcuk naval shipyard. In particular, the Government asserts that, within the framework of the restructuring activities, many workers from other units of the Ministry of National Defence were transferred to the Pendik and Alaybey shipyards in order to increase the efficiency of the workplaces according to the needs of the new employer. In light of these circumstances, the Ministry of Labour and Social Security decided that the activities of the two shipyards fell into the national defence branch and published a formal decision in the Official Gazette to this effect in February 2000.*

841. *Act No. 2821 on trade unions (hereinafter, the Trade Unions Act) addresses questions of trade union formation and classification of branches of activity. Section 3 of the Trade Unions Act provides that trade unions may be formed at industrial level by workers employed in establishments in the same branch activity. The branch of activity covering an establishment is to be determined by the Ministry of Labour and Social Security, and the parties concerned may appeal the decision to the competent courts (section 4, of the Trade Unions Act). Section 60 of the Act sets out the various branches of activity along the lines of which workers and employers may organize.*

842. *While the law permits more than one trade union in a given branch activity, it appears that a trade union can only represent workers in respect of one single branch of activity. Harb-Iş is the trade union which has had sole representation rights in the naval shipyards classified as being in the national defence sector and Dok Gemi-Iş has traditionally represented the workforce in shipyards with commercial operations, establishments which had been classified as pertaining to the shipbuilding sector. The result of the change in the classification of the Pendik and Alaybey shipyards is that, while the type of operations carried out has apparently not changed, the entire workforce is now considered as falling within the national defence sector; thus the workers who were members of Dok Gemi-Iş may no longer be represented by this trade union.*

843. *The Committee first recalls that the right of workers to establish and join organizations of their own choosing is one of the basic tenets of freedom of association. While the fact that trade unions at industrial level may only affiliate members from one single given branch of activity may be purely a matter of form, particularly in the light of the fact that these first-degree organizations appear to be free to establish and join federations and confederations, the Committee notes that, in the case at hand, the sudden change of the branch classification of the Pendik and Alaybey shipyards has, for a significant number of workers, resulted in the immediate loss of their right to be represented by the organization which they had freely chosen. While not calling into question the approach of setting up broad bands of classification relating to branches of activity for the purposes of clarifying the nature and scope of industrial level unions, the Committee considers that the fine distinction made between shipbuilding in the commercial sector and that carried out for naval purposes borders on the illogical, particularly given the identical nature of the functions carried out by the workers and the fact that there is no distinction between their status as "employee" falling within the scope of the Trade Unions Act. The radical impact of this decision in respect of the Dok Gemi-Iş trade union and its members constitutes a clear violation of the right of workers to form and join organizations of their own choosing. In this respect, the Committee stresses that the right of workers to form and join organizations of their own choosing also implies the right to determine the structure of such organizations.*

844. *In conclusion, the Committee considers that the classification of the Pendik and Alaybey shipyards as part of the national defence sector, with the resulting loss of trade union membership and representation, constitutes a violation of both the organizational and the*

representational rights of the workers affiliated to Dok Gemi-Iş, in contravention of Convention No. 87 (ratified by Turkey). The Committee therefore requests the Government to take the necessary measures to guarantee the right of Dok Gemi-Iş to organize and represent its members in the Pendik and Alaybey shipyards and to ensure that any resulting lost membership in the Dok Gemi-Iş trade union is immediately restored.

845. *As concerns the allegations related to the threatened change in classification of the Haliç and Camialti shipyards, the Committee notes the Government's indication that no evidence could be found in this respect. Given that Dok Gemi-Iş remains the representative union for the workers in these shipyards, and in the light of its above conclusions concerning the classification of commercial operations at shipyards, the Committee considers that this point does not call for further examination. On the other hand, the Committee regrets that the Government has not provided any specific information concerning the impending dismissal of 1,100 workers (virtually all of whom, according to the complainant, were Dok Gemi-Iş members) as a result of the threats of closure of these two shipyards. The Committee therefore requests the Government to take the necessary measures to institute an independent investigation into these allegations and, if any dismissals have occurred due to anti-union discrimination, to take the necessary measures to ensure that these individuals are reinstated in their jobs with compensation for lost wages or that they be guaranteed adequate compensation for the damages suffered. Similarly, the Committee requests the Government to institute independent investigations into the allegations of harassment and intimidation of Dok Gemi-Iş members by management, including the dismissal of the maximum number of workers allowed by law (nine per month), and the dismissal of some 200 workers at the ship-scrapping site at Aliaga the day after they had agreed to join the union. Again, the Government is requested to take the necessary remedial steps if these allegations are proven to be true and to keep the Committee informed in this regard.*

846. *Finally, the complainants refer to the heavy burden of the dual criteria – representation of at least 10 per cent of the workers in a given branch of activity and more than half of the workers in the establishment or in each of the establishments to be covered by the collective agreement – necessary to obtain recognition rights (section 12 of the Collective Agreement Act No. 2822). The Committee recalls that it has already commented on this provision and requested the Government to take the necessary measures to amend it so that it would not constitute an obstacle to the right of workers' organizations to represent their workers [see 303rd Report, para. 57]. While noting with interest the Government's indication that it has proposed draft bills which would lift the requirement that a union represent 10 per cent of the workers in the relevant branch of industry, the Committee also notes that the Committee of Experts on the Application of Conventions and Recommendations, in its most recent observation (2002) concerning the application of Convention No. 98 in Turkey, has taken note of the Government's indication that the Bill to amend Act No. 2822 has not been finalized due to continuing consultations with social partners in order to reach a consensus on the question of dual criteria and that these amendments are specified in the National Programme as having medium-term priority. The Committee therefore expresses the firm hope that the necessary measures will be taken to amend this provision in the near future to bring it into conformity with Conventions Nos. 87 and 98 and draws this aspect of the case to the attention of the Committee of Experts on the Application of Conventions and Recommendations.*

The Committee's recommendations

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

(a) The Committee requests the Government to take the necessary measures to guarantee the right of Dok Gemi-Iş to organize and represent its members in the Pendik and Alaybey shipyards and to ensure that any lost membership in the Dok Gemi-Iş trade union as a result of the classification of these shipyards as falling within the national defence sector is immediately restored.

(b) The Committee requests the Government to take the necessary measures to institute an independent investigation into the allegations of impending anti-union dismissals of 1,100 workers (virtually all of whom, according to the complainant, were Dok Gemi-Iş members) at the Haliç and Camialti shipyards as a result of the threats of closure and, if any dismissals have occurred due to anti-union discrimination, to take the necessary measures to ensure that these individuals are reinstated in their jobs with compensation for loss of wages or that they are guaranteed adequate compensation for the damages suffered. The Committee requests the Government to keep it informed of the progress made in this regard.

(c) The Committee also requests the Government to institute independent investigations into the allegations of harassment and intimidation of Dok Gemi-Iş members by management, including the dismissal of the maximum number of workers allowed by law (nine per month), and the dismissal of some 200 workers at the ship-scrapping site at Aliaga the day after they had agreed to join the union and to take the necessary remedial steps if these allegations are proven to be true, including reinstatement in their jobs or adequate compensation for damages suffered by those dismissed. The Committee requests the Government to keep it informed of the progress made in this regard.

(d) The Committee expresses the firm hope that the necessary measures will be taken in the near future to amend the dual criteria for representational rights set forth in section 12 of Act No. 2822 to bring it into conformity with Conventions Nos. 87 and 98, and draws this aspect of the case to the attention of the Committee of Experts on the Application of Conventions and Recommendations.

CASE NO. 2147

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

Complaint against the Government of Turkey presented by the Confederation of Public Servants Unions of Turkey (TÜRKIYE KAMU-SEN)

Allegations: Dismissal of a trade union leader

848. In a communication dated 13 July 2001, the Confederation of Public Servants Unions of Turkey (TÜRKIYE KAMU-SEN) submitted a complaint of violations of freedom of association against the Government of Turkey.

849. The Government sent its observations in a communication dated 22 October 2001.

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

A. The complainant's allegations

851. In its communication dated 13 July 2001, the Confederation of Public Servants Unions (TÜRKIYE KAMU-SEN) presented the following allegations of violations of trade union rights in Turkey. Mr. Mehmet Akyüz has been an instructor in the "Ondokuz Mayis" (19 May) University in Samsun since May 1992. He has been working on fixed-term contracts of two years each which have been renewed without any problem since 1992. Mr. Mehmet Akyüz has also been the branch president of Türk Egitim-Sen (Trade Union of Public servants in the Education Branch of Activity, affiliated with TÜRKIYE KAMU-SEN) since 1992. He was also elected as the Samsun province representative of TÜRKIYE KAMU-SEN and has served in this capacity since 1995.

852. During the first months of the year 2001, discussion about the enactment of the law on public servants intensified in Turkey. This positive step to bring the national legislation into line with the ratified ILO Conventions caused some problems at the workplace level. Mr. Mehmet Akyüz, in February 2001, made a number of public statements in Samsun, which had a media coverage in the local press. The statements constitute no infringement of the existing legislation on civil servants or of the Turkish Penal Code. However, the university administration, using these statements as a pretext, started an administrative disciplinary investigation concerning Mr. Mehmet Akyüz. Then, the contract of Mr. Mehmet Akyüz was not renewed on 1 July 2001, without any explicit reason given, which testifies to the fact that the de facto dismissal (non-renewal of a chain of fixed-term contracts) of Mr. Mehmet Akyüz is a result of his trade union activity, which is expected to be intensified following the promulgation of the Public Servants Trade Unions Act. The complainant contends that this dismissal constitutes a violation of the right to organize.

B. The Government's reply

853. In its communication dated 22 October 2001, the Government asserts that the procedure concerning Mr. Mehmet Akyüz in no way constitutes a violation of Convention No. 87. In this respect, the Government refers to section 31 of the Higher Education Act No. 2547 concerning the terms of appointment of lecturers.

854. The function of Mr. Mehmet Akyüz, who was a lecturer in the Class Teaching Department of the Faculty of Education, was terminated when the term of his employment contract elapsed, since there was no further need for his services and also in view of Decision No. 189 of 13 June 2001 of the Management Board of the Faculty of Education.

855. Within the framework of the abovementioned section 31, it is stated clearly that, when a function is due to come to an end automatically at the end of a term of appointment and a reappointment is contemplated, any such reappointment shall be carried out, not as the extension of a term of appointment but according to the rules for a first appointment, and this is a mandatory provision. Consequently, the university administration has discretionary power in decisions on persons who are to be employed as lecturers. Similarly, the reappointment of Mr. Mehmet Akyüz, whose service relationship had come to an end once his term of appointment had elapsed, was also a matter for the discretion of the administration. It is one of the established principles of Turkish administrative law that

that discretionary power is not absolute but must be exercised having regard to public benefit and the needs of the service concerned.

856. Since, according to the principles of the examination instructions supplied to him, Mr. Mehmet Akyüz acted negligently and failed to fulfil his duty in conducting the personal talent stage one examination held in the Fine Arts Education Department of the Faculty of Education on 31 August 2000, the university opened a disciplinary investigation at the conclusion of which the abovementioned person was "rebuked" by the Disciplinary Board.

857. During the period when Mr. Mehmet Akyüz was a lecturer at the 19th May University, the penalties of "rebuke" and "one-eighth reduction of his monthly pay" were also imposed on him at the conclusion of disciplinary investigations carried out because of various statements he had made to the press and a further investigation concerning the above person is still under way since he objected to the distribution of lectures.

858. The Management Board of the Faculty of Education of the 19th May University examined the issue in the light of the negative conduct of the abovementioned person and came to the conclusion that it was difficult for him to conduct the education/teaching services expected of him; the Board then informed the Chancellor's office in Decision No. 2001/189 that it considered that Mr. Mehmet Akyüz's term of duty should not be extended.

859. The disciplinary penalties mentioned above were not imposed because Mr. Mehmet Akyüz was the president of the Samsun section of the Turkish Teachers' Union, but because his conduct had contravened the articles of the disciplinary regulations concerning administrators of the High Council for Education, Teachers and Civil Servants applying to his actions. The statements which Mr. Mehmet Akyüz made to the press were intended to inform public opinion in his capacity as president of the Samsun section of the Turkish Teachers' Union of that union's opinion on a certain subject and were directly insulting towards the university administration and to the teachers of the university and thus had nothing to do with his trade union activities.

860. Consequently the fact that Mr. Mehmet Akyüz was not reappointed to his post at that university in accordance with section 31 of Act No. 2547 had nothing to do with his trade union activities and in no way constitutes a violation of Convention No. 87.

861. Furthermore, since Turkey is a "state-governed by the rule of law", as established in its Constitution, all actions and procedures of the administration are open to the supervision of the judiciary. Mr. Mehmet Akyüz is therefore entitled to file an application with the Administrative Court against the decisions taken and the procedures followed by the university administration concerning his case.

C. The Committee's conclusions

862. *The Committee notes that the allegation in this case concerns the non-renewal of the contract of Mr. Mehmet Akyüz, the branch president of the Samsun section of the Turkish Teachers' Union, for anti-union reasons.*

863. *The Committee takes due note of the Government's statement that Mr. Mehmet Akyüz was employed on a series of two-year fixed-term contracts and that, when his most recent contract elapsed in 2001, it was decided that there was no further need of his services. According to the Government, this decision was taken on the basis of two "rebukes" issued by the Disciplinary Board of the University. While the first rebuke concerned Mr. Mehmet Akyüz's alleged failure to fulfil his duty in the conducting of an examination, the second was imposed at the conclusion of disciplinary investigations carried out because of various*

statements he had made to the press. While recognizing that the public statements made by Mr. Mehmet Akyüz were intended to inform public opinion in his capacity as president of the Samsun section of the Turkish Teachers' Union of the union's opinion on a certain subject, the Government asserts that these statements were directly insulting towards the university administration and to the teachers of the university and concludes that they had nothing to do with his trade union activities.

864. *The Committee observes that, while the complainant alleges that the non-renewal of Mr. Mehmet Akyüz's contract was due to the public statements that he made in February 2001, the Government asserts that this was one of the reasons for his dismissal, but that he had also been rebuked on an earlier occasion. As concerns the public statements, both the Government and the complainant agree that these statements were made in Mr. Akyüz's capacity as president of the local branch union, but the Government adds that these statements were insulting towards the university without providing any further details.*

865. *In respect of Mr. Akyüz's public statement, the Committee wishes to recall that the right to express opinions through the press or otherwise is an essential aspect of trade union rights [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 153.] The general assertion made by the Government that Mr. Mehmet Akyüz's public statements were insulting to the university, coupled with the complainant's explanation that these statements took place within the framework of discussions concerning the draft public servants' law, is not, in the Committee's opinion, a sufficient reason to disregard the fundamental importance of the principle of freedom of expression in respect of trade union matters.*

866. *The Committee considers that the non-renewal of a contract for anti-union reasons constitutes a prejudicial act within the meaning of Article 1 of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), ratified by Turkey. The Committee therefore requests the Government to institute an inquiry into the motivations for the non-renewal of Mr. Mehmet Akyüz's contract and to review this decision in the light of the above principles. The Committee requests the Government to keep it informed of developments in this respect.*

The Committee's recommendation

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

> ***Considering that the non-renewal of a contract for anti-union reasons constitutes a prejudicial act within the meaning of Article 1 of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Committee requests the Government to institute an inquiry into the motivations for the non-renewal of Mr. Mehmet Akyüz's contract and to review this decision in the light of the above principles. The Committee requests the Government to keep it informed of developments in this respect.***

CASE NO. 2079

INTERIM REPORT

Complaint against the Government of Ukraine presented by the Volyn Regional Trade Union Organization of the All-Ukraine Trade Union "Capital/Regions"

Allegations: Adoption of legislation contrary to freedom of association; denial of legal recognition to trade union; harassment and intimidation of trade union activists

868. The Committee *has* already examined the substance of this case on two occasions, at its November 2000 and June 2001 meetings when it submitted interim reports to the Governing Body [see 323rd Report, paras. 525-543 and 325th Report, paras. 547-560 respectively].

869. The Government provided further information in communications dated 22 August, 14 September and 12 November 2001 and 24 January 2002. The complainant forwarded additional information in communications dated 1 May and 1 and 21 November 2001 and 9 January 2002.

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

A. Previous examination of the case

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

(a) Noting with interest the ruling of the Constitutional Court of Ukraine and the Government's intention to comply with that ruling as well as its request for ILO technical assistance on this issue, the Committee asks the Government to keep it informed of the measures effectively taken to bring the Act on "Trade Unions, their Rights and Safeguard of their Activities" in full conformity with the provisions of Conventions Nos. 87 and 98.

(b) Concerning the case of Mr. Vdovichenko, the Committee requests the complainant to provide more information on the current trade union situation at the Lutsk Bearing Plant. With regard to the case of Mr. Chupikov, victim of an assault which is under investigation, the Committee requests the Government to keep it informed of the outcome of this case as soon as the decision is handed down. The Committee also asks the Government to keep it informed on the situation of Mr. Jura, trade union leader at the Volynoblenergo enterprise.

(c) The Committee notes the recent registration of the All-Ukraine Trade Union "Capital/Regions" and the acquisition of legal personality of its affiliates. However, noting that the Volynskaya Province of the All-Ukraine Trade Union "Capital/Regions" has not yet been registered with the local authorities since the required documents have not been submitted, the Committee trusts that the said union will be registered without delay, as soon as it has complied with the required formalities and asks the Government to keep it informed in this regard. In addition, the Committee requests the Government to put an end to all acts of harassment and intimidation of trade unionists. It asks the Government to keep it informed in this regard.

(d) With regard to the dismissal of a high number of workers in 1999 at the Lutsk Bearing Plant, the Committee requests the complainant to provide further information on this aspect of the case.

(e) The Committee asks the Government to send its observations concerning the allegations contained in the complainant's most recent communication.

B. The complainant's new allegations

872. In a communication dated 1 May 2001, the complainant organization puts forward new violations of trade union rights at the Lutsk Bearing Plant, which concerns mainly Mr. Vladimir Linik. The complainant organization alleges that the management of that enterprise forcibly excluded an issue raised by Mr. Linik concerning his working conditions from the agenda for collective bargaining on the draft collective bargaining agreement. Mr. Linik worked for the enterprise from 7 February 1985 to 26 May 1999 and was an active member of the trade union since 1994. He became ill and was certified disabled, mainly because he had worked in an unhealthy and harmful environment for a long period of time at the Lutsk Bearing Plant. In 1998, the enterprise's new owners decided to ensure appropriate working conditions for the workers. But the old management, which stayed in place, did not follow these instructions. This led to active protests from the Free Trade Union, which were followed by reprisals from the management. The first people to be included on the blacklist were the leaders and activists of the Free Trade Union, amongst which figured Mr. Linik. The complainant organization explains that the management then subjected Mr. Linik to constant psychological pressure and he was compelled to accept his dismissal and the payment of an insignificant amount of compensation. In addition, the complainant organization reiterates that the workers at the Lutsk Bearing Plant are being pressured to withdraw from the Free Trade Union.

873. In recent communications dated 1 and 21 November 2001 and 9 January 2002, the complainant organization alleges new violations of trade union rights at the Volynoblenergo enterprise and at the Kovel Depot of L'vov Railways. Moreover, it alleges that the draft proposals on the amendments of sections 11 and 16 of the Act on "Trade Unions, their Rights and Safeguard of their Activities" put forward by the Government do not comply with the requirements of Conventions Nos. 87 and 98, particularly with regard to the registration formalities.

C. New reply from the Government

874. In its communication dated 22 August 2001, the Government replies to the recent allegations put forward by the complainant organization concerning the case of Mr. Linik. The Government explains that the management of the enterprise examined Mr. Linik's application to be transferred to another post because of his deteriorating health and proposed him a number of alternative posts at the Lutsk Bearing Plant. Since Mr. Linik refused all the alternative posts proposed, and in view of his inadequate qualifications and deteriorating health, the management terminated his contract of employment in accordance with section 40(2) of the Labour Code, which provides that a contract of employment may be terminated in cases where a worker is not able to perform a given job because of inadequate qualifications or poor health. When Mr. Linik's employment was terminated under the terms of an agreement between the Board of Directors and the trade union committee and in accordance with the collective agreement in force, he was given paid leave on the basis of twice his average monthly wages for the period from the date on which he was given notice of termination, to the day on which he was due to leave, plus payments equivalent to three months' average wages for 1998 and an additional lump sum equivalent to six months' pay.

875. In its communication of 14 September 2001, the Government provided information related to the case of Mr. Chupikov, leader of the Free Trade Union at the Voltex enterprise. Mr. Chupikov and his wife were assaulted and robbed on 20 October 1999 in the city of Lutsk. The local authorities had initiated criminal investigations, which were supervised by the Ministry of the Interior. However, the Government indicates that these proceedings were suspended in accordance with section 206(3) of the Code of Penal Procedure, since the identity of the offenders had not been established.

D. The Committee's conclusions

876. *The Committee recalls that this case related to two sets of allegations, namely allegations of a legislative nature related to certain provisions of the Act on "Trade Unions, their Rights and Safeguard of their Activities", and allegations of a factual nature related to the denial of legal recognition of trade unions, harassment and intimidation of trade union activists as well as unlawful dismissals.*

877. *The Committee regrets that in their numerous recent communications, both parties have not provided detailed information on most of the specific issues which were still pending in this case and have chosen to provide information which was not related to the present case and did not involve violations of freedom of association.*

878. *With regard to the allegations of a legislative nature related to certain provisions of the Act on "Trade Unions, their Rights and Safeguard of the Activities", the Committee notes that according to the Government, a bill amending sections 11 and 16 of the Act was examined at a session of the Supreme Council and adopted as a basis for further discussion. The drafting process will also take into account the conclusions of the ILO mission which visited the country in April 2001. The Committee takes due note of this information and once again asks the Government to continue to keep it informed of the measures effectively taken to bring the said Act into full conformity with the provisions of Conventions Nos. 87 and 98.*

879. *With regard to the case of Mr. Chupikov, victim of an assault which was under investigation, the Committee takes note of the Government's statement according to which the proceedings in that case were suspended since the offenders had not been identified. While noting this information, the Committee recalls that the absence of judgements against the guilty parties creates, in practice, a situation of impunity, which reinforces the climate of violence and insecurity, and which is extremely damaging to the exercise of trade union rights [see* ***Digest of decision and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 55]. In addition, it once again asks the Government to keep it informed on the situation of Mr. Jura, trade union leader at the Volynoblenergo enterprise.*

880. *In its previous report, the Committee had noted the recent registration of the All-Ukraine Trade Union "Capital/Regions" and the acquisition of legal personality of its affiliates. In this regard, it asks the Government to keep it informed of whether the Volynskaya Province division of the All-Ukraine Trade Union "Capital/Regions" has been registered with the local authorities.*

881. *With regard to the new allegations concerning Mr. Linik, trade unionist at the Lutsk Bearing Plant, the Committee notes that according to the Government, Mr Linik was dismissed because of his deteriorating health and inadequate qualifications and because he refused to be transferred to another post. The Government stated the Mr. Linik's contract was terminated in accordance with the relevant sections of the Labour Code and that he perceived all the indemnities he was entitled to. However, the Committee notes that according to the complainant, Mr. Linik was put on a blacklist, was the victim of constant*

psychological pressure and forced to accept an insignificant amount of compensation, namely because he was a trade union activist. In view of the contradicting statements, the Committee asks the Government to set up an independent inquiry into the dismissal of Mr. Linik and if there was evidence that he had been dismissed for reasons linked to his legitimate trade union activities, to take all necessary measures to reinstate him in an appropriate position, without loss of wage and benefits. The Committee asks the Government to keep it informed in this regard.

882. *Finally, in the light of the continued allegations of acts of anti-union discrimination at the Lutsk Bearing Plant, the Committee urges the Government to investigate these allegations and if they are proven to be true, to take all necessary measures to put an end to these acts. The Committee asks the Government to keep it informed in this regard. The Committee also asks the Government to provide its observations on the recent allegations put forward by the complainant organization in its communications of 1 and 21 November 2001 and 9 January 2002.*

The Committee's recommendations

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

(a) With regard to the allegations of a legislative nature related to certain provisions of the Act on "Trade Unions, their Rights and Safeguard of their Activities", the Committee takes due note that a bill amending the said provisions was examined at a session of the Supreme Council. It once again asks the Government to continue to keep it informed of the measures effectively taken to bring the said Act into full conformity with the provisions of Conventions Nos. 87 and 98.

(b) The Committee asks the Government to keep it informed of whether the Volynskaya Province division of the All-Ukraine Trade Union "Capital/Regions" has been registered with the local authorities.

(c) With regard to the case of Mr. Linik, the Committee requests the Government to set up an independent inquiry into his dismissal and if there was evidence that he had been dismissed for reasons linked to his legitimate trade union activities, to take all necessary measures to reinstate him in an appropriate position, without loss of wage and benefits. The Committee asks the Government to keep it informed in this regard. It also asks the Government to keep it informed of the situation of Mr. Jura, trade union leader at the Volynoblenergo enterprise.

(d) In the light of the continued allegations of acts of anti-union discrimination at the Lutsk Bearing Plant, the Committee urges the Government to investigate these allegations and, if they are proven to be true, to take all necessary measures to put an end to these acts. The Committee asks the Government to keep it informed in this regard. The Committee also asks the Government to provide its observations on the recent allegations put forward by the complainant organization in its communications of 1 and 21 November 2001 and 9 January 2002.

CASE NO. 2146

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

Complaint against the Government of Yugoslavia presented by the Yugoslav Union of Employers (UPJ)

Allegations: Violations of the organizational and collective bargaining rights of employers

884. In a communication dated 5 July 2001, the Yugoslav Union of Employers (UPJ) submitted a complaint of violations of freedom of association and of collective bargaining rights against the Government of Yugoslavia.

885. The Government sent its observations in a communication dated 28 August 2001.

886. Yugoslavia 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

887. In its communication dated 5 July 2001, the Yugoslav Union of Employers (UPJ) alleges that the voluntary nature of collective bargaining in Yugoslavia is violated by the law on the Chamber of Commerce which provides in section 6 that one of the activities of the Chambers is to sign all collective agreements, while membership in the Chamber of Commerce is compulsory for all enterprises.

888. The UPJ was founded in 1995 and membership in the organization of enterprises and employers is voluntary. As employers' organizations can still not be registered as such in Yugoslavia, the UPJ was registered as a "citizens' association". The Serbian Union of Employers (UPS) and the Montenegro Union of Employers (UPM) are both members of the UPJ and represent respectively 800 and 50 companies in their regions, as well as various branch associations. In 2001, the UPJ joined the South Eastern Europe Employers' Forum (SEEEF) and, in the spring of 2001, the UPJ applied for membership to the International Organization of Employers (IOE).

889. The complainant states that its organization, as well as the UPS and UPM, would like to start negotiations with the Trade Unions in Yugoslavia on a voluntary basis, in conformity with Convention No. 98. The complainant alleges however that under the law on the Chamber of Commerce, the outcome of their negotiations, i.e. the collective agreements, have to be signed by the Chamber of Commerce. The complainant considers that such a condition makes voluntary negotiation between the UPJ and the Trade Unions of Yugoslavia impossible. The complainant further alleges that a new draft law on the Chamber of Commerce of Serbia provides that membership in the Chamber is compulsory for all enterprises and that one of the tasks of the Chamber is to sign collective agreements. Thus, voluntary negotiations will not be possible in Serbia either. The complainant therefore requests that appropriate initiatives be taken to ensure that real voluntary negotiations can take place at the national level, as well as at the level of Serbia and of Montenegro, without the requirement that all collective agreements be signed by the Chambers of Commerce.

B. The Government's reply

890. In its communication dated 28 August 2001, the Government asserts that the allegations are unfounded because the federal regulations do not violate the provisions of ILO Conventions, including Convention No. 98. The Government recalls that article 41 of the Constitution of the Federal Republic of Yugoslavia guarantees the freedom of political, trade union and other associations and actions of citizens, without prior approval, with registration with the competent authority. Moreover, the Law on Employment devotes a separate section to collective agreements without specifying what entities will conclude such agreements.

891. As concerns section 6 of the law on the Yugoslav Chamber of Commerce, the Government asserts that this provision concerns the participation in the conclusion and implementation of collective agreements, but does not imply any exclusive right of the Chamber to conclude collective agreements, nor are other organizations excluded from this right. The very fact that membership in the Chamber is compulsory does not mean that collective bargaining cannot be done on a voluntary basis, nor is the Chamber authorized to supervise the negotiations and their results.

892. The Government concludes that it is not in the interest of the federal Government to determine which organizations of workers and employers will participate in the collective bargaining process, but rather is for the organizations themselves to win their own positions on the basis of the principle of representation.

C. The Committee's conclusions

893. *The Committee notes that the allegations in this case concern restrictions placed upon the right of employers to form and join the organization of their own choosing and to bargain collectively as a result of obligatory membership in the Chamber of Commerce and the requirement that the Chamber signs agreements negotiated by the complainant organization and its affiliates.*

894. *In this respect, the Committee notes the Government's assertion that the Constitution of the Republic guarantees the right of association to all and that section 6 of the law on the Chamber of Commerce, referred to by the complainant, refers only to participation in the conclusion and implementation of collective agreements, but does not imply any exclusive right of the Chamber to conclude collective agreements, nor does it exclude any other organizations from so doing. The Committee notes however that, while it is not clear from the legislation, the Government does admit that membership in the Chamber of Commerce is compulsory and then goes on to state that participation in the collective bargaining process depends on the principle of representation.*

895. *In the first instance, the Committee emphasizes that Article 2 of Convention No. 87 provides that employers shall have the right to establish and join the organization of their own choosing. The Committee therefore considers that compulsory membership in Chambers of Commerce when such Chambers have the powers of employers' organizations in the meaning of Article 10 of Convention No. 87 would be contrary to freedom of association standards and principles. It derives from this principle that, just as for trade unions, questions concerning the financing of employers' organizations as regards both their own budgets and those of federations and confederations should be governed by the by-laws of the organizations themselves. Considering that the powers and activities set forth in the Yugoslav Law on the Chamber of Commerce include those within the purview of employer organizations within the meaning given by Convention No. 87, the Committee requests the Government to take the necessary steps to repeal all provisions of*

this law which would give rise to compulsory membership or financing. The Committee requests the Government to keep it informed of the progress made in this regard.

896. *As concerns the right to collective bargaining, the Committee recalls that the voluntary negotiation of collective agreements, and therefore the autonomy of the bargaining partners, is a fundamental aspect of the principles of freedom of association [see* ***Digest of decision and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 844]. While noting that the law on the Chamber of Commerce does not appear in itself to provide a monopoly to the Chamber of Commerce to conclude collective agreements, the Committee takes due note of the complainant's allegation that any collective agreement resulting from negotiations must be signed by the Chamber of Commerce, particularly in the light of the Government's indication that collective bargaining should be conducted on the basis of representativeness and in the light of the compulsory nature of the membership of the Chamber of Commerce. The Committee is of the opinion that the principle of representation for collective bargaining purposes cannot be applied in an equitable fashion in respect of employers' associations if membership in the Chamber of Commerce is compulsory and the Chamber of Commerce is empowered to bargain collectively with trade unions.*

897. *While noting that the Law on Employment, referred to by the Government, does not set out in any express manner the associations which are to participate in collective bargaining at the various levels, the Committee is of the opinion that the employers concerned should be able to choose the organization which they wish to represent their interests in the collective bargaining process. Furthermore, the Committee considers that granting collective bargaining rights to the Chamber of Commerce which is created by law and to which affiliation is compulsory impairs the employers' freedom of choice in respect of the organization to represent their interests in collective bargaining. The Committee therefore trusts that the Government will take the necessary measures to ensure that employers may freely choose the organization they wish to represent their interests in the collective bargaining process and that the results of any such negotiations will not be subjected to the approval of the legislatively constituted Chamber of Commerce. The Committee requests the Government to keep it informed of the progress made in this regard.*

The Committee's recommendations

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

(a) Considering that the powers and activities set forth in the Yugoslav Law on the Chamber of Commerce include those within the purview of employer organizations within the meaning given by Convention No. 87, the Committee requests the Government to take the necessary steps to repeal all provisions of this Law which would give rise to compulsory membership or financing. The Committee requests the Government to keep it informed of the progress made in this regard.

(b) The Committee recalls the importance it attaches to the voluntary nature of collective bargaining and trusts that the Government will take the necessary measures to ensure that employers may freely choose the organization they wish to represent their interests in the collective bargaining process, and that the results of any such negotiations will not be subjected to the approval of

the legislatively constituted Chamber of Commerce. The Committee requests the Government to keep it informed of the progress made in this regard.

Geneva, 15 March 2002.

Maurice Ramond,
Chairperson.

Points for decision: Paragraph 161; Paragraph 173; Paragraph 197; Paragraph 203; Paragraph 213; Paragraph 259; Paragraph 311; Paragraph 326; Paragraph 344; Paragraph 367; Paragraph 411; Paragraph 438; Paragraph 446; Paragraph 506; Paragraph 524 ; Paragraph 547; Paragraph 562; Paragraph 588; Paragraph 604; Paragraph 644; Paragraph 663; Paragraph 683; Paragraph 704; Paragraph 737; Paragraph 761; Paragraph 780; Paragraph 804; Paragraph 847; Paragraph 867; Paragraph 883; Paragraph 898.